

# Gender stereotyping as a human rights violation

Research report

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## Executive summary

Wrongful gender stereotyping is a pervasive human rights violation. As this report shows, it is a frequent cause of discrimination against women and a contributing factor in violations of rights ranging from the right to an adequate standard of living through to the freedom from gender-based violence. Yet, despite the substantial harm they have caused, gender stereotypes and gender stereotyping are often misunderstood in human rights discourses. It is significant, for instance, that gender stereotyping is regularly overlooked as the cause of human rights violations, gender stereotypes are frequently misidentified, if they are identified at all, and there is little in-depth discussion of the myriad ways in which gender stereotypes and gender stereotyping harm women. Moreover, there is surprisingly limited awareness of the full extent and breath of international human rights obligations related to stereotypes and stereotyping, with much of the focus to date limited only to the obligations enumerated in the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. This is in spite of the fact that it is not the only international human rights treaty to impose obligations related to stereotypes and stereotyping. It is also in spite of the fact that many of the human rights treaty bodies have recognised that the rights to non-discrimination and equality – and through them, other rights and freedoms – contain an implied obligation to address harmful stereotypes and wrongful stereotyping.

A number of UN human rights mechanisms, including, most notably, the Committee on the Elimination of Discrimination against Women (**CEDAW Committee**), have increasingly shed important light on the grave and/or systematic harms of gender stereotypes and gender stereotyping. The work of these mechanisms has helped to propel the issue of gender stereotyping onto the international human rights stage and has been an important factor that has helped to encourage other mechanisms to give this issue serious attention. The important ground work of these mechanisms will help to move the conversation about gender stereotypes and gender stereotyping into its next phase, one in which there is widespread understanding of the key concepts of gender stereotypes and gender stereotyping and a keen and sophisticated awareness of the broad-ranging international human rights obligations related to stereotypes and stereotyping. But, for now, much more work is needed to prioritise stereotypes and stereotyping as a human rights concern and, in this, there is an important and significant leadership role for the Office of the High Commissioner for Human Rights (**OHCHR**) to play.

Opportunities for the OHCHR to play a leadership role on the issue of gender stereotyping are explored in the policy paper that accompanies this research report. The policy paper acknowledges that this leadership role begins within the OHCHR itself. It is important, it is suggested, that the OHCHR prioritises stereotypes and stereotyping in its overall work plan and commits each of its sections to incorporate a focus on stereotypes and stereotyping into their work. It is further suggested that the OHCHR should take steps to raise the profile of stereotyping as a human rights issue, including by creating a flagship publication on stereotyping, conducting research that highlights the negative impact of gender stereotyping within specific contexts (e.g., the judiciary), and undertaking or commissioning research on good

practice examples of addressing stereotypes and stereotyping. In addition, in order to ensure that the OHCHR does not inadvertently reinforce or perpetuate stereotypes through its own work, it is recommended that it should incorporate a focus on stereotypes and stereotyping in its induction and training of staff and ensure that its processes for reviewing resources prior to publication take stereotypes and stereotyping into account. It is further recommended that the OHCHR consider how any existing and new projects or programs might help in the modification or transformation of harmful stereotypes and the elimination of wrongful stereotyping.

The OHCHR's leadership role on gender stereotyping should extend to its work supporting the treaty bodies. A key first step is for the OHCHR to encourage and support the CEDAW Committee to develop a General Recommendation on the obligations of States Parties to address stereotypes and stereotyping. The OHCHR should also consider developing a briefing note on stereotypes and stereotyping for all existing and incoming experts appointed to human rights treaty bodies. Moreover, the OHCHR should advocate that the next Annual Meeting of Chairpersons of Human Rights Treaty Bodies considers the "harmonisation of treaty body approaches to harmful stereotypes and wrongful stereotyping." Just like with the treaty bodies, the OHCHR can show leadership on stereotyping through its work supporting the special procedures of the UN Human Rights Council. Steps in this area could include encouraging the special procedures to issue a joint statement on stereotyping, developing a briefing note for all existing and incoming special procedures, exploring opportunities to support special procedures interested in addressing stereotyping and facilitating opportunities to promote the reports of special procedures that examine the impact of stereotyping on human rights. It might also include identifying "challenges and best practices in addressing harmful gender stereotypes and wrongful gender stereotyping" as a topic for discussion at the Council's annual full-day discussion on women's human rights and at other high profile human rights forums. More broadly, the OHCHR should advocate that key human rights forums, like the Commission on the Status of Women, consider stereotyping as a key issue for discussion. It should also identify and strengthen opportunities for collaboration on stereotyping with other UN agencies, National Human Rights Institutions, States Parties and non-governmental organisations.

The OHCHR occupies a unique position to raise awareness of the issue of gender stereotyping and the myriad ways this practice undermines the recognition, exercise and enjoyment of women's human rights. Significantly, it can leverage its role supporting the human rights treaty bodies and special procedures to encourage them also to raise awareness of this important, but often misunderstood and overlooked, issue that threatens the full realisation of women's human rights and fundamental freedoms. Moving beyond recognition that gender stereotyping is an obstacle to women's rights to meaningful progress in implementing human rights obligations to address harmful stereotypes and wrongful stereotyping will require all of us – treaty bodies, special procedures, States Parties, civil society and academics – to give this issue the serious attention it deserves. The OHCHR can be a decisive force in bringing about this change, provided it prioritises stereotyping through its work.

## Table of Contents

<b>Executive summary</b>	<b>ii</b>
<b>1. Introduction</b>	<b>5</b>
1.1 Objectives	5
1.2 Methodology	6
1.3 Reading this report	7
<b>2. Understanding gender stereotypes/stereotyping</b>	<b>8</b>
2.1 Gender stereotypes/stereotyping	8
2.2 Harmful gender stereotypes and wrongful gender stereotyping	17
<b>3. State obligations to address gender stereotypes/stereotyping</b>	<b>20</b>
3.1 CEDAW	21
3.2 CRPD	30
3.3 CAT	33
3.4 CRC	33
3.5 ICCPR	36
3.6 ICERD	38
3.7 ICESCR	39
3.8 ICRMW	41
<b>4. How gender stereotypes/stereotyping harm women</b>	<b>44</b>
4.1 Discrimination	44
4.2 Gender-based violence against women	46
4.3 Adequate standard of living, including food, poverty and housing	49
4.4 Health	52
4.5 Education	53
4.6 Marriage and family relations	55
4.7 Political and public life, including employment	57
<b>5. Challenges in addressing gender stereotyping</b>	<b>60</b>
5.1 Lack of understanding of key concepts	60
5.2 Limited awareness of state obligations	61
5.3 Lack of awareness of good practices in addressing gender stereotyping	63
5.4 Missed opportunities to address gender stereotypes/stereotyping	65
5.5 Balancing competing human rights obligations	67

## 1. Introduction

In 2013, the Women's Rights and Gender Section of the OHCHR decided to embark on research on gender stereotypes and gender stereotyping within the context of the realisation of women's human rights and gender equality. To this end, it proceeded to commission two documents, namely a:

- research report, now entitled *Gender Stereotyping as a Human Rights Violation: Research Report (research report)*; and
- policy paper, now entitled *Strategies for Addressing Gender Stereotyping: Policy Paper (policy paper)*.

The OHCHR Women's Rights and Gender Section decided to pursue this research to enable it to consider potential opportunities and challenges for future programming and coordination on gender stereotypes and gender stereotyping. Its decision was informed by a number of factors, including the: growing consensus that gender stereotyping poses a significant, yet largely unaddressed, challenge to the recognition, exercise and enjoyment of women's human rights; limited understanding of stereotyping as a human rights issue; and limited awareness of the content and meaning of states' obligations to address gender stereotyping.<sup>1</sup>

### 1.1 Objectives

This research report, the first project deliverable, examines how international human rights treaties and UN human rights mechanisms (i.e., human rights treaty bodies and special procedures) have addressed gender stereotypes/stereotyping. The report seeks to:

- define key concepts (e.g., gender stereotypes/stereotyping);
- identify and map international human rights obligations related to gender stereotypes/stereotyping;
- analyse how, in the view of UN human rights mechanisms, gender stereotypes/stereotyping harm women and violate their human rights; and
- pinpoint and explore some of the key challenges in addressing gender stereotypes/stereotyping, as revealed in the work of the UN human rights mechanisms.

In doing so, the report aims to identify potential opportunities and challenges for work, by the OHCHR, on gender stereotypes/stereotyping. It also aims to aid the

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<sup>1</sup> Simone Cusack, "The CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping," in Anne Hellum and Henriette Sinding Aasen (eds.), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press, 2013), 124, at 126-131.

normative development of human rights obligations related to gender stereotypes/stereotyping and lay a robust foundation for further research on gender stereotypes/stereotyping (e.g., research on the identification of good practice examples in addressing stereotypes/stereotyping, analysis of regional approaches to addressing stereotypes/stereotyping).

As agreed with the OHCHR, this report is limited to gender stereotypes/stereotyping; consideration of stereotypes/stereotyping unrelated to sex or gender is therefore minimal. Even so, the OHCHR is encouraged to take a broader view of the problem of stereotypes/stereotyping and not to limit itself to action on gender stereotypes/stereotyping. This is because other forms of stereotypes and stereotyping, including compounded stereotypes/stereotyping, can be equally as harmful as gender stereotypes and gender stereotyping.

## 1.2 Methodology

This report is based on a desk review and analysis of UN human rights materials. These materials consist of international human rights treaties<sup>2</sup> and the work of UN human rights treaty bodies (i.e., General Recommendations, Concluding Observations, individual communications and inquiries) and special procedures. An effort has been made to include examples and excerpts from the work of a diverse range of UN human rights mechanisms. That being said, it is acknowledged that the work of the CEDAW Committee is overrepresented in the report due to the fact that this particular mechanism has considered the issue of gender stereotypes/stereotyping with greater frequency and in more depth than its fellow UN human rights mechanisms. By agreement with the OHCHR, the report does not consider regional human rights systems, though it should be acknowledged that those systems, especially the inter-American human rights system, have established important standards and jurisprudence on gender stereotypes/stereotyping that will need to be considered by the OHCHR at a future point in time.

Secondary materials have been relied on to clarify or support the discussion of primary materials, but only where necessary or where such material was considered particularly useful in further illustrating a point or series of points made by the UN human rights mechanisms. In addition, the report has benefitted from the advice and guidance of the OHCHR staff, particularly Veronica Birga and Adwoa Kufuor-Owusu, and informal conversations over a number of years with several current and past UN human rights mechanisms. It must also be acknowledged that this report has benefitted from and builds upon work undertaken by Professor Rebecca J. Cook (University of Toronto) and the author, most notably *Gender Stereotyping: Transnational Legal Perspectives* (2010).

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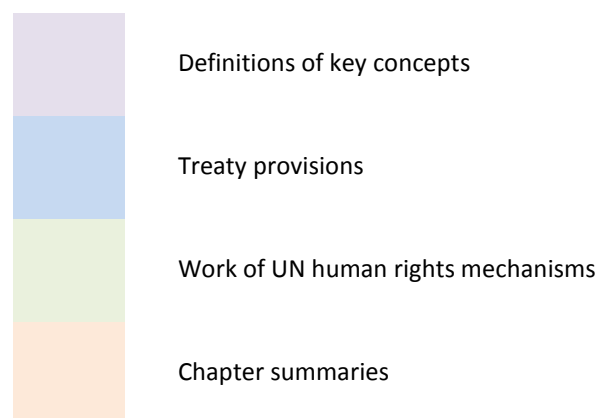
<sup>2</sup> This report does not consider the *International Convention for the Protection of All Persons from Enforced Disappearance*, UN Doc. A/RES/61/177 (entered into force 23 December 2010), as it does not refer to stereotypes/stereotyping explicitly. Although the Committee on Enforced Disappearances has begun to consider the periodic reports of States Parties, any Concluding Observations it has issued, including on stereotyping (if any), fall outside the agreed research period and therefore have not been analysed in the drafting of this report.

With the exception of the international human rights treaties and General Recommendations, the review and analysis in this report has been limited to material published between January 2008 and March 2013. The review of the former covered all treaties, irrespective of when they were adopted or entered into force, and General Recommendations issued up until or during March 2013. This is due mainly to the desire to highlight current debates about gender stereotypes/stereotyping, the timing requirements of the project, and the need to limit the large volume of materials generated by the UN human rights system. It is also consistent with research undertaken by the author that suggests that the past five years has seen a significant increase in the amount of attention paid by UN human rights mechanisms to the issue of gender stereotypes/stereotyping. The report does contain a handful of brief references to material published after March 2013, but only when that material was already known to the author and only because of its particular significance to the project.

### 1.3 Reading this report

The report is comprised of five substantive chapters. Chapter 2 briefly explains key terms, such as “gender stereotype” and “gender stereotyping.” Chapter 3 identifies the obligations in international human rights treaties to address gender stereotypes/stereotyping and explains how treaty bodies have interpreted those obligations. Chapter 4 summarises some of the ways in which gender stereotypes/stereotyping harm women and violate their human rights and fundamental freedoms, as described by the UN human rights mechanisms themselves. And, lastly, chapter 5 concludes by outlining some of the main challenges that lie ahead in addressing gender stereotypes/stereotyping, which have emerged from the work of the UN human rights mechanisms.

At the request of the OHCHR, great care has been taken to avoid an overly academic discussion of the issue of gender stereotypes/stereotyping. One way that the author has sought to avoid such an approach is through the use of text boxes to highlight key information, treaty provisions, and excerpts from the work of the UN human rights mechanisms. For ease of reference, these boxes have been highlighted, by colour, in accordance with the following categories.



## 2. Understanding gender stereotypes/stereotyping

Chapter 2 outlines some of the key concepts addressed in this report and identifies how those concepts have been understood and applied by the various UN human rights mechanisms. It asks: what are the “gender stereotypes” that States Parties are required to address under international human rights law? It also asks: what is the practice of “gender stereotyping” that States Parties are similarly required to address under international human rights law? In considering these questions, Chapter 2 offers working definitions of the terms “gender stereotypes” and “gender stereotyping”, identifies different forms of gender stereotypes, and highlights examples where UN human rights mechanisms have examined the different forms of gender stereotypes and the practice of gender stereotyping. In addition, Chapter 2 explores the concepts of “harmful gender stereotypes” and “wrongful gender stereotyping” and distinguishes them from other stereotypes and stereotyping that are not subject to international human rights law.

### 2.1 Gender stereotypes/stereotyping

A “stereotype” is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, members of a particular social group.<sup>3</sup> Hence, a “gender stereotype” is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.<sup>4</sup>

#### Gender stereotype

A gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.

It should be noted that this definition, which was first put forward in *Gender Stereotyping: Transnational Legal Perspectives*, has been relied upon several times by the UN Special Rapporteur on the independence of judges and lawyers<sup>5</sup> and cited with approval (albeit indirectly) by the UN Working Group on the issue of discrimination against women in law and in practice.<sup>6</sup>

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<sup>3</sup> Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010), 9.

<sup>4</sup> *Ibid.*, 20.

<sup>5</sup> Gabriella Knaul, *Report of the Special Rapporteur on the independence of judges and lawyers*, UN Doc. A/66/289 (10 August 2011), para. 19; Gabriella Knaul, *Report of the Special Rapporteur on the independence of judges and lawyers*, UN Doc. A/HRC/17/30 (29 April 2011), para. 22 n 6.

<sup>6</sup> *Report of the UN Working Group on the issue of discrimination against women in law and in practice*, UN Doc. A/HRC/23/50 (19 April 2013), para. 69 n 41.

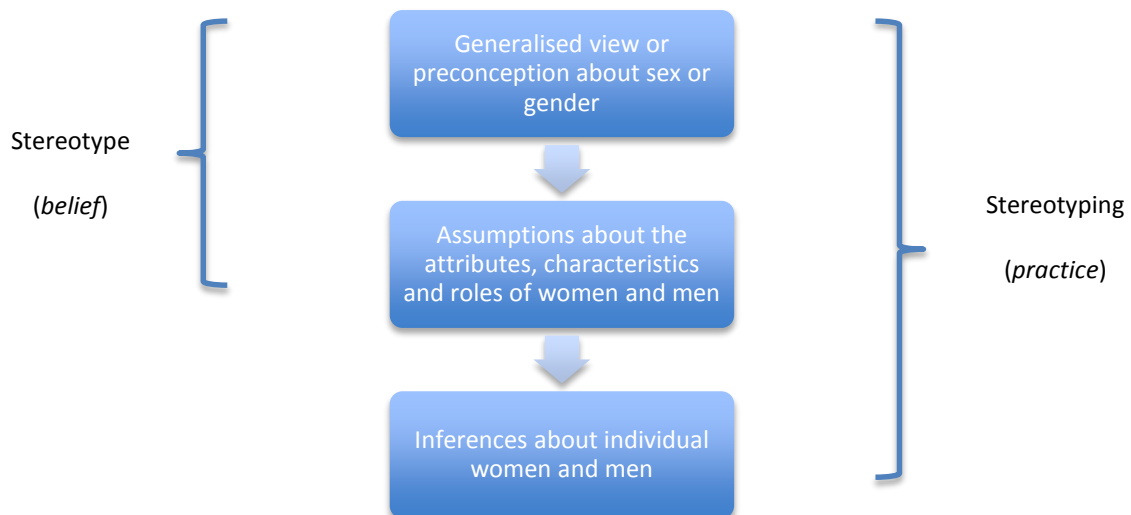


A gender stereotype is, at its core, a *belief* and that belief may cause its holder to make assumptions about members of the subject group, women and/or men. In contrast, the term “gender stereotyping” refers to the *practice* of applying a stereotypical belief to an individual member of the subject group; that is to say, the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.<sup>7</sup> Inferences are subsequently drawn about individual women and men based on the generalised views or preconceptions and related assumptions about the attributes, characteristics and roles of the different sexes/genders.

### Gender stereotyping

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.

The differences between a gender stereotype and the practice of gender stereotyping can be represented in the following way.



Gender stereotypes (and, hence, gender stereotyping) come in varied and overlapping forms, including “sex stereotypes,” “sexual stereotypes,” “sex-role stereotypes” and “compounded stereotypes.” Understanding the different forms is important as it can assist in identifying and grasping the parameters of a particular stereotype and, as a result, the steps that a State Party might usefully take to address that stereotype. Does, for instance, the stereotype concern the emotional characteristics of women, their sexual behaviours and/or their roles within the family and in society? And how does this affect the type or scope of action that the State Party needs to take to comply with its obligations under international human

<sup>7</sup> Cook and Cusack, *supra* note 3, 20.

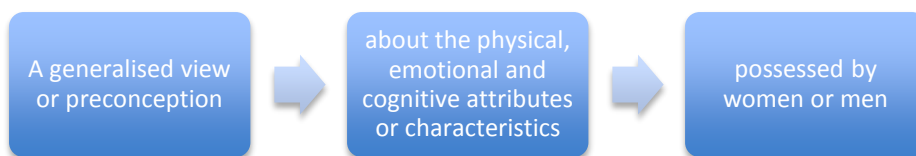
rights law? The remainder of this section considers the various forms of gender stereotypes present in the work of the UN human rights mechanisms.

The term “sex stereotype” refers to a generalised view or preconception about the physical, including biological, emotional and cognitive, attributes or characteristics that are or should be possessed by women and men.<sup>8</sup>

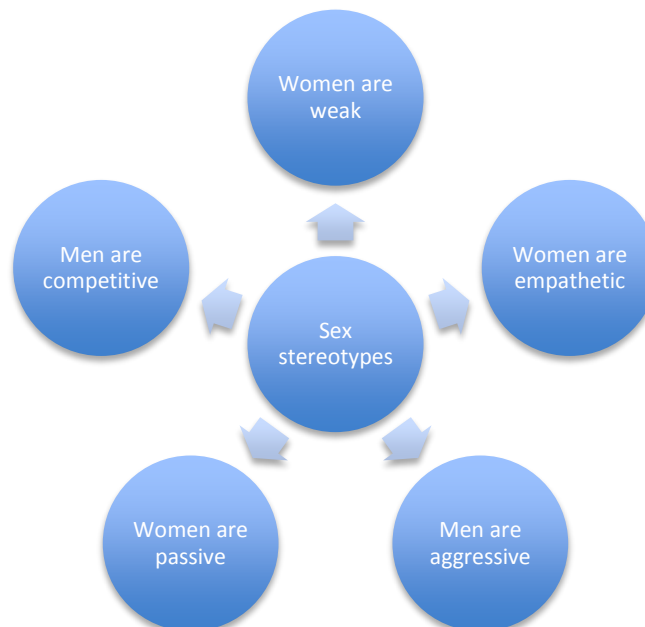
### Sex stereotype

A sex stereotype is a generalised view or preconception about the physical, including biological, emotional and cognitive, attributes or characteristics that are or should be possessed by women and men.

Sex stereotypes, in other words, focus on the attributes and characteristics of women and men, specifically their physical, emotional and cognitive attributes and characteristics; they are not concerned with the roles that women and men perform.



Many sex stereotypes are based on perceived (i.e., constructed) differences between men and women, rather than actual differences. Some examples follow.



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<sup>8</sup> Ibid., 25.

The Special Rapporteur on the right to food considered the sex stereotypes of women as physically weak and men as physically strong (among other stereotypes) in a recent report to the Human Rights Council.

#### Special Rapporteur on the right to food

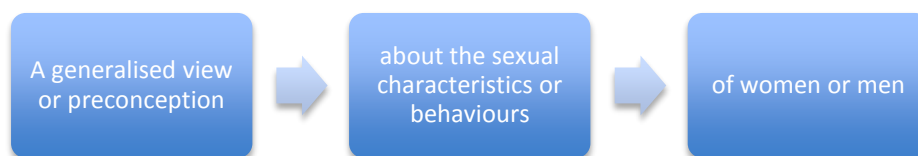
“Similar self-exclusion may occur where the work proposed under the public works programmes is considered too demanding physically (more suitable for men) or violates certain cultural norms as to which tasks are suitable for women. The challenge in this case would be to ensure that the division of tasks on the programme takes into account the specific constraints faced by women, without reinforcing gender stereotypes. This may be done by adopting a phased approach. During a first phase, some work may be designated as ‘light’ or ‘moderate’ with priority for women, and some work as ‘heavy’ and assigned to men; and certain tasks that are traditionally performed by women could be included in public works programmes, for instance preparing food in community kitchens or maintaining community vegetable gardens. At the same time, it should be ensured that women are paid the same wages as men. During a second phase, in order to reduce the risk that such an approach might reinforce gender stereotypes, women could gradually be encouraged to learn how to perform tasks traditionally assigned to men, so that in time ‘role-shifting’ will occur.”<sup>9</sup>

The term “sexual stereotype” refers to a generalised view or preconception about the sexual characteristics or behaviours that women and men are believed or expected to possess.<sup>10</sup>

#### Sexual stereotype

A sexual stereotype is a generalised view or preconception about the sexual characteristics or behaviours that women and men are believed or expected to possess.

Sexual stereotypes focus on sexual characteristics and behaviours and typically reinforce dominant forms of sexuality, particularly heterosexuality and dominant male sexuality.

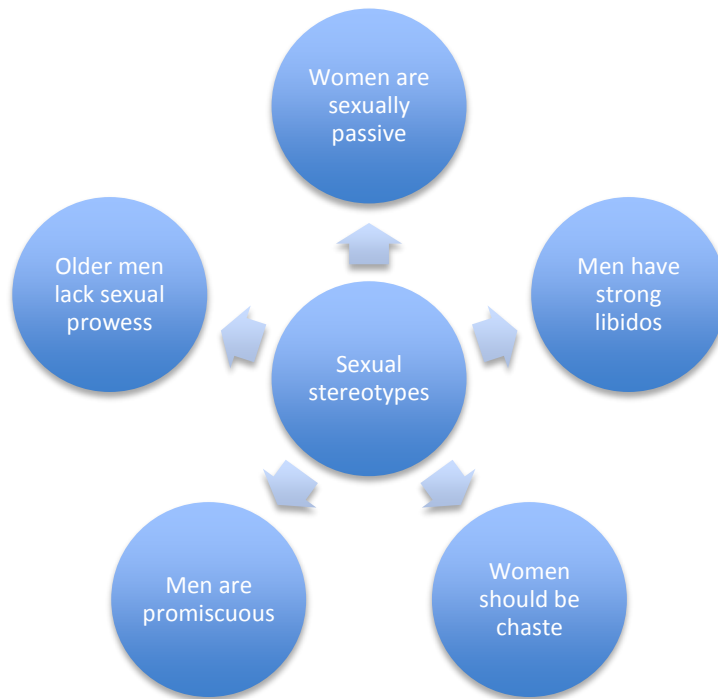


Like sex stereotypes, sexual stereotypes are often based on perceived (i.e., constructed), rather than actual, differences between women and men and their sexuality.

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<sup>9</sup> Olivier De Schutter, *Report of the Special Rapporteur on the right to food*, UN Doc. A/HRC/22/50 (24 December 2012), para. 27(b) [citations omitted].

<sup>10</sup> Cook and Cusack, *supra* note 3, 27.



The CEDAW Committee highlighted a number of sexual stereotypes in *Karen Tayag Vertido v. The Philippines* that contributed to the decision of a trial judge to acquit the accused, Jose B. Custodio, of raping Karen Tayag Vertido.

#### ***Karen Tayag Vertido v. The Philippines***

- “[T]he Committee stresses that stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”<sup>11</sup>
- “It is clear from the judgement (sic) that the assessment of the credibility of the author’s version of events was influenced by a number of stereotypes, the author in this situation not having followed what was expected from a rational and ‘ideal victim’ or what the judge considered to be the rational and ideal response of a woman in a rape situation....”<sup>12</sup>
- “Further misconceptions are to be found in the decision of the Court, which contains several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the credibility of the victim. In this regard, the Committee views with concern the findings of the judge according to which it is unbelievable that a man in his sixties would be able to proceed to ejaculation with the author resisting the sexual attack. Other factors taken into account in the judgement (sic), such as the weight given to the fact that the author and the accused knew each other, constitute a further example of ‘gender-based myths and misconceptions.’”<sup>13</sup>

<sup>11</sup> *Karen Tayag Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008 (22 September 2010), para. 8.4.

<sup>12</sup> *Ibid.*, para. 8.5.

<sup>13</sup> *Ibid.*, para. 8.6.

The term “sex-role stereotype” refers to a generalised view or preconception about the roles that women and men do or are expected to perform, and the types of behaviours that they possess or to which they are expected to conform.<sup>14</sup>

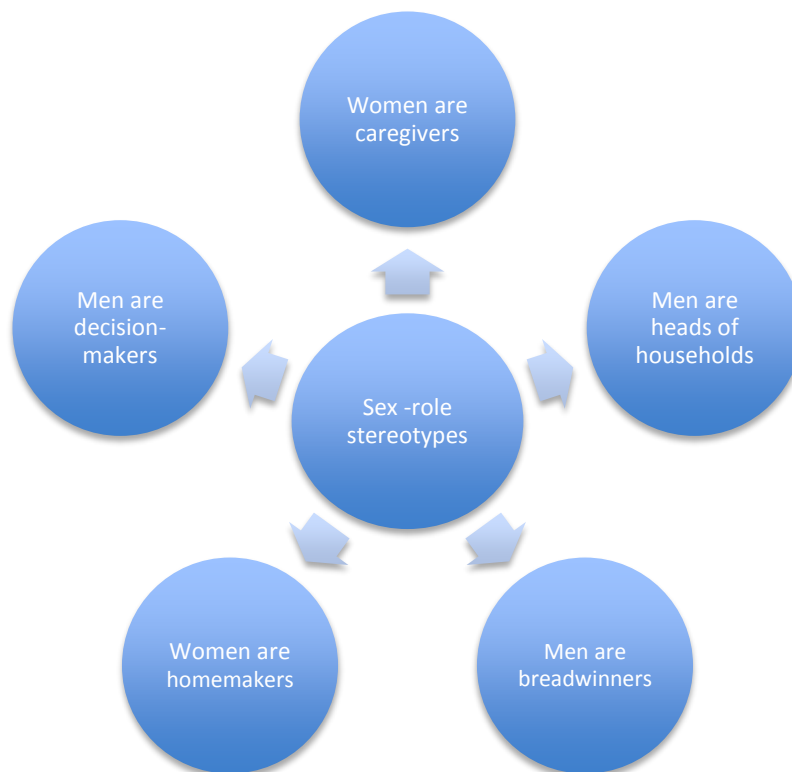
### Sex-role stereotype

A sex-role stereotype is a generalised view or preconception about the roles that women and men do or are expected to perform, and the types of behaviours that they possess or to which they are expected to conform.

Sex-role stereotypes focus on the roles and behaviours of women and men and typically assign them distinct, yet mutually reinforcing, roles and behaviours.



For example, sex-role stereotypes tend to assign women roles usually associated with the private sphere and men roles usually associated with the public sphere.



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<sup>14</sup> Cook and Cusack, *supra* note 3, 28.

Sex-role stereotypes are arguably the most common type of stereotype considered by UN human rights mechanisms, though the umbrella term “gender stereotype” is often used as the descriptor. Particular attention has been paid to the sex-role stereotypes of women as homemakers/caregivers and men as heads of households/breadwinners, which provides an indication of the pervasiveness and perniciousness of those particular stereotypes. The 2010 report of the Special Rapporteur on contemporary forms of slavery provides an appropriate illustration.

**Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

- “Forced marriage combines sexual exploitation with domestic servitude. The victims are forced to perform household chores in line with gendered stereotypes, while submitting to their husbands’ sexual demands.”<sup>15</sup>
- “On the job, domestic workers are also confronted with gender-based discrimination. Stereotypical gender roles that assign domestic chores to the women of the family – who are expected to take care of them without reward, recognition or remonstrance – are transposed to the professional context. This helps explain why domestic workers are often expected to be always available – notwithstanding labour standards on maximum working hours, rest days and vacation. Because domestic work was traditionally performed by female family members for free, many employers feel reticent to pay a serious salary for work they think should really cost no more than room, board and a measure of gratitude.”<sup>16</sup>

Another illustration comes from the Special Rapporteur on the right to food.

**Special Rapporteur on the right to food**

“A ... requirement is achieving the right combination of measures that recognize the specific obstacles women face (particularly time poverty and restricted mobility resulting from their role in the ‘care’ economy), and measures that seek to transform the existing gender division of roles by redistributing tasks both within the household and in other spheres. As long as we simply recognize the role of women in the ‘care’ economy by accommodating their specific needs, the existing division of roles within the household and associated gender stereotypes will remain in place, and could even be reinforced. Redistributing roles and challenging the associated gender stereotypes require a transformative approach, whereby the support provided to women not only recognizes their specific needs, but seen provides the opportunity to question existing social and cultural norms.”<sup>17</sup>

A potential leading contribution in this area will be the forthcoming 2013 General Assembly report of the Special Rapporteur on extreme poverty and human rights. Among other things, the report will consider how the unequal distribution of unpaid care work – which is due in the main to sex-role stereotypes – contributes to poverty and inequality and undermines women’s human rights. It will also likely pick up on

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<sup>15</sup> Gulnara Shahinian, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences*, UN Doc. A/HRC/15/20 (18 June 2010), para. 43 [citations omitted].

<sup>16</sup> *Ibid.*, para. 66.

<sup>17</sup> De Schutter, *supra* note 9, para. 42.

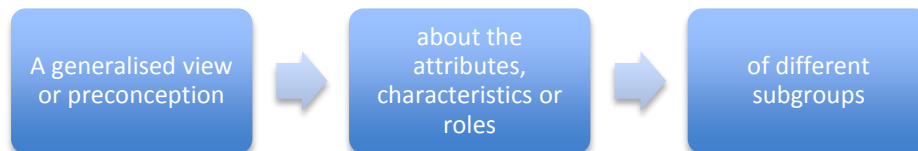
her earlier recognition of the connection between women’s poverty and the fact that because “women are primary caregivers of children and older adults, they have more difficulty in seeking remunerative work outside the home.”<sup>18</sup>

The term “compounded stereotype” refers to a generalised view or preconception about groups that result from the ascription of attributes, characteristics or roles based on one or more other traits, for example sex/gender and disability.<sup>19</sup>

### Compounded stereotype

A compounded stereotype is a generalised view or preconception about groups that result from the ascription of attributes, characteristics or roles based on one or more other traits.

Compounded stereotypes can be broken down as follows.

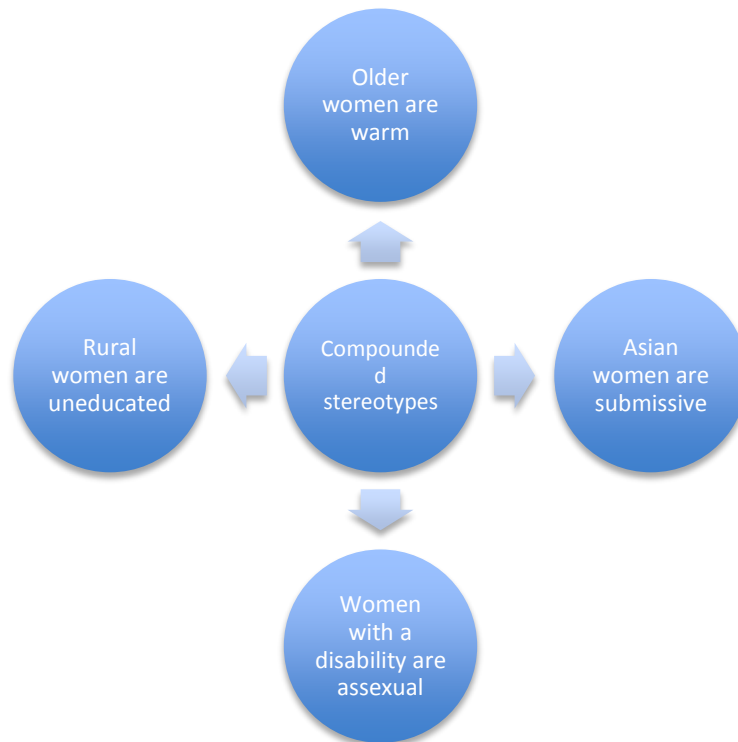


A compounded gender stereotype is effectively a sex stereotype, sexual stereotype or sex-role stereotype that intersects with another type of stereotype (e.g., disability stereotype, age stereotype, sexual orientation stereotype) to produce unique stereotypes of different subgroups of women or men (e.g., stereotypes of women with disabilities, stereotypes of wives, stereotypes of lesbians). Much like compounded/intersectional discrimination, compounded stereotypes affect women belonging to particular subgroups to a different degree or in different ways to men.

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<sup>18</sup> Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights*, UN Doc. A/63/274 (13 August 2008), para. 34 [citations omitted].

<sup>19</sup> Cook and Cusack, *supra* note 3, 29.



It is likely that many stereotypes that are labelled as gender stereotypes are in fact compounded gender stereotypes. This is because gender stereotypes are frequently concerned with a specific group of women (e.g., women of childbearing age), rather than with women as a whole.

The Special Rapporteur on violence against women, its causes and consequences, has paid significant attention to compounded stereotypes of women with disabilities in her recent reports. “Women with disabilities,” she has explained, “experience both the stereotypical attitudes directed towards women, and those directed towards persons with disabilities.”<sup>20</sup> Through her reports, which are excerpted in part below, the Special Rapporteur has highlighted carefully how compounded stereotypes/stereotyping influence the unique forms, causes and consequences of violence against women with disabilities as well as their ability to access justice more broadly.

**Special Rapporteur on violence against women, its causes and consequences:**

- “Women with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence.”<sup>21</sup>
- “Not only are [women with disabilities] excluded as witnesses because they may have

<sup>20</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/23/49 (14 May 2013), para. 7.

<sup>21</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/67/227 (3 August 2012), para. 32.



difficulty communicating with the police, but stereotypes operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses. On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control.”<sup>22</sup>

- “Stereotypical views of women with disabilities may be imposed on their parental rights or through the termination of parental rights. According to Women with Disabilities Australia, it is relatively common for everyday stereotypes and deeply rooted beliefs about women with disabilities to be legitimized in family court and used against them in a divorce hearing or custody trial. Due to such prejudices, many women have lost custody and even visitation rights with their children.”<sup>23</sup>
- “Women with disabilities face problems with representation and may fail to comport with society’s view on women’s roles generally, leading to invisibility and exclusion from meaningful participation in society. Women with disabilities may also be viewed as childlike and presumed to be incompetent, which prevents them from reaching their potential as full and equal members of the community.”<sup>24</sup>
- “Article 8 of the Convention on the Rights of Persons with Disabilities and article 5 of the Convention on the Elimination of All Forms of Discrimination against Women emphasize the negative role that stereotypes can play in the lives of persons with disabilities, including women with disabilities, and women in general. Under both Conventions, States have the responsibility to combat/eliminate stereotypes, prejudices and harmful practices. In article 6, the Convention on the Rights of Persons with Disabilities recognizes that gender and disability stereotypes coincide to have a compounded effect on women with disabilities.”<sup>25</sup>

## 2.2 Harmful gender stereotypes and wrongful gender stereotyping

The international human rights law framework appears to be concerned with stereotypes and stereotyping that affect recognised human rights and fundamental freedoms, rather than all stereotypes and all forms of stereotyping. The CEDAW Committee has explained that States Parties are required to modify or transform “*harmful gender stereotypes*”<sup>26</sup> and “*eliminate wrongful gender stereotyping*.”<sup>27</sup>

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<sup>22</sup> Ibid., para. 41 [citations omitted].

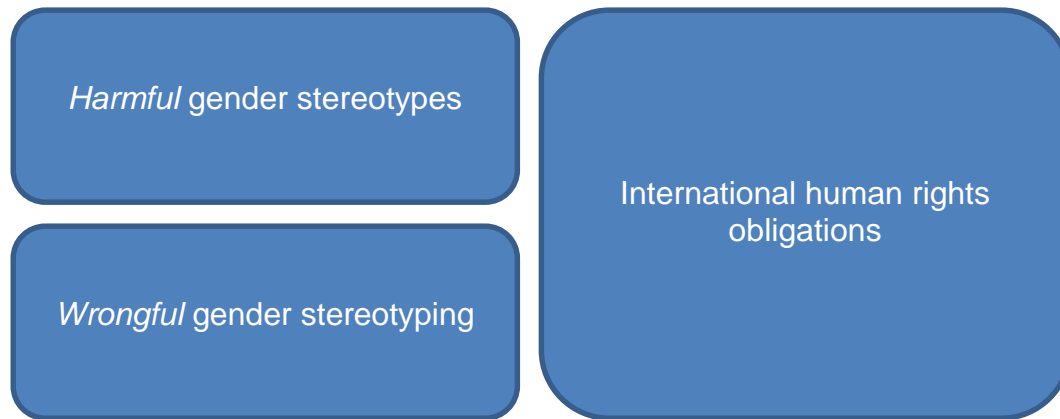
<sup>23</sup> Ibid., para. 46.

<sup>24</sup> Ibid., para. 66.

<sup>25</sup> Ibid., para. 76.

<sup>26</sup> *V.V.P. v. Bulgaria*, UN Doc. CEDAW/C/53/D/31/2011 (24 November 2012), para. 9.6 [emphasis added].

<sup>27</sup> *R.K.B. v. Turkey*, UN Doc. CEDAW/C/51/D/28/2010 (13 April 2012), para. 8.8 [emphasis added].



Although the other UN human rights mechanisms have not been so explicit in their discussion of stereotypes and stereotyping, their focus has undoubtedly remained on those stereotypes and forms of stereotyping that in one way or another impair or nullify the enjoyment of human rights and fundamental freedoms – in other words, on stereotypes that might be considered harmful and stereotyping that might be considered wrongful.<sup>28</sup> A case in point is the recent report of the UN Special Rapporteur on the right to food, mentioned above, which considered the negative impact of gender stereotypes/stereotyping on the recognition, exercise and enjoyment, by women, of the right to food.<sup>29</sup>

Assuming the other UN human rights mechanisms accept the approach adopted by the CEDAW Committee, there are two questions that need to be answered. Firstly, when is a stereotype considered to be “harmful?” And, secondly, when is stereotyping “wrongful?” Preliminary guidance on each of these questions is offered here in an effort to facilitate a discussion within the OHCHR about how it might encourage the UN human rights mechanisms to explore these questions further.

#### **Harmful gender stereotypes**

A harmful gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men, which, *inter alia*, limits their ability to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans. Harmful stereotypes can be both hostile/negative (e.g., women are irrational) or seemingly benign (e.g., women are nurturing). It is therefore important that UN human rights mechanisms focus on *harmful* gender stereotypes, rather than *negative* gender stereotypes.

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<sup>28</sup> See Chapters 3 and 4 below.

<sup>29</sup> De Schutter, *supra* note 9.

### Wrongful gender stereotyping

Wrongful gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men, which results in a violation or violations of human rights and fundamental freedoms. The harm is caused by the *application* of a stereotypical belief to an individual (e.g., through a state enforcing a gender stereotype into a law) in such a way as to negatively affect the recognition, exercise or enjoyment of their rights and freedoms.

### Summary

- There is no definition of the terms “gender stereotypes” or “gender stereotyping” in any international human rights treaty.
- For the purposes of this report, the term “gender stereotype” refers to a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men. This definition has been relied upon, both directly and indirectly, by a handful of UN human rights mechanisms.
- For the purposes of this report, the term “gender stereotyping” refers to the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.
- Gender stereotypes come in varied and overlapping forms, including “sex stereotypes,” “sexual stereotypes,” “sex-role stereotypes” and “compounded stereotypes.”
- International human rights law is concerned with “harmful gender stereotypes” and “wrongful gender stereotyping;” it is not concerned with all stereotypes or all forms of gender stereotyping. UN human rights mechanisms have yet to consider what makes a gender stereotype harmful and what makes gender stereotyping wrongful.
- A gender stereotype need not be “negative” to cause harm.
- Consideration needs to be given to all types of stereotypes (e.g., disability stereotypes) and all forms of stereotyping (e.g., racial stereotyping). It is not enough to just consider gender stereotypes and gender stereotyping or compounded gender stereotypes and compounded gender stereotyping.

### 3. State obligations to address gender stereotypes/stereotyping

States are required under international human rights law to address stereotypes and stereotyping, including gender stereotypes and gender stereotyping. Two international human rights treaties contain express obligations concerning stereotypes/stereotyping, namely CEDAW and the *Convention on the Rights of Persons with Disabilities (CRPD)*. These obligations are both positive and negative in nature. In addition, many international human rights treaty bodies have interpreted the rights to non-discrimination and equality to include those forms of discrimination and inequality that are rooted in stereotypes, including gender stereotypes. In other words, a number of human rights treaty bodies have recognised an implied obligation in the rights to non-discrimination and equality to address stereotypes and stereotyping. Those same treaty bodies have also acknowledged that there are implied obligations to address stereotypes and stereotyping in a range of other human rights and fundamental freedoms, for example the freedom from arbitrary interference in private life and the right to the highest attainable standard of health. They have done this by reading the rights to non-discrimination and equality — which impose overarching obligations on States Parties — together with the substantive rights and freedoms guaranteed by the treaties for which they are responsible for monitoring.

It is suggested that many UN human rights mechanisms and States Parties would be surprised to learn about the breadth of international human rights obligations related to stereotypes and stereotyping. It is further suggested that many would be surprised to learn that the obligations related to stereotypes and stereotyping are both positive and negative in nature and concern not only gender stereotypes/stereotyping, but all types of stereotypes (e.g., ethnic stereotypes) and all forms of stereotyping (e.g., sexual orientation stereotyping). More needs to be done to identify and highlight the existence, content and scope of these obligations.

Chapter 3 explores the obligations of States Parties to address gender stereotypes/stereotyping, focusing mainly on gender stereotypes and gender stereotyping (as instructed by the OHCHR). It begins by identifying the express obligations contained in CEDAW and the CRPD and describing how the CEDAW Committee and the Committee on the Rights of Persons with Disabilities (**CRPD Committee**) have interpreted those obligations to advance the human rights of women. Chapter 3 then moves on to the remaining international human rights treaties and explains how the responsible treaty bodies have applied those treaties in relation to gender stereotypes/stereotyping, with a view to advancing women's human rights. Chapter 3 does not consider the *International Convention for the Protection of All Persons from Enforced Disappearance (CPED)*, as it does not refer to stereotyping explicitly. Moreover, although the Committee on Enforced Disappearances has begun to consider the periodic reports of States Parties, any Concluding Observations it has issued, including on gender stereotyping, fall outside the agreed research period and therefore have not been considered in the drafting of this report.

### 3.1 CEDAW

Several provisions of CEDAW create explicit obligations to address harmful gender stereotypes and wrongful gender stereotyping. Article 5 and, to a lesser extent, article 2(f) set out the core obligations in this area and, together, provide CEDAW's overarching legal framework for addressing stereotypes/stereotyping. Before considering each of those provisions, though, it is important to reflect on how CEDAW's preamble frames the issue of stereotyping and, consequently, States Parties' obligations to address gender stereotypes/stereotyping.

CEDAW's preamble acknowledges that the achievement of substantive equality will require States Parties to change "the traditional role of men as well as the role of women in society and in the family" and, in doing so, stresses the centrality of States Parties' obligations in this area.<sup>30</sup>

#### Preambular paragraph 14 of CEDAW

*Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.*

The CEDAW Committee affirmed the importance of States Parties' obligations in its *General Recommendation No. 25*, by identifying the obligation to "address prevailing gender relations and the persistence of gender-based stereotypes" as one of three categories of obligations central to the achievement of substantive equality.<sup>31</sup> The immediate consequence of this characterisation of the obligations to address gender stereotypes/stereotyping

is acknowledgment of the significance of the obligations and States Parties' compliance with them, for the recognition, exercise and enjoyment of women's human rights. Such acknowledgment emphasises that efforts to eliminate direct and indirect discrimination and improve women's de facto position in society will only go so far toward achieving substantive equality, unless they are also accompanied by measures to transform structural inequality that stems from, inter alia, wrongful gender stereotyping.<sup>32</sup>

A further consequence is that steps by States Parties to limit or qualify their obligations to address gender stereotypes/stereotyping through reservations are likely to be met with substantial resistance from the CEDAW Committee.<sup>33</sup>

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<sup>30</sup> Although the preamble does not refer to stereotypes explicitly, the terms "traditional role" and "role" can reasonably be assumed to encompass gender stereotypes, specifically sex-role stereotypes.

<sup>31</sup> CEDAW Committee, *General Recommendation No. 25*, UN Doc. A/59/38 (2004), para. 7. See also *R.K.B. v. Turkey*, *supra* note 27, para. 8.8.

<sup>32</sup> Cusack, *supra* note 1, at 134.

<sup>33</sup> *Ibid.*

Article 5 is CEDAW's core provision on stereotyping. Article 5(a) requires States Parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women" in an effort to eliminate practices that "are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." It addresses both gender stereotypes that are based on a view of women as being inferior to men and sex-role stereotypes. Article 5(b) requires States Parties to take "all appropriate measures" to ensure that: maternity is recognised as a social function in family education; and care for children is recognised as a common responsibility of women and men. A textual and contextual reading appears to suggest that article 5(b) seeks to modify and transform the stereotypical view that women (and not men) are carers.

#### Article 5 of CEDAW

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 2(f) reinforces article 5 by requiring States Parties to take "all appropriate measures" to "modify or abolish ... laws, regulations, customs and practices which constitute discriminate against women."

#### Article 2(f) of CEDAW

States Parties ... undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

This obligation extends to laws, regulations, customs and practices that discriminate against women on the basis of gender stereotypes. It should be noted that the obligations outlined in article 2(f) of CEDAW include, but extend beyond, gender stereotypes/stereotyping.

The Committee has recently interpreted these provisions as imposing an obligation on States Parties to "modify and transform gender stereotypes and eliminate wrongful gender stereotyping."<sup>34</sup> That is to say, the Committee has drawn a distinction between the obligations of States Parties with respect to gender stereotypes and gender stereotyping. This distinction is important as it recognises —

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<sup>34</sup> *R.K.B. v. Turkey*, *supra* note 27, para. 8.8.

consistent with the freedom of expression — that there are difficulties in requiring States Parties to “eliminate” a (stereotypical) belief, but that it is equally important to “modify and transform” beliefs that are harmful to women. It also recognises that States Parties must eradicate the practice of applying stereotypical beliefs to individual women and men in ways that violate their human rights.

The obligations in articles 2(f) and 5 encompass stereotypes of women and men and the stereotyping of individual women and men, a point reinforced by CEDAW’s preamble.<sup>35</sup> The Committee demonstrated the importance of States Parties addressing stereotypes of men (as well as stereotypes of women) in *Karen Tayag Vertido v. The Philippines*.

***Karen Tayag Vertido v. The Philippines***<sup>36</sup>

In *Karen Tayag Vertido v. The Philippines*, the CEDAW Committee considered how sexual stereotypes of both women and men had contributed to the decision of the trial judge to acquit Jose B. Custodio of raping Karen Tayag Vertido. In addition to examining stereotypes of women and how they had influenced the evaluation of Vertido’s testimony, the Committee analysed the reasoning of the trial judge for implicit assumptions about men/masculinities. It was this detailed analysis, which led the Committee to conclude that the acquittal of the accused — a man in his sixties — had also been influenced by the stereotype that older men lack sexual prowess, the assumption being that they are not capable of rape.

Article 10(c) is the final provision of CEDAW to impose express obligations related to gender stereotypes/stereotyping. It requires States Parties to take “all appropriate measures” to ensure “the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging ... education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.”

**Article 10(c) of CEDAW**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.

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<sup>35</sup> The recognition of stereotypes of men is important because gender stereotypes are often relational in nature — assigning women and men distinct yet mutually reinforcing attributes, characteristics and roles, such as when women are stereotyped as nurturers and carers and men are stereotyped as breadwinners. Changing gender stereotypes therefore requires action vis-à-vis stereotypes of women and stereotypes of men. See Cusack, *supra* note 1, 135-136; Cook and Cusack, *supra* note 3, 68-70.

<sup>36</sup> *Karen Tayag Vertido v. The Philippines*, *supra* note 11.

In its efforts to articulate the obligations in article 10(c) more fully, the Committee has recommended, *inter alia*, that States Parties:

- take comprehensive measures to overcome gender stereotypes that act as a barrier to the education of girls and women;<sup>37</sup>
- ensure teachers receive gender training, with a view to eradicating gender stereotypes from both official and unofficial curricula;<sup>38</sup>
- review and revise education materials, including textbooks, to eliminate gender stereotypes;<sup>39</sup>
- implement programmes encouraging girls to pursue education and employment in non-traditional fields;<sup>40</sup> and
- challenge the stereotypical beliefs of parents, teachers and community leaders regarding the importance and value of education for girls.<sup>41</sup>

With the preamble and articles 2(f), 5 and 10(c), CEDAW became the first international treaty to establish human rights obligations concerning stereotyping and gender stereotyping, specifically. Importantly, the CEDAW Committee has regularly considered the provisions in its constructive dialogue with States Parties and also held States Parties accountable for their failure to implement them fully. The obligations of States Parties to address harmful gender stereotypes and wrongful gender stereotyping are not, however, limited to the aforementioned provisions. The CEDAW Committee has recognised that there are implied obligations in each of CEDAW's substantive provisions to address gender stereotypes/stereotyping. It has also recognised that the obligations of States Parties extend further still, to rights and freedoms not explicitly covered by CEDAW but which are recognised under other treaties or customary international law and have an impact on the elimination of all forms of discrimination against women and the achievement of substantive equality.<sup>42</sup> The Committee has reached these conclusions by reading those substantive rights and freedoms together with articles 5 and 2(f) and in light of the article 1 definition of "discrimination against women" and CEDAW's overarching interpretative framework. The scope of this report does not permit an examination of how the Committee has interpreted the obligation to address gender stereotypes/stereotyping in respect of all recognised human rights and fundamental freedoms. Therefore, a selection of rights and freedoms that are

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<sup>37</sup> CEDAW Committee, *Concluding Observations: Albania*, UN Doc. CEDAW/C/ALB/CO/3 (2010), para. 31.

<sup>38</sup> CEDAW Committee, *Concluding Observations: Argentina*, UN Doc. CEDAW/C/ARG/CO/6 (2010), para. 34

<sup>39</sup> CEDAW Committee, *Concluding Observations: Armenia*, UN Doc. CEDAW/C/ARM/CO/4 (2009), para. 31; CEDAW Committee, *Concluding Observations: Bahamas*, UN Doc. CEDAW/C/BHS/CO/1-5 (2012), para. 32(c).

<sup>40</sup> CEDAW Committee, *Concluding Observations: Armenia*, UN Doc. CEDAW/C/ARM/CO/4 (2009), para. 31; CEDAW Committee, *Concluding Observations: Belarus*, UN Doc. CEDAW/C/BLR/CO/7 (2011), para. 30.

<sup>41</sup> CEDAW Committee, *Concluding Observations: Burkina Faso*, UN Doc. CEDAW/C/BFA/CO/6 (2010), para. 32.

<sup>42</sup> CEDAW Committee, *General Recommendation No. 28*, UN Doc. CEDAW/C/GC/28 (16 December 2010), para. 7.



illustrative of the Committee's approach to states' obligations with respect to stereotypes/stereotyping has been selected for discussion below.

Gender-based violence against women is one area where the Committee has taken significant strides toward elaborating the content and scope of States Parties' obligations to address gender stereotypes/stereotyping. The Committee has played a leadership role in identifying the linkages between gender stereotyping and violence against women, beginning with its well-known and much celebrated *General Recommendation No. 19*<sup>43</sup> and continuing with its Concluding Observations<sup>44</sup> and Optional Protocol jurisprudence.<sup>45</sup> Through its work, the Committee has sought to identify some of the steps that States Parties are required to take under CEDAW to address gender stereotypes/stereotyping related to gender-based violence against women. It has emphasised the importance of taking steps to address gender stereotypes/stereotyping as a way of preventing violence against women. For instance, in its *General Recommendation No. 19*, the Committee recommended that States Parties take "[p]reventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women."<sup>46</sup> It has reinforced the importance of such measures in its subsequent work.

#### ***Ciudad Juárez Inquiry***<sup>47</sup>

The CEDAW Committee's inquiry into the abduction, rape and murder of women in the Ciudad Juárez region of Mexico highlighted how gender stereotypes and gender stereotyping contributed to the aforementioned violations. The Committee noted, for instance, that "even the campaigns aimed at preventing violence ... have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women's dignity, but on making potential victims responsible for their own protection by maintaining traditional cultural stereotypes."<sup>48</sup> In its inquiry report, the Committee made a number of recommendations to the State Party and, in doing so, "emphasize[d] that, because what is involved is a structural situation and a social and cultural phenomenon deeply rooted in the consciousness and customs of the population, it requires a global

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<sup>43</sup> CEDAW Committee, *General Recommendation No. 19*, UN Doc. A/47/38 at 1 (1993), paras. 11, 21, 23, 24(t)(ii).

<sup>44</sup> For an overview of the CEDAW Committee's Concluding Observations on gender stereotyping, including linkages with gender-based violence against women, see Rikki Holtmaat, "Article 5," in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 142; Rikki Holtmaat, "Preventing Violence against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Grounds of Article 5(a) of the CEDAW Convention," in Carin Benninger-Budel, ed., *Due Diligence and Its Application to Protect Women from Violence* (Martinus Nijhoff, 2009), 63.

<sup>45</sup> *Isatou Jallow v. Bulgaria*, UN Doc. CEDAW/C/52/D/32/2011 (28 August 2012); *V.K. v. Bulgaria*, UN Doc. CEDAW/C/49/D/20/2008 (27 September 2011); *Karen Tayag Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008 (22 September 2010); *Fatma Yildirim v. Austria*, UN Doc. CEDAW/C/39/D/6/2005 (1 October 2007); *Şahide Goekce v. Austria*, UN Doc. CEDAW/C/39/D/5/2005 (6 August 2007); *A.T. v. Hungary*, UN Doc. CEDAW/C/32/D/2/2003 (26 January 2005); *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, UN Doc. CEDAW/C/2005/OP.8/MEXICO (27 Mexico 2005) (Ciudad Juárez inquiry).

<sup>46</sup> CEDAW Committee, *General Recommendation No. 19*, *supra* note 44, para. 24(t)(ii).

<sup>47</sup> CEDAW Committee, *Ciudad Juárez inquiry*, *supra* note 46.

<sup>48</sup> *Ibid.*, para. 57.

and integrated response, a strategy aimed at transforming existing sociocultural patterns, especially with regard to eradicating the notion that gender violence is inevitable.”<sup>49</sup>

***A.T. v. Hungary***<sup>50</sup>

In *A.T. v. Hungary*, the Committee condemned the failure of the State Party to address harmful gender stereotypes. It noted that it had explained “on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them”<sup>51</sup> and had recognised those very attitudes, specifically those concerning roles and responsibilities within the family, when it considered the periodic report of the State Party in 2002. The Committee further noted that the facts revealed “aspects of the relationships between the sexes and attitudes towards women,”<sup>52</sup> vis-à-vis the country as a whole. In so explaining, it stressed the importance of taking steps to eliminate stereotyping, but did not make any specific recommendations in this regard.

The CEDAW Committee has also emphasised the importance of taking steps to ensure investigations into allegations of violence are impartial and not influenced by gender stereotypes/stereotyping and that victims/survivors are able to access justice and are not prejudiced by gender stereotypes/stereotyping.

***Karen Tayag Vertido v. The Philippines***<sup>53</sup>

In *Karen Tayag Vertido v. The Philippines*, the Committee held the State Party accountable for the decision of a trial judge to acquit an accused of rape. In doing so, it affirmed that States Parties must ensure that allegations of violence against women are “dealt with in a fair, impartial, timely and expeditious manner”<sup>54</sup> and that their judiciaries “take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”<sup>55</sup>

***V.K. v. Bulgaria***<sup>56</sup>

In *V.K. v. Bulgaria*, the Committee similarly explained that “stereotyping affects women’s right to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence.”<sup>57</sup> It was also critical of the State Party’s reliance on an “overly narrow concept”<sup>58</sup> and “stereotyped interpretation”<sup>59</sup> of what

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<sup>49</sup> Ibid., para. 287.

<sup>50</sup> *A.T. v. Hungary*, supra note 46.

<sup>51</sup> Ibid., para. 9.4.

<sup>52</sup> Ibid.

<sup>53</sup> *Karen Tayag Vertido v. The Philippines*, supra note 11.

<sup>54</sup> Ibid., para. 8.3.

<sup>55</sup> Ibid., para. 8.4.

<sup>56</sup> *V.K. v. Bulgaria*, supra note 46.

<sup>57</sup> Ibid., para. 9.11.

<sup>58</sup> Ibid., para. 9.12.

constitutes domestic violence and urged the State Party to “[p]rovide mandatory training for judges, lawyers and law enforcement personnel ... on gender stereotypes.”<sup>60</sup>

Political and public life (arts. 7-8) and the related area of employment (art. 11) have been a further focus of the Committee’s efforts to articulate the obligations of States Parties to address gender stereotyping. Frances Raday, former CEDAW Committee member and current Chair of the Working Group on discrimination against women in law and practice, helps to explain why:

[t]he most universally prevalent gender stereotype still attached to women in all cultures, religious and secular, is that they are primarily homemakers and that their role in the public sphere in general and in the labour market in particular is subordinate to that of men. Thus, all sections of Article 11 and all Committee concluding observations which address women’s right to equal opportunity in acceptance to employment and promotion, their right to equal wages for work of equal value, and the need to eliminate occupational segregation in the labour market are directed to eliminating cultural stereotyping and prejudices based on the perceived inferiority of women as workers.<sup>61</sup>

A review of the Committee’s work shows that it has made extensive recommendations in the aforementioned areas, including that States Parties should:

- modify stereotypes that recognise men as heads of households and breadwinners and confine women to the roles of wives and mothers;<sup>62</sup>
- change perceptions of women’s role in political and public life, including through educating the media on the importance of promoting positive images of women in public life and the revision of education materials;<sup>63</sup>
- create the conditions necessary for women to exercise their autonomy and agency and “develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices;”<sup>64</sup>
- emphasise through awareness-raising activities the importance of women’s participation in decision-making roles;<sup>65</sup>

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid., para. 9.16 (b)(iv).

<sup>61</sup> Frances Raday, “Article 11,” in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 279, at 304.

<sup>62</sup> CEDAW Committee, *Concluding Observations: Yemen*, UN Doc. CEDAW/C/YEM/CO/6 (2008), para. 15.

<sup>63</sup> See, e.g., CEDAW Committee, *Concluding Observations: Macedonia*, UN Doc. CEDAW/C/MKD/CO/4-5 (22 March 2013), para. 21(b).

<sup>64</sup> CEDAW Committee, *General Recommendation No. 28*, UN Doc. CEDAW/C/GC/28, para. 22.

<sup>65</sup> CEDAW Committee, *Concluding Observations: Pakistan*, UN Doc. CEDAW/C/PAK/CO/4 (27 March 2013), para. 26(c); CEDAW Committee, *Concluding Observations: Brazil*, UN Doc. CEDAW/C/BRA/CO/7 (23 March 2013), para. 23(c).

- review and analyse the impact of employment laws on the women’s opportunities in the labour market and eliminate gender stereotypes that undermine their equal participation in that market;<sup>66</sup>
- adopt effective measures, including temporary special measures, to eliminate occupational segregation based on gender stereotypes;<sup>67</sup> and
- include information in their periodic reports on whether or not reservations to articles 7 or 8 of CEDAW are based on “stereotyped attitudes towards women’s roles in society, as well as the steps being taken by the States parties to change those attitudes.”<sup>68</sup>

The Committee’s decision in *R.K.B. v. Turkey* provides a further illustration of its efforts to articulate the obligation of States Parties to address gender stereotyping, specifically in the area of employment.

#### ***R.K.B. v. Turkey***<sup>69</sup>

In *R.K.B. v. Turkey*, which concerned unlawful termination of employment, the majority and concurring CEDAW Committee members determined that the State Party violated CEDAW when its courts failed to hold the employer accountable for unequal treatment. The Committee concluded *inter alia* that the courts’ decisions were based on gender stereotypes that condoned extramarital affairs by men but not women, in violation of article 5(a) of CEDAW. It explained that the Labour Court had allowed its reasoning to be influenced by stereotypes when it failed to challenge and reject the discriminatory evidence submitted by the employer, and scrutinised the moral integrity of R.K.B. and not that of her male colleagues. The Committee further explained that the Court of Cassation perpetuated gender stereotypes when it failed to address the gender-related aspects of R.K.B.’s complaint. In finding the State Party in violation of article 5(a), the Committee affirmed that CEDAW requires States Parties to “modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination.”<sup>70</sup> Importantly, it recommended that the State Party “[p]rovide ... appropriate and regular training on the Convention, its Optional Protocol and its general recommendations for judges, lawyers and law enforcement personnel in a gender-sensitive manner, so as to ensure that stereotypical prejudices and values do not affect decision-making.”<sup>71</sup>

Reproductive health is another area where the Committee has taken steps toward elaborating States Parties’ obligations to address gender stereotyping. Reading article 12 together with articles 2(f) and 5 of CEDAW, the Committee has emphasised that States Parties are required by CEDAW to refrain from stereotyping

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<sup>66</sup> CEDAW Committee, *Concluding Observations: Greece*, UN Doc. CEDAW/C/GRC/CO/7 (26 March 2013), para. 29(b); CEDAW Committee, *Concluding Observations: Turkmenistan*, UN Doc. CEDAW/C/TKM/CO/3-4 (9 November 2012), para. 33(c).

<sup>67</sup> CEDAW Committee, *Concluding Observations: Bahamas*, UN Doc. CEDAW/C/BHS/CO/1-4 (2012), para. 34(b).

<sup>68</sup> CEDAW Committee, *General Recommendation No. 23*, UN Doc. A/52/38/Rev.1 at 61 (1997), para. 44.

<sup>69</sup> *R.K.B. v. Turkey*, *supra* note 27.

<sup>70</sup> *Ibid.*, para. 8.8.

<sup>71</sup> *Ibid.*, para. 8.10(b)(ii).

women who are seeking health care services and to adopt positive measures to expose and modify harmful gender stereotypes within the health sector. *L.C. v. Peru*<sup>72</sup> provides a recent illustration of the Committee's approach in this area.

#### *L.C. v. Peru*

In *L.C. v. Peru*, the Committee held the State Party accountable under CEDAW for the decision of a public hospital to delay spinal surgery and refusal to perform a therapeutic abortion on L.C., a minor who had attempted suicide after learning that she was pregnant as a consequence of being raped repeatedly. The abortion was denied even though it is lawful in the State Party to preserve a woman's life and health. L.C. later miscarried, but the significant delays in providing essential medical care left her paralysed. In its views, the CEDAW Committee condemned the decision of the doctors to base their decision about L.C.'s treatment on the stereotype that "protection of the foetus should prevail over the health of the mother."<sup>73</sup> Based on its views, the CEDAW Committee urged the State Party to, *inter alia*, implement "education and training programmes to encourage health providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence."

The last area that will be considered here is marriage and family relations. The Committee has said repeatedly that, when read together with articles 2(f) and 5, article 16 of CEDAW imposes an obligation on States Parties to address gender stereotyping that impairs or nullifies equality in marriage and family relations. For instance, having recognised the negative impact of stereotypes related to the division of roles and responsibilities within such relations, the Committee has urged States Parties to discourage notions of inequality between women and men, including those that place a father, husband or son in a favourable position.<sup>74</sup> In this connection, the Committee has urged States Parties to, *inter alia*, implement a comprehensive policy and awareness-raising initiatives designed to overcome stereotypical attitudes about the roles and responsibilities of women and men in the family and in society.<sup>75</sup> Relatedly, it has also clarified that a substantive equality approach to the economic dimensions of family relations requires States Parties to address "the impact of gender stereotypes and gender roles on women's economic

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<sup>72</sup> *L.C. v. Peru*, UN Doc. CEDAW/C/50/D/22/2009 (25 November 2011). See also Charles G. Ngwena, "A Commentary on *LC v Peru*: The CEDAW Committee's First Decision on Abortion" (2013) *Journal of African Law* (forthcoming).

<sup>73</sup> As explained in section 5.1 below, it is suggested respectfully that the relevant stereotype in *L.C. v. Peru* is that "women should be mothers" and the assumption underpinning that belief is that women should prioritise childbearing and childrearing over their own lives and health and over all other roles they might perform or choose. In other words, it is suggested that the CEDAW Committee identified the underpinning assumption and not the operative stereotype relied upon by L.C.'s doctors, despite labelling it as such.

<sup>74</sup> CEDAW Committee, *General Recommendation No. 21*, UN Doc. A/49/38 at 1 (1994), paras. 11-12, 42-44.

<sup>75</sup> See, e.g., CEDAW Committee, *Concluding Observations: Grenada*, UN Doc. CEDAW/C/GRD/CO/1-5 (23 March 2013), para. 40(a); CEDAW Committee, *Concluding Observations: Macedonia*, UN Doc. CEDAW/C/MKD/CO/4-5 (22 March 2013), para. 21(a).

capacity”<sup>76</sup> and to amend discriminatory laws that position men as heads of households and/or sole economic agents within the family.<sup>77</sup>

### 3.2 CRPD

The CRPD is the only international human rights treaty other than CEDAW to contain express obligations concerning stereotyping. Article 8(1)(b) is the central provision in the CRPD that outlines States Parties’ obligations regarding stereotypes/ stereotyping.<sup>78</sup> It requires States Parties to adopt immediate, effective and appropriate measures to combat stereotypes, including compounded stereotypes, of people with disabilities.

#### Article 8(1)(b) of the CRPD

States Parties undertake to adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

The first key element of article 8(1)(b) is the requirement for States Parties to adopt immediate, effective and appropriate measures (to combat stereotypes). Use of the terms “immediate” and “effective” suggest that the measures must be adopted without delay and must be capable of bringing about change in practice. Article 8(2) provides guidance on the types of “appropriate” measures that States Parties should adopt to implement article 8(1) of the Convention, including article 8(1)(b). Consistent with article 8’s overarching focus on “awareness-raising,” the measures highlighted in article 8(2) emphasise education and training initiatives. These measures include conducting public education campaigns, fostering an attitude of respect for the rights of persons with disabilities through the education system, encouraging the media to portray persons with disabilities in a manner consistent with the Convention, and promoting awareness-training programmes.<sup>79</sup>

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<sup>76</sup> CEDAW Committee, *General Recommendation No. 29*, UN Doc. CEDAW/C/GC/29 (26 February 2013), para. 8.

<sup>77</sup> *Ibid.*, paras. 36-38.

<sup>78</sup> The provision deals also with prejudices and harmful practices, but the discussion in this section is limited to stereotyping.

<sup>79</sup> CRPD, arts. 8(2)(a)-8(2)(d).

***Kenneth McAlpine v. United Kingdom of Great Britain and Northern Ireland***<sup>80</sup>

The type of measures that States Parties are required to adopt to combat stereotypes of people with disabilities was raised in *Kenneth McAlpine v. United Kingdom of Great Britain and Northern Ireland*, a communication concerning a man with type 1 diabetes who was made redundant. McAlpine claimed that the State Party had, *inter alia*, violated article 8(1)(b) of the CRPD because it had failed to adopt “any immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices by employers, the legal system and judges who stereotypically assume that all diabetics have prolonged periods of time off due to their illness.”<sup>81</sup> However, the CRPD Committee was not required to consider the types of measures States Parties are required to take to comply with article 8(1)(b), as it determined that the communication was inadmissible on unrelated grounds.<sup>82</sup>

The few Concluding Observations of the CRPD Committee that have addressed stereotyping have emphasised the importance of adopting education and training measures to combat stereotypes and to promote the dignity, capabilities and contributions of people with disabilities.<sup>83</sup> Importantly, however, those same Concluding Observations have recommended that States Parties also develop and implement policies and programmes to combat stereotypes.<sup>84</sup> A textual reading of article 8(1)(b) of the CRPD appears to support such an interpretation; that is, one that requires States Parties to adopt measures that go beyond awareness-raising. This appears logical, as awareness-raising measures by themselves are unlikely to combat stereotypes.

The second key element of article 8(1)(b) of the CRPD is the requirement for States Parties to combat stereotypes. The CRPD does not clarify the meaning of the term “combat” and the CRPD Committee has yet to define the term in its work. The Committee has used the terms “combat” and “eliminate” interchangeably in its few Concluding Observations on stereotyping,<sup>85</sup> but it is far too early to draw any concrete conclusions about how the CRPD Committee will interpret the term “combat.” It is interesting, though, to note the potential difference in approach between the CRPD and CEDAW Committees, with the former requiring States Parties to combat/eliminate stereotypical beliefs and the latter requiring them to modify/transform those beliefs and eliminate the practice of stereotyping.

The third key element of article 8(1)(b) of the CRPD is the requirement for States Parties to combat stereotypes. The “stereotypes” to which article 8(1)(b) refers are those “relating to persons with disabilities, including those based on sex

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<sup>80</sup> *Kenneth McAlpine v. United Kingdom of Great Britain and Northern Ireland*, Communication No. 6/2011, UN Doc. CRPD/C/8/D/6/2011 (13 November 2012).

<sup>81</sup> *Ibid.*, para. 3.4.

<sup>82</sup> *Ibid.*, para. 7.

<sup>83</sup> CRPD Committee, *Concluding Observations: Tunisia*, UN Doc. CRPD/C/TUN/CO/1 (13 May 2011), para. 15(a); CRPD Committee, *Concluding Observations: Peru*, UN Doc. CRPD/C/PER/CO/1 (9 May 2012), para. 19.

<sup>84</sup> CRPD Committee, *Concluding Observations: Peru*, UN Doc. CRPD/C/PER/CO/1 (9 May 2012), para. 19.

<sup>85</sup> CRPD Committee, *Concluding Observations: Tunisia*, UN Doc. CRPD/C/TUN/CO/1 (13 May 2011), para. 15(a); CRPD Committee, *Concluding Observations: Peru*, UN Doc. CRPD/C/PER/CO/1 (9 May 2012), para. 19.

and age.” Significantly, article 8(1)(b) is concerned with disability stereotypes and compounded disability stereotypes; that is, stereotypes of persons with disabilities that intersect with other types of stereotypes (e.g., gender stereotypes) to produce specific stereotypes of different subgroups of people with disabilities, (e.g., women and girls with disabilities). The CRPD is the first international human rights treaty to impose an express obligation to address compounded stereotypes. This is particularly significant for women and girls with a disability whose experiences of discrimination and other rights violations may differ from the experiences of men and other women due to the application or enforcement of compounded stereotypes.<sup>86</sup>

The final element of article 8(1)(b) is the requirement to combat stereotypes in all areas of life. The obligation to adopt measures to combat stereotypes therefore has broad application; it covers both the public and private spheres as well as all sectors of society. This is consistent with the fact that articles 8(1)(b) (and 4(1)(b)) form part of the CRPD’s general interpretative framework and, as such, should be read in conjunction with all of the human rights guaranteed by the CRPD.

Article 4(1)(b) strengthens article 8(1)(b) by requiring States Parties to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. It requires States Parties to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

#### **Article 4(1)(b) of the CRPD**

States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

The text of article 4(1)(b) is similar to the text of article 2(f) of CEDAW. Like that provision, article 4(1)(b) encompasses discrimination based on stereotypes, but it also imposes obligations in relation to other forms of discrimination that are not based on stereotypes. In other words, it is not concerned entirely with stereotypes. The similarities between article 4(1)(b) of the CRPD and article 2(f) of CEDAW raise a reasonable expectation that the CRPD Committee will interpret the obligations of States Parties in article 4(1)(b) of the CRPD in a similar way to how the CEDAW Committee has interpreted the obligations of States Parties in article 2(f) of CEDAW (see section 3.1 above).

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<sup>86</sup> See Stephanie Ortoleva, “Women with Disabilities: The Forgotten Peace Builders” (2010) 33 *Loy. L.A. Int’l & Comp. L. Rev.* 83, at 91, 114 ; Kathleen Cornelsen, “Doubly Protected and Doubly Discriminated: The Paradox of Women with Disabilities After Conflict” (2012) 19 *Wm. & Mary J. Women & L.* 105, 119-120.



### 3.3 CAT

Unlike CEDAW and the CRPD, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* does not address stereotyping explicitly. The Committee against Torture (**CAT Committee**) has nevertheless insisted that CAT contains implied obligations to address gender stereotyping.

According to the expert view of the CAT Committee, article 2(1) of the Convention requires States Parties to address gender stereotypes/stereotyping as part of States Parties' efforts to prevent acts of torture.

#### Article 2(1) of CAT

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

In its *General Comment No. 2* on the implementation of article 2(1), the CAT Committee acknowledged that gender, particularly non-conformity with gender stereotypes, is a determining factor in “the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof.”<sup>87</sup> “Both men and women and boys and girls,” the Committee continued, “may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles.”<sup>88</sup> The CAT Committee therefore urged States Parties “to identify these situations and the measures taken to punish and prevent them in their reports”<sup>89</sup> and, relatedly, to collect sex/gender disaggregated data to ensure that the measures adopted to prevent gender-based torture are effective.<sup>90</sup> In addition, the CAT Committee has highlighted the connection between gender stereotypes/stereotyping and gender-based violence against women and has made it clear that CAT requires States Parties to take steps to address such stereotypes/stereotyping. For instance, the CAT Committee has called for a response to gender-based violence “that goes beyond legislative provisions and action plans and requires a coordinated, ongoing effort to change the perception of women in society and dispel associated stereotypes (art. 16).”<sup>91</sup>

### 3.4 CRC

The *Convention on the Rights of the Child (CRC)* does not contain express obligations concerning stereotyping. The treaty does, however, impose obligations

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<sup>87</sup> CAT Committee, *General Comment No. 2*, UN Doc. CAT/C/GC/2 (24 January 2008), para. 22.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., paras. 23-24.

<sup>91</sup> CAT Committee, *Concluding Observations: Spain*, UN Doc. CAT/C/ESP/CO/5 (9 December 2009), para. 24. See also CAT Committee, *Concluding Observations: Albania*, UN Doc. CAT/C/ALB/CO/2 (26 June 2012), para. 25.

on States Parties that appear, *inter alia*, to be directed at ensuring States Parties treat children, including the girl child, in accordance with their evolving capacities and individual circumstances and not on the basis of age and/or other stereotypes. For instance, a number of provisions in the CRC emphasise the requirements to take the “evolving capacities of the child”<sup>92</sup> into account and to give due weight to the views of children “in accordance with the age and maturity of the child.”<sup>93</sup>

#### Article 5 of the CRC

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, *in a manner consistent with the evolving capacities of the child*, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. [emphasis added]

#### Article 12(1) of the CRC

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight *in accordance with the age and maturity of the child*. [emphasis added]

#### Article 14(2) of the CRC

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right *in a manner consistent with the evolving capacities of the child*. [emphasis added]

These provisions appear implicitly to reject the stereotypical belief that all children are immature and therefore incapable of making informed decisions or expressing informed views. Accordingly, they seek to prevent States Parties from relying on that belief in their dealings with and treatment of children. The Committee on the Rights of the Child (**CRC Committee**) appears to have confirmed this implicit link to stereotypes, noting that “gender stereotypes and patriarchal values undermine and place severe limitations on girls” with respect to the right of the child to be heard.<sup>94</sup>

In addition, the CRC Committee has interpreted the CRC as imposing positive obligations to address gender stereotypes and stereotyping that impair or nullify the rights of the girl child. For instance, it has explained that, in relation to:

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<sup>92</sup> CRC, arts. 5, 14(2).

<sup>93</sup> CRC, art. 12(1).

<sup>94</sup> CRC Committee, *General Comment No. 12*, UN Doc. CRC/C/GC/12 (20 July 2009), para. 77.

- adolescent health and development, States Parties should “develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices;”<sup>95</sup>
- the right of the child to freedom from all forms of violence, States Parties should address “gender-based stereotypes, ... which support and perpetuate the use of violence and coercion;”<sup>96</sup>
- the right of the child to be heard, States Parties should “pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and her view be given due weight;”<sup>97</sup>
- the right of the child to the enjoyment of the highest attainable standard of health, States Parties should pay attention to “the impact of gender-related social norms and values on the health and development of boys and girls;”<sup>98</sup>
- the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, States Parties should:
  - take action to challenge gender stereotypes resulting in discrimination and inequality of opportunity, including stereotypes that impose “limitations on the expectations and behaviour of girls” and “serve to maintain traditional gender-role divisions in society;”<sup>99</sup> and
  - review policies on the commercialization of children’s games and toys, paying “particular regard to those ... reinforcing gender and disability stereotypes.”<sup>100</sup>

It is clear from the above that the CRC Committee regards gender stereotyping as a form of discrimination that may violate not only article 2(1) of the CRC, but also a wide range of other rights guaranteed by that Convention.

#### Article 2(1) of the CRC

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

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<sup>95</sup> CRC Committee, *General Comment No. 4*, UN Doc. para. 24. See also CRC, *General Comment No. 11*, UN Doc. CRC/C/GC/11 (12 February 2009), para. 22.

<sup>96</sup> CRC Committee, *General Comment No. 13*, UN Doc. CRC/C/GC/13 (18 April 2011), para. 72(b).

<sup>97</sup> CRC Committee, *General Comment No. 12*, *supra* note 101, para. 77.

<sup>98</sup> CRC Committee, *General Comment No. 15*, UN Doc. CRC/C/GC/15 (17 April 2013), para. 9.

<sup>99</sup> CRC Committee, *General Comment No. 17*, UN Doc. CRC/C/GC/17 (17 April 2013), para. 48.

<sup>100</sup> *Ibid.*, para. 57(f).

### 3.5 ICCPR

The text of the *International Covenant on Civil and Political Rights (ICCPR)* is silent on the question of gender stereotypes/stereotyping. However, the Human Rights Committee (HRC) has read obligations to address gender stereotyping into various provisions of the ICCPR. According to the expert view of the HRC, gender stereotyping can lead to discrimination and inequality and, as such, States Parties are required by articles 2(1), 3 and 26 of the ICCPR to address this practice.<sup>101</sup>

#### Article 2(1) of the ICCPR

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 3 of the ICCPR

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

#### Article 26 of the ICCPR

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Much of the HRC's attention has focused on gender stereotypes concerning the role and responsibilities of women and men in the family and in society, particularly those stereotypes that have simultaneously limited women's participation in the public sphere and increased their responsibilities for matters pertaining to the private sphere.<sup>102</sup> In this connection, the HRC has noted that States Parties must "ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights."<sup>103</sup> It has also called on States Parties to, *inter alia*, provide information on those attitudes and practices that "jeopardize, or may jeopardize,

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<sup>101</sup> See, e.g., HRC, *General Comment No. 28*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2000), para. 5; HRC, *Concluding Observations: Cameroon*, UN Doc. CCPR/C/CMR/CO/4 (4 August 2010), para. 8.

<sup>102</sup> See, e.g., HRC, *Concluding Observations: Armenia*, UN Doc. CCPR/C/ARM/CO/2 (31 August 2012), para. 7.

<sup>103</sup> HRC, *General Comment No. 28*, *supra* note 108, para. 5.

compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.”<sup>104</sup>

Because articles 2(1), 3 and 26 of the ICCPR are crosscutting provisions, the HRC has also read the obligations to address gender stereotyping into other substantive provisions of the ICCPR.

- In its *General Recommendation No. 28*, the HRC recognised that gender stereotyping can lead to arbitrary interference with women’s private lives, in violation of article 17 of the ICCPR (read together with articles 2(1), 3 and/or 26). “An example of such interference,” it explained, “arises where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape.”<sup>105</sup> The Committee accordingly urged States Parties to report on: laws and actions that interfere with women’s equal enjoyment of the rights guaranteed by article 17; and the measures taken to eliminate such interference and protect women from any such interference.<sup>106</sup>
- The HRC has recognised in its Concluding Observations the negative impact that gender stereotyping has on women’s ability to participate in public life and access decision-making roles as well as the various ways in which stereotyping can violate article 25 of the ICCPR (read in conjunction with articles 2(1), 3 and/or 26). In this connection, it has recommended that States Parties adopt a range of measures to change perceptions of women’s roles in the family and in society and to eliminate wrongful gender stereotyping. Such measures include: undertaking public education campaigns;<sup>107</sup> adopting temporary special measures;<sup>108</sup> reviewing domestic laws to eliminate gender stereotypes that restrict women’s participation in public life;<sup>109</sup> and evaluating the effectiveness of measures adopted to combat stereotypes.<sup>110</sup>
- The HRC has recognised the linkages between gender stereotyping and gender-based violence against women, expressed its concern regarding the inclusion in laws of gender stereotypes related to the behaviour of victims/survivors of violence,<sup>111</sup> and urged States Parties to “design and

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<sup>104</sup> Ibid., para. 5.

<sup>105</sup> Ibid., para. 20.

<sup>106</sup> Ibid.

<sup>107</sup> See, e.g., HRC, *Concluding Observations: Croatia*, UN Doc. CCPR/C/HRV/CO/2 (4 November 2009), para. 7; HRC, *Concluding Observations: Cape Verde*, UN Doc. CCPR/C/CPV/CO/1 (23 April 2012), para. 8; HRC, *Concluding Observations: Mongolia*, UN Doc. CCPR/C/MNG/CO/5 (2 May 2011), para. 8; HRC, *Concluding Observations: The Former Yugoslav Republic of Macedonia*, UN Doc. CCPR/C/MKD/CO/2 (17 April 2008), para. 9; HRC, *Concluding Observations: Uzbekistan*, UN Doc. CCPR/C/UZB/CO/3 (7 April 2010), para. 20.

<sup>108</sup> See, e.g., HRC, *Concluding Observations: Kuwait*, UN Doc. CCPR/C/KWT/CO/2 (18 November 2011), para. 8; HRC, *Concluding Observations: Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/1 (19 August 2011), para. 9.

<sup>109</sup> See, e.g., HRC, *Concluding Observations: Turkmenistan*, UN Doc. CCPR/C/TKM/CO/1 (19 April 2012), para. 8.

<sup>110</sup> See, e.g., HRC, *Concluding Observations: Belgium*, UN Doc. CCPR/C/BEL/CO/5 (16 November 2010), para. 12.

<sup>111</sup> HRC, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/6 (28 November 2006), para. 10.

implement programmes aimed at eliminating gender stereotypes in society.”<sup>112</sup>

- Finally, the HRC has stressed that States Parties are required by the ICCPR to ensure that gender stereotypes do not undermine the right to equality before the law. It has, for instance, explained that “judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them.”<sup>113</sup>

### 3.6 ICERD

The *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* contains no mention of stereotyping, but article 7 does address the related and sometimes overlapping concept of prejudice.

#### Article 7 of ICERD

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Notwithstanding the absence of any explicit recognition of stereotyping, the Committee on the Elimination of Racial Discrimination (**CERD**) has addressed stereotyping in its work. However, its focus has been on racial stereotyping,<sup>114</sup> rather than gender stereotyping and it does not appear that it has considered the obligations of States Parties to address compounded race stereotypes, at least not during the period covered by this report. That being said, CERD’s decision in *Yilmaz-Dogan v. The Netherlands* does deal with compounded stereotypes, though the Committee does not say so explicitly.

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<sup>112</sup> See, e.g., HRC, *Concluding Observations: El Salvador*, UN Doc. CCPR/C/SLV/CO/6 (18 November 2010), para. 9.

<sup>113</sup> HRC, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (23 August 2007), para. 21.

<sup>114</sup> For example, CERD has recommended, *inter alia*, that States Parties: adopt measures to promote tolerance and overcome negative stereotypes of Roma people; refrain from racial and ethnic profiling or stereotyping of non-citizens in the fight against terrorism; take resolute action to counter any tendency to stereotype members of “non-citizen” population groups on the basis of race, colour, descent, and national or ethnic origin; take resolute action to counter any tendency to stereotype people of African descent on the basis of race; and review and, where appropriate, amend textbooks to ensure that they are based on equality and dignity and do not perpetuate stereotypes concerning descent-based communities. See: CERD, *General Recommendation No. 34*, UN Doc. CERD/C/GC/34 (3 October 2011), paras. 31, 61; CERD, *General Recommendation 30*, UN Doc. CERD/C/64/Misc.11/rev.3 (2004), paras. 10, 12; CERD, *General Recommendation No 29*, UN Doc. A/57/18 at 111 (2002), para. (vv); CERD, *General Recommendation No 27*, UN Doc. A/55/18, annex V at 154 (2000), para. 9.

***Yilmaz-Dogan v. The Netherlands***<sup>115</sup>

This case concerned the termination of employment of Yilmaz-Dogan, a Turkish national living in the Netherlands, due to how her employer understood her absenteeism. The explanation for termination noted: “When a Netherlands girl marries and has a baby, she stops working. Our foreign women workers, on the other hand, take the child to neighbours or family and at the slightest setback disappear on sick leave under the terms of the Sickness Act. They repeat that endlessly. Since we all must do our utmost to avoid going under, we cannot afford such goings-on.” CERD found a violation of her equal right to work in a textile factory, because she was discriminated against on the ground of her ethnic Turkish status. The operative stereotype in the case, left unidentified by CERD, concerned Yilmaz’s sex/gender, ethnicity and immigrant status.

### 3.7 ICESCR

The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* does not address stereotyping explicitly. However, the Committee on Economic, Social and Cultural Rights (**CESCR**) has acknowledged that gender stereotypes undermine women’s equal enjoyment of economic, social and cultural rights<sup>116</sup> and explained that articles 2(2) and 3 of ICESCR (and through them, all substantive articles of ICESCR) contain implied obligations to address gender stereotyping.

#### Article 2(2) of ICESCR

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 3 of ICESCR

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

In the expert view of CESCR, sex discrimination, which is prohibited by article 2(2) of ICESCR, may be based on gender stereotypes.<sup>117</sup> Because discrimination may be based on stereotypes, article 2(2) requires States Parties to ensure that gender stereotypes/stereotyping do not impair or nullify the exercise of economic, social and cultural rights. States Parties must therefore immediately adopt measures to modify or transform gender stereotypes that discriminate against women.<sup>118</sup>

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<sup>115</sup> *Yilmaz-Dogan v. The Netherlands*, UN Doc. CERD/C/36/D/1/1984 (1988).

<sup>116</sup> See, e.g., CESCR, *Concluding Observations: Benin*, UN Doc. E/C.12/BEN/CO/2 (9 June 2008), para. 14; CESCR, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/4-5 (11 December 2012), para. 8.

<sup>117</sup> CESCR, *General Comment No. 16*, UN Doc. E/C.12/2005/4 (11 August 2005), para. 11.

<sup>118</sup> See, e.g., CESCR, *General Comment No. 20*, UN Doc. E/C.12/GC/20 (25 May 2009), para. 8; CESCR, *Concluding Observations: Congo*, UN Doc. E/C.12/COD/CO/4 (16 December 2009), para. 20; CESCR, *Concluding Observations: Madagascar*, UN Doc. E/C.12/MDG/CO/2 (16 December 2009), para. 17.

According to the expert view of CESCR, gender stereotyping may also violate the right to equality guaranteed by article 3 of ICESCR, which requires States Parties to ensure the equal enjoyment by women and men of economic, social and cultural rights. It has explained that article 3 contains an implied obligation to “take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women.”<sup>119</sup> Significantly, CESCR appears to have drawn on the text of article 5 of CEDAW in reaching this conclusion.

The Committee has identified a number of measures that States Parties should adopt to address gender stereotyping and comply with articles 2(1) and 3 of ICESCR. These measures include legislative reform,<sup>120</sup> education and awareness-raising campaigns,<sup>121</sup> and working with the media and other opinion-makers,<sup>122</sup> to combat stereotypes that are harmful to women and to promote a positive and non-stereotypical portrayal of women. CESCR has also underscored the importance of States Parties including information in their periodic reports on efforts to address gender stereotypes/stereotyping.<sup>123</sup>

Importantly, CESCR has recognised that articles 2(2) and 3 contain crosscutting obligations that apply to all rights contained in articles 6 to 15 of the ICESCR.<sup>124</sup> Thus, the obligations incumbent on States Parties to address gender stereotypes/stereotyping are also crosscutting and must be read together with the other rights and freedoms protected under the Covenant. For instance, CESCR has explained that, in relation to

- the right to the highest attainable standard of health, “[t]he implementation of article 3, in relation to article 12, requires ... the removal of ... obstacles that prevent men and women from accessing and benefiting from health care on a

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<sup>119</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 19.

<sup>120</sup> See, e.g., CESCR, *Concluding Observations: Equatorial Guinea*, UN Doc. E/C.12/GNQ/CO/1 (13 December 2012), para. 15; CESCR, *Concluding Observations: Turkey*, UN Doc. E/C.12/TUR/CO/1 (12 July 2011), para. 14(a).

<sup>121</sup> See, e.g., CESCR, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/4-5 (11 December 2012), para. 8; CESCR, *Concluding Observations: Equatorial Guinea*, UN Doc. E/C.12/GNQ/CO/1 (13 December 2012), para. 15; CESCR, *Concluding Observations: Estonia*, UN Doc. E/C.12/EST/CO/2 (16 December 2011), para. 11; CESCR, *Concluding Observations: Poland*, UN Doc. E/C.12/POL/CO/5 (2 December 2009), para. 12; CESCR, *Concluding Observations: Turkey*, UN Doc. E/C.12/TUR/CO/1 (12 July 2011), para. 14(a); CESCR, *Concluding Observations: Sri Lanka*, UN Doc. E/C.12/LKA/CO/2-4 (9 December 2010), para. 15; CESCR, *Concluding Observations: Sri Lanka*, UN Doc. E/C.12/LKA/CO/2-4 (9 December 2010), para. 15; CESCR, *Concluding Observations: Turkmenistan*, UN Doc. E/C.12/TKM/CO/1 (13 December 2011), para. 10; CESCR, *Concluding Observations: Uruguay*, UN Doc. E/C.12/URY/CO/3-4 (1 December 2010), para. 9.

<sup>122</sup> See, e.g., CESCR, *Concluding Observations: Russian Federation*, UN Doc. E/C.12/RUS/CO/5 (1 June 2011), para. 12.

<sup>123</sup> See, e.g., CESCR, *Concluding Observations: Benin*, UN Doc. E/C.12/BEN/CO/2 (9 June 2008), para. 35; CESCR, *Concluding Observations: Chad*, UN Doc. E/C.12/TCD/CO/3 (16 December 2009), para. 14.

<sup>124</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 22; CESCR, *General Comment No. 20*, *supra* note 126, para. 7.



basis of equality. This includes ... addressing the ways in which gender roles affect access to determinants of health, such as water and food...<sup>125</sup>

- the right to education, “given article 2 (2), States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.”<sup>126</sup>
- the freedom from gender-based violence, States Parties should “conduct national public information campaigns and stimulate broader public discussion with the aim [of addressing] attitudes and stereotypes leading to violence against women.”<sup>127</sup>

Importantly, CESCR has recognised that ICESCR itself may perpetuate gender stereotypes and, accordingly, it has taken steps to debunk those stereotypes. For example, commenting on article 11(1), CESCR explained that

[t]he right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups.<sup>128</sup>

The ICESCR is not the only international human rights treaty to institutionalise gender stereotypes. Article 6 of CEDAW has, for instance, been criticised for perpetuating sexual stereotypes of women in the context of prostitution and trafficking (e.g., the stereotype of women as (sexually) weak and vulnerable and, thus, in need of “protection”).<sup>129</sup> That certain international human rights treaties institutionalise gender stereotypes does not preclude their use as legal frameworks for addressing stereotyping, provided, like CESCR, that the human rights treaty bodies responsible for interpreting those treaties contest and debunk such stereotypes, with a view to preventing their further perpetuation.<sup>130</sup>

### 3.8 ICRMW

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)* is silent with respect to stereotypes/stereotyping. However, the Committee on Migrant Workers (**CMW**) appears to have interpreted the right to non-discrimination in article 7 of the ICRMW

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<sup>125</sup> Ibid., para. 29.

<sup>126</sup> CESCR, *General Comment No. 13*, UN Doc. E/C.12/1999/10 (8 December 1999), para. 55.

<sup>127</sup> CESCR, *Concluding Observations: Iceland*, UN Doc. E/C.12/ISL/CO/4 (11 December 2012), para. 15.

<sup>128</sup> CESCR, *General Comment No. 4*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 6.

<sup>129</sup> Dianne Otto, “Disconcerting ‘Masculinities’: Reinventing the Gendered Subject(s) of International Human Rights Law,” in D. Buss and A. Manji (eds.), *International Law: Modern Feminist Approaches* (2005), 105, at 118-119.

<sup>130</sup> Cusack, *supra* note 1, 144-145.

to include an obligation to address the stereotyping of migrant workers and their family members.

#### Article 7 of the ICRMW

States Parties undertake ... to respect and to ensure to all migrant workers and members of their families ... the rights provided for in the present Convention without distinction of any kind such as to sex....

On occasion, the CMW has expressed its concern regarding discriminatory stereotypical attitudes towards migrant workers.<sup>131</sup> With respect to gender stereotyping in particular, it has noted the impact of such stereotyping on the status and experiences of women migrant workers, including the type of work they perform (e.g., caregiving) and the sector of the labour market in which they work (e.g., sex industry) as well as the type and extent of legal protections that they enjoy.<sup>132</sup> In its *General Recommendation No 1* on migrant domestic workers, the CMW urged States Parties to “incorporate a gender perspective” into their efforts to understand and remedy the specific violations that women migrant workers face throughout the migration process.<sup>133</sup> However, it did not identify, nor has it elsewhere identified, the content and nature of States Parties’ obligations under the ICRMW to address gender stereotyping. Rather, the recommendations that the CMW has made in respect of stereotyping have been more general in nature. Examples include urging States Parties to: adopt measures to eliminate discriminatory stereotypes about migrant workers and their family members;<sup>134</sup> and guarantee the right to non-discrimination in practice and not to pursue discriminatory policies aimed at specific migrant groups.<sup>135</sup>

#### Summary

- CEDAW and the CRPD are the only international human rights treaties to contain express obligations concerning stereotyping. However, many human rights treaty bodies have recognised that the rights to non-discrimination and equality contain an implied obligation to address stereotypes/ stereotyping. As the obligations to address stereotypes/stereotyping are crosscutting, they should be read together with all substantive rights and freedoms as well as in their own right.
- The CEDAW Committee has recognised that the obligations of States Parties to address gender

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<sup>131</sup> CMW, *Concluding Observations: Argentina*, UN Doc. CMW/C/ARG/CO/1 (28 September 2011), para. 17; CMW, *Concluding Observations: Ecuador*, UN Doc. CMW/C/EQU/CO/2 (15 December 2010), para. 25.

<sup>132</sup> CMW, *General Comment No 1*, UN Doc. CMW/C/GC/1 (23 February 2011), paras. 19, 60; CMW, *Concluding Observations: The Philippines*, UN Doc. CMW/C/PHL/CO/1 (22 May 2009), para. 27.

<sup>133</sup> CMW, *General Comment No 1*, *supra* note 141, para. 60.

<sup>134</sup> CMW, *Concluding Observations: Argentina*, UN Doc. CMW/C/ARG/CO/1 (28 September 2011), para. 18(a) [emphasis added].

<sup>135</sup> CMW, *Concluding Observations: Ecuador*, UN Doc. CMW/C/EQU/CO/2 (15 December 2010), para. 26.

stereotypes/stereotyping are central to the achievement of substantive equality.

- The CEDAW Committee has drawn a distinction between the obligations in CEDAW to *modify* and/or *transform* gender stereotypes on the one hand and the obligation to *eliminate* gender stereotyping on the other. The CRPD requires States Parties to *combat* stereotypes of people with disabilities.
- The obligations to address gender stereotypes/stereotyping covers stereotypes/stereotyping of women and men.
- The CRPD is the first and only international human rights treaty to impose an express obligation to address compounded stereotypes, though other treaty bodies have addressed compounded stereotyping through their work.
- More needs to be done to identify and highlight the existence, content and scope of international human rights obligations related to stereotypes/stereotyping, including gender stereotypes/stereotyping.

## 4. How gender stereotypes/stereotyping harm women

There are few areas of life left untouched by gender stereotypes and gender stereotyping – a fact that has been reinforced repeatedly by a surprisingly broad range of UN human rights mechanisms. Even UN mechanisms with responsibility for areas not traditionally associated with gender stereotypes/stereotyping have recognised the harmful effects of gender stereotypes/stereotyping on women’s human rights and fundamental freedoms. The UN Special Rapporteur on the human right to safe drinking water and sanitation is but one example.<sup>136</sup> It should be noted, however, that although the UN human rights mechanisms have identified a broad range of harms caused by gender stereotypes/stereotyping, they have tended to note the harm at a very high level and have only infrequently examined that harm in depth. For example, a number of mechanisms have identified a connection between gender stereotyping and gender-based violence against women, but few have explored in detail how gender stereotyping facilitates and condones such violence.

Chapter 4 highlights some of the negative consequences of gender stereotypes and gender stereotyping for the recognition, exercise and enjoyment of women’s human rights. The purpose of this section is to illustrate the breadth and depth of the harms caused by gender stereotypes and gender stereotyping, as identified by the UN human rights mechanisms. A comprehensive or more broad-ranging discussion of the harms of gender stereotypes and gender stereotyping or of compounded or other forms of stereotypes/stereotyping falls outside the scope of this research report.

### 4.1 Discrimination

There is a fairly widespread consensus amongst UN human rights mandates that differences in treatment that are based on gender stereotypes (or, indeed, other types of stereotypes) may constitute discrimination against women, absent objective and reasonable justification. The CEDAW Committee and CESCR have played a leading role in contributing to and building upon this consensus. For example, the CEDAW Committee in its *General Recommendation No. 25* explained that discrimination against women includes those differences of treatment that exist “because of stereotypical expectations, attitudes and behaviour directed towards women” and “because of the generally existing subordination of women by men.”<sup>137</sup> It recognised this link again in its *General Recommendation No. 28*.

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<sup>136</sup> Catarina de Albuquerque, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, UN Doc. A/HRC/21/42 (2 July 2012) (focusing mainly on the harms of stigma, but also considering the harms of stereotyping).

<sup>137</sup> CEDAW, *General Recommendation No. 25*, *supra* note 32, para. 7 n 1.

#### CEDAW Committee

- “Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. ... The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. ... The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1.”<sup>138</sup>
- “Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.”<sup>139</sup>

Applying CEDAW’s definition of discrimination against women, CESCR has explicitly acknowledged that gender stereotypes/stereotyping can constitute discrimination against women.

#### CESCR

- “Discrimination on the basis of sex may be based on the differential treatment of women because of ... stereotypical assumptions....”<sup>140</sup>
- “Gender-based assumptions and expectations, generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.”<sup>141</sup>
- “Since the adoption of the Covenant, the notion of the prohibited ground ‘sex’ has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights.”<sup>142</sup>

Recognition that gender stereotypes/stereotyping can result in discrimination against women is not limited to the treaty bodies, however, with a number of Special Procedures plainly recognising this connection. The recent report of the Special Rapporteur on the right to food provides a case in point, once again.

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<sup>138</sup> CEDAW, *General Recommendation No. 28*, *supra* note 65, para. 5.

<sup>139</sup> *Ibid.*, para. 22.

<sup>140</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 11.

<sup>141</sup> *Ibid.*, para. 14.

<sup>142</sup> CESCR, *General Comment No. 20*, *supra* note 126, para. 20.

### Special Rapporteur on the right to food

“Despite these requirements, discrimination against women remains pervasive in all spheres of life. It may result from laws that are themselves discriminatory. More often however, the discrimination women face is the result of social norms or customs, linked to certain stereotypes about gender roles; unequal access to productive resources such as land and to economic opportunities, such as decent wage employment; unequal bargaining position within the household; gendered division of labor within households, that result both in time poverty for women and in lower levels of education; and women’s marginalization from decision-making spheres at all levels. Only by addressing these different levels, including by challenging the existing distribution of family responsibilities between women and men, shall the root causes of discrimination women face be effectively addressed.”<sup>143</sup>

## 4.2 Gender-based violence against women

It is now widely accepted by UN human rights mechanisms that harmful gender stereotypes and wrongful gender stereotyping are one of the root causes of gender-based violence against women.

### CEDAW Committee, *General Recommendation No. 19: Violence against Women*

- “Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion....”<sup>144</sup>
- “These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”<sup>145</sup>
- “Rural women are at risk of gender-based violence because [of the] traditional attitudes regarding the subordinate role of women that persist in many rural communities.”<sup>146</sup>
- “Within family relationships women of all ages are subjected to violence of all kinds, ... which are perpetuated by traditional attitudes.”<sup>147</sup>

### Special Rapporteur on violence against women

- “Women with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence.”<sup>148</sup>
- “Gender ideologies that dictate that men should control women or allow for men to physically control their partners or children are forms of gender-based structural violence. Therefore,

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<sup>143</sup> Olivier De Schutter, *supra* note 9, para. 2.

<sup>144</sup> CEDAW Committee, *General Recommendation No. 19*, *supra* note 44, para. 11.

<sup>145</sup> *Ibid.*, para. 12.

<sup>146</sup> *Ibid.*, para. 21.

<sup>147</sup> *Ibid.*, para. 23.

<sup>148</sup> Rashida Manjoo, *supra* note 21, para. 32.

when a woman is abused by a husband because he believes he has the right to physically assault her, the woman is experiencing interpersonal and structural violence simultaneously.”<sup>149</sup>

#### Special Rapporteur on the situation of human rights defenders

- “[W]omen defenders are more at risk of suffering certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. Their work is often seen as challenging ‘traditional’ notions of the family which can serve to normalize and perpetuate forms of violence and oppression of women.”<sup>150</sup>
- “[Human rights] defenders ... are at greater risk of facing certain forms of violence because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.”<sup>151</sup>

UN human rights mechanisms have also recognised that harmful gender stereotypes and wrongful gender stereotyping influence how survivors are treated when they report violence and whether or not they are able to access justice for the violence that they have experienced.

#### *Isatou Jallow v. Bulgaria*<sup>152</sup>

In *Isatou Jallow v. Bulgaria*, the Committee held the State Party accountable for its failure to provide effective protection against domestic violence. The communication focused on the State Party’s failure to conduct an effective investigation into allegations of domestic violence made by Jallow. The Committee determined *inter alia* that the stereotype of men as heads of households and the related assumption of male superiority had influenced the decision of the State Party to investigate allegations of domestic violence made by Jallow’s partner, but not to investigate the allegations of violence made by Jallow herself. According to the Committee, the authorities based their actions “on a stereotyped notion that the husband was superior and that his opinions should be taken seriously.”<sup>153</sup>

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<sup>149</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/17/26 (2 May 2011), para. 26.

<sup>150</sup> Margaret Sekaggya, *Report of the Special Rapporteur on the situation of human rights defenders*, UN Doc. A/HRC/16/44 (20 December 2010), para. 23 [citations omitted].

<sup>151</sup> Margaret Sekaggya, *Report of the Special Rapporteur on the situation of human rights defenders*, UN Doc. A/66/203 (28 July 2011), para. 114.

<sup>152</sup> *Isatou Jallow v. Bulgaria*, *supra* note 46.

<sup>153</sup> *Ibid.*, para. 8.6.

### Special Rapporteur on violence against women

- “[T]he investigation of cases and the sanctioning of perpetrators is underpinned by patriarchal notions linked to myths and stereotypes about women and men and their gendered roles.”<sup>154</sup>
- “Not only are [women with disabilities] excluded as witnesses because they may have difficulty communicating with the police, but stereotypes operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses. On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control.”<sup>155</sup>
- “[W]hen [women with disabilities] seek assistance from police or other members of the community, their complaints may not be taken seriously or may be disbelieved, due to stigma and stereotyping.”<sup>156</sup>

### Special Rapporteur on the independence of judges and lawyers

- “Procedures and rules of evidence in the criminal justice system are often infiltrated by strong gender stereotypes which can result in engagement in gender-biased behaviour by court officials and discrimination against women by the criminal system in general. Gender stereotypes particularly affect procedures in rape and violence against women cases.”<sup>157</sup>
- “In many States, provisions on rape and sexual assault in criminal codes are based on gender stereotypes and prejudices which result in the discriminatory treatment of victims, who are disproportionately female. Hence, high levels of attrition plague the prosecution of rape and sexual violence cases throughout the world, resulting in a significant problem of impunity.”<sup>158</sup>
- “Examples of stereotypes applied to rape cases through gender-biased criminal rules of evidence and procedure are provided by cases where the following requirements or beliefs obtain: proof of physical violence is required to show that there was no consent; women are likely to lie, therefore evidence should be accepted only if corroborated; women can be assumed to be sexually available; women can be inferred to be consenting to sex even if forced, threatened or coerced, because they remained silent; previous sexual experience predisposes women to be sexually available, or to automatically consent to sex; women bear the responsibility for sexual attacks or invite them by being out late or in isolated places or by dressing in a particular manner; it is impossible to rape a sex worker; raped women have been dishonoured or shamed or are guilty rather than victimized.”<sup>159</sup>

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<sup>154</sup> Manjoo, *supra* note 20, para. 53.

<sup>155</sup> Manjoo, *supra* note 13, para. 41 [citations omitted].

<sup>156</sup> *Ibid.*, para. 59.

<sup>157</sup> Knaul, *supra* note 5, para. 46 [citations omitted].

<sup>158</sup> *Ibid.*, para. 47 [citations omitted].

<sup>159</sup> *Ibid.*, para. 48 [citations omitted].



- “Pervasiveness and persistence of gender stereotypes continue, leading to discriminatory treatment of women in the criminal justice system. Judicial officers are not immune to such stereotypes.”<sup>160</sup>

### 4.3 Adequate standard of living, including food, poverty and housing

A range of different UN human rights mechanisms have highlighted how gender stereotypes – particularly sex-role stereotypes related to marriage and family relations – have undermined women’s ability to enjoy an adequate standard of living, including through unequal access to food and housing as well as their increased vulnerability to poverty. The CEDAW Committee captured this negative correlation well in its 2005 Concluding Observations on the Democratic People’s Republic of Korea, which, although falling outside the scope of the agreed research period, merit repeating here.

#### **CEDAW Committee**

“The Committee notes with concern the persistence of traditional and stereotyped assumptions and attitudes in respect of the roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact.... For example, the Committee is concerned at the stereotyping of women, which perceives them exclusively as caregivers and homemakers and assigns them to areas ... on the basis of spheres suitable to their ‘characteristics’. The Committee is concerned that such expectations of women have serious consequences, preventing them from accessing rights and entitlements on an equal basis with men and creating a dependency on men, husbands and family for housing, food entitlements and other services. It is also concerned that in times of economic crisis, as in the current situation of the country, women’s prescribed roles and lesser entitlement intensifies their hardship and amounts to multiple discrimination.”<sup>161</sup>

The Special Rapporteur on the right to food has, on a number of occasions, further elaborated the negative effects of gender stereotypes/stereotyping on the right to food of women and girls. At the same time, the Special Rapporteur has cautioned States Parties about the risk of perpetuating gender stereotypes through policies and programmes aimed at alleviating hunger and increasing food security.

#### **Special Rapporteur on the right to food**

- “As noted by the World Bank, ‘in many societies, women bear the primary responsibility for feeding the family, yet without having control of family resources. In many countries, women and girls are also frequently less favoured in the intra-household distribution of food.’”<sup>162</sup>
- “The approach adopted by [conditional cash transfer] programmes may reinforce gender stereotyped roles as women are prioritized as ‘mothers’ and ‘caregivers’, rather than

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<sup>160</sup> Ibid., para. 83.

<sup>161</sup> CEDAW Committee: *Concluding Observations: Democratic People’s Republic of Korea*, UN Doc. CEDAW/C/PRK/CO/1 (2005), para. 35.

<sup>162</sup> Olivier De Schutter, *Report of the Special Rapporteur on the right to food*, UN Doc. A/HRC/9/23 (8 September 2008), para. 23 [citations omitted].

empowered as equal to men. Women are relied upon to ensure that the household invests in children, leading some authors to claim that child-centered policies such as those illustrated by [conditional cash transfer] programmes tend to sideline ‘the equality claims of adult women and attention to their needs [...] in favor of those of children, including girls.’”<sup>163</sup>

The Special Rapporteur on extreme poverty and human rights has taken care to explore how gender stereotypes and gender stereotyping increase women’s vulnerability to, and create barriers to their escaping, poverty and, as noted earlier in this report, she is likely to expand her contribution in this area even further in her forthcoming report to the General Assembly. Recent reports of the Special Rapporteur have emphasised the linkages between poverty and women’s disproportionate share of caring responsibilities – responsibilities that derive mainly from the widespread reliance on and perpetuation of such sex-role stereotypes as women are carers, nurturers and mothers.

#### **Special Rapporteur on extreme poverty and human rights**

- “International human rights law also requires States to take measures to eliminate harmful cultural and traditional practices and all other practices that are based on the idea of the inferiority or the superiority of either sex, or on stereotyped roles for women and men. These practices increase the social exclusion of women and girls, impede their access to resources and education and perpetuate poverty and discrimination.”<sup>164</sup>
- “Women usually take on the bulk of unpaid care work in their households, making them more likely to engage in low paid and insecure employment, or preventing them from entering the labour market altogether.”<sup>165</sup>
- “The fact that structural discrimination against women prevails in most societies and the consequent limited influence of women in decision-making processes must be taken into account in all stages of programmes. Gender stereotypes frequently attribute to women the responsibility of caregiving, particularly for children and older persons. While such activities contribute significantly to household and community well-being and development, they often go unrecognized by States and societies. Domestic responsibilities are usually not remunerated, and they often prevent women from gaining access to the formal labour market and limit the opportunities for women and girls to participate in capacity-building activities, including education and training.”<sup>166</sup>

More generally, the Special Rapporteur has paid considerable attention to the harmful effects of stereotyping people who are experiencing poverty, though her contribution in this area is outside the scope of the present report. It is worth noting, however, that the Special Rapporteur has done a particularly good job of

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<sup>163</sup> Olivier De Schutter, *supra* note 9, para. 25 [citations omitted].

<sup>164</sup> Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights*, UN Doc. A/HRC/21/39 (18 July 2012), para. 24.

<sup>165</sup> *Ibid.*, para. 83.

<sup>166</sup> Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights*, UN Doc. A/65/259 (9 August 2010), para. 54.

naming the operative stereotypes frequently applied to women and men who are experiencing poverty and, in this respect, offers a good practice example for other UN human rights mechanisms.

A range of UN human rights mechanisms have highlighted how sex-role stereotypes – particularly those that have the effect of increasing women’s economic insecurity and their financial dependence on men – affect women’s access to land as well as their housing options and experiences. For instance, in its 2011 Concluding Observations on Sri Lanka, the CEDAW Committee noted that “discriminatory practices prevent women from acquiring ownership of land since only the ‘head of household’ is authorized to sign official documentation such as land ownership certificates and to receive pieces of land from Government.”<sup>167</sup> By incorporating this particular stereotype into its legislation, the State Party effectively imposed its view that men (and not women) should be heads of households and, in the process, impaired women’s ability to access land. The Committee went on to urge the State Party to “abolish the concept of ‘head of household’ in administrative practice and recognize joint or co-ownership of land.”<sup>168</sup> The Special Rapporteur on adequate housing has similarly condemned reliance on the sex-role stereotype of men as heads of households.

**Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

“States should also amend or repeal domestic legislation related to family and marriage which discriminates against women, so as to ensure that women and men have equal powers in all matters related to housing and land. Seemingly gender-neutral concepts or standards which discriminate against women in practice – such as the application of the ‘head of the household’ concept – should similarly be rescinded.”<sup>169</sup>

Like the Special Rapporteur on the right to food and the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the right to adequate housing has urged States Parties to exercise care to ensure that they do not perpetuate harmful gender stereotypes as part of their efforts to ensure women’s rights in practice.

**Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

“[W]hile it is true that women and the home are still in many places closely connected for social and cultural reasons, to insist that a woman’s right to adequate housing is upheld should not reinforce the old (and discriminatory) adage that ‘a woman’s place is in the home’. Rather, securing women’s right

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<sup>167</sup> CEDAW Committee, *Concluding Observations: Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/7 (8 April 2011), para. 38.

<sup>168</sup> *Ibid.*, para. 39(d).

<sup>169</sup> Raquel Rolnik, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, UN Doc. A/HRC/19/53 (26 December 2011), para. 64.

to adequate housing ultimately ensures greater autonomy for women in all areas of their lives, and not less. Advocating on behalf of women's right to adequate housing is not about confining women to certain gender roles. Instead, it is about acknowledging that gender as a social construct fundamentally impacts the ways in which women and men experience their housing situations, and that in order for women to enjoy adequate housing on the basis of equality their needs must be understood and made visible within the framework of the right to adequate housing."<sup>170</sup>

#### 4.4 Health

The negative impact of harmful gender stereotypes and wrongful gender stereotyping on the health of women and girls has received attention from a handful of UN human rights mechanisms. CESCR has recognised, for instance, that stereotypes/stereotyping can affect access to the determinants of health, such as water and food,<sup>171</sup> while the CRC Committee has stressed that these beliefs/practices can adversely affect girls' health and development.<sup>172</sup>

Perhaps more than any other area of health, though, the impact of gender stereotypes/stereotyping on women's access to reproductive and sexual health services has come under particular scrutiny. As CESCR has explained, "[t]he causal relationship between the gender stereotyping, discrimination and marginalization of women and girls and their enjoyment of their right to sexual and reproductive health is well documented..."<sup>173</sup> The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health appears to agree, having highlighted how sex-role stereotypes and sexual stereotypes often curb women's sexual expression and reproductive freedom, including by forcing women to continue with unwanted pregnancies.

##### **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

"Persistent stereotyping of women's roles within society and the family establish and fuel societal norms. Many of those norms are based on the belief that the freedom of a woman, especially with regard to her sexual identity, should be curtailed and regulated.... Where women transgress these stereotype-driven norms in the pursuit of sexual and reproductive freedom, they are often punished severely, with resultant adverse effects on their health outcomes and violations of their right to health. The criminal laws and other legal restrictions examined in the present report facilitate and justify State control over women's life, such as forcing women to continue unwanted or unplanned pregnancies."<sup>174</sup>

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<sup>170</sup> Ibid., para. 4.

<sup>171</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 29 [citations omitted].

<sup>172</sup> CRC Committee, *General Comment No. 15*, *supra* note 105, para. 9.

<sup>173</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 17 [citations omitted].

<sup>174</sup> Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/66/254 (3 August 2011), para. 16 [citations omitted].

The impact of stereotypes/stereotyping on women's ability to access safe and lawful abortion has been further highlighted in a number of individual communications. In addition to *L.C. v. Peru*, which has been discussed already, it was claimed in both *L.M.R. v. Argentina*<sup>175</sup> and *K.L. v. Peru*<sup>176</sup> that gender stereotyping had negatively affected the ability of the victims to access abortion. In neither case, though, did the HRC address stereotypes/stereotyping in finding that the denial of access to abortion by the respective States Parties violated the ICCPR.

UN human rights mechanisms have recognised the potential of reproductive and sexual health information to serve as a tool both to challenge and perpetuate harmful gender stereotypes and wrongful gender stereotyping. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has, for instance, emphasised these contradictory outcomes.

**Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

- “The existence of legal restrictions on access to sexual and reproductive health information and education lead to the provision of inaccurate information through informal sources that are often inaccurate and may reinforce negative gender stereotypes. As a result, young women are less prepared for their sexual and reproductive lives, leaving them vulnerable to coercion, abuse and exploitation, as well as to an increased risk of unintended pregnancy, unsafe abortion, maternal mortality, HIV/AIDS and other sexually transmitted infections.”<sup>177</sup>
- “As a tool for empowerment and means to critically examine gender inequalities and stereotypes, comprehensive education and information also becomes a way of eroding deeply entrenched systems of patriarchy; such systems perpetuate violations of women's rights, including their right to health.... Providing women with knowledge and skills relating to their sexual and reproductive health, related education and information enhances their freedom in making informed health- related decisions, and promotes their equal participation in society.”<sup>178</sup>

#### 4.5 Education

The CEDAW Committee, CESCR and the UN Special Rapporteur on the right to education (among other human rights mechanisms) have highlighted the negative correlation between gender stereotypes/stereotyping and women's access to and level and quality of education and, relatedly, the content and quality of educational materials and resources. CESCR has, for instance, expressed its concern regarding gender stereotyping that “impedes the educational access of girls [and] women”<sup>179</sup>

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<sup>175</sup> *L.M.R. v. Argentina*, UN Doc. CCPR/C/101/D/1608/2007 (28 April 2011), para. 3.6.

<sup>176</sup> *K.L. v. Peru*, UN Doc. CCPR/C/101/D/1153/2003 (22 November 2005), para. 3.2(b).

<sup>177</sup> Anand Grover, *supra* note 183, para. 61 [citations omitted].

<sup>178</sup> *Ibid.*, para. 63 [citation omitted].

<sup>179</sup> CESCR, *General Comment No. 13*, *supra* note 135, para. 55.

and influences “the choice of students’ field of study.”<sup>180</sup> Fareda Banda has helpfully summarised the CEDAW Committee’s contribution in this area. “The Committee,” she explained,

presses States parties about the impact of stereotyped education, including curricula, on women’s life chances and choices including in employment. Instruction that promotes gender stereotypes by providing “female”-focused subjects for girls is not permitted. The Committee has commented on the “low participation of girls and women in secondary and tertiary education, including in technology and science-related course”, which may also point to gender-based discrimination in “tracking” girls into certain study areas. The Committee also engages States parties about “traditional attitudes that constitute obstacles to girls’ education”. It has expressed concern at “the practice of cross-timetabling, or conflicting class schedules that effectively prevent girls from pursuing courses of study traditionally offered to boys.”<sup>181</sup>

The Special Rapporteur on the right to education has extended the consideration of the impact of gender stereotypes/stereotyping outside of the immediate school environment to include sex education and educational opportunities for women in detention.

#### Special Rapporteur on the right to education

“[I]n many States, there are fewer [educational] programmes for women and ... those that are available are less varied and of poorer quality than those offered to male detainees. For example, in Latin America, recent research showed quite clearly that, in many States in the region, courses that are offered to women in detention are mostly related to issues traditionally linked to women, such as sewing, kitchen duties, beauty and handicrafts. Nonetheless, there are welcome examples in some States of programmes turning away from such stereotyping and offering, in turn, a greater diversification of courses, with greater relevance and overall perceived value. Generally however, it is unsurprising that research involving female detainees has uncovered deep expressions of frustration with the extent and quality of education and training they received.”<sup>182</sup>

Whilst it is not possible to provide a comprehensive overview of the harms of gender stereotypes/stereotyping in respect of the education of women and girls, two common themes emerge from the work of the UN human rights mechanisms. The first theme is that education can be a powerful for both perpetuating and eliminating harmful gender stereotypes and wrongful gender stereotyping. The second theme to emerge is that the indoctrination of gender stereotypes through education, particularly primary and secondary schooling, has broad-ranging and long-lasting effects on all areas of women’s lives, including their life plans, their economic security, and the employment and other choices available to them.

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<sup>180</sup> CESCR, *Concluding Observations: Turkmenistan*, UN Doc. E/C.12/TKM/CO/1 (13 December 2011), para. 27.

<sup>181</sup> Fareda Banda, “Article 10,” in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 253, at 264 [citations omitted].

<sup>182</sup> Vernor Muñoz, *Report of the Special Rapporteur on the right to education*, UN Doc. A/HRC/11/8 (2 April 2009), para. 51 [citations omitted].

## 4.6 Marriage and family relations

Sex-role stereotypes related to marriage and family relations have dominated discussions of gender stereotypes/stereotyping by UN human rights mechanisms. In fact, it is the one area of life where gender stereotypes and gender stereotyping have received constant attention from a broad cross-section of mechanisms (though, as indicated earlier, the depth of that attention is often disappointing). It is common, for instance, for mechanisms to express concern regarding “the persistence of deep-rooted and negative patriarchal stereotypes regarding the roles of women and men in the family and in society at large.”<sup>183</sup> The stereotypes that have been singled out the most are the sex-role stereotypes of women as carers and homemakers and of men as breadwinners and heads of households.

The UN human rights mechanisms have focused in the main on how the roles assigned to the sexes/genders: keep women in and men out of the family home; limit women’s participation in political and public life (see section 4.7 below); and position women as inferior to men, both within the family and in society more generally. Yet, they have also considered the impact of sex-role stereotypes in other areas of marriage and family relations, including, for example, the role that those stereotypes play in the practice of early marriage,<sup>184</sup> domestic and family violence,<sup>185</sup> and during and after divorce.<sup>186</sup> It is perhaps no surprise then that Marsha Freeman has asserted that

[c]ustoms, traditions, religious law and gender stereotyping have perhaps a greater impact on [the] implementation of Article 16 than on any other article in [CEDAW]. Family role assignments, and family identity as a whole, are defined through a long history of gender-based stereotypes and patriarchal control of family systems. The gender roles related to the inescapable biology of reproduction place women in a double-edged position of prime nurturer and prime object of control. ... Achievement of substantive equality may be particularly challenging, because of deeply held prejudices and accepted cultural traditions and attitudes specifically related to women’s reproductive and family roles. Understanding and implementation of Article 5 [of CEDAW] are central to implementing all parts of Article 16.<sup>187</sup>

Like Freeman, the CEDAW Committee has also recognised the impact of gender stereotyping on marriage and family relations.

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<sup>183</sup> HRC, *Concluding Observations: Cape Verde*, UN Doc. CCPR/C/CPV/CO/1 (23 April 2012), para. 8. See also HRC, *Concluding Observations: Kuwait*, UN Doc. CCPR/C/KWT/CO/2 (18 November 2011), para. 8; HRC, *Concluding Observations: Armenia*, UN Doc. CCPR/C/ARM/CO/2 (31 August 2012), para. 7; CESCR, *Concluding Observations: Equatorial Guinea*, UN Doc. E/C.12/GNQ/CO/1 (13 December 2012), para. 15; CESCR, *Concluding Observations: Mauritania*, UN Doc. E/C.12/MRT/CO/1 (10 December 2012), para. 10.

<sup>184</sup> See, e.g., CESCR, *Concluding Observations: Sri Lanka*, UN Doc. E/C.12/LKA/CO/2-4 (9 December 2010), para. 15.

<sup>185</sup> See Section 4.2 above.

<sup>186</sup> See, e.g., CEDAW, *General Recommendation No. 29*, *supra* note 77, paras. 8, 36, 43, 45.

<sup>187</sup> Marsha A. Freeman, “Article 16,” in Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 409, at 411.

**CEDAW Committee, *General Recommendation No. 21***

- “Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.”<sup>188</sup>
- “As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.”<sup>189</sup>

UN human rights mechanisms have also highlighted how the aforementioned and other stereotypes related to marriage and family relations perpetuate views about heteronormativity and contribute to discrimination based on sexual orientation. They do this by assuming a male-female relationship and assigning women and men distinct yet mutually reinforcing roles.

**Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

“Laws restricting information about sexual and reproductive health and which censor discussions of homosexuality in the classroom fuel stigma and discrimination of vulnerable minorities. For example, laws and policies that promote abstinence-only education reduce sexual education to images and stereotypes of heteronormativity, given their focus on procreation; some of these programmes even contain explicitly discriminatory content on gender and sexual orientation. ... Such laws and policies perpetuate false and negative stereotypes concerning sexuality, alienate students of different sexual orientations and prevent students from making fully informed decisions regarding their sexual and reproductive health.”<sup>190</sup>

**Special Rapporteur on the right to education**

“In addition, abstinence-only programmes marginalize millions of young people who are already having sexual relationships and, like programmes promoting abstinence until marriage, do not foster informed and responsible decision-making. In the Special Rapporteur’s view, this type of programme normalizes stereotypes and promotes images that are discriminatory because they are based on heteronormativity; by denying the existence of the lesbian, gay, transsexual, transgender and bisexual population, they expose these groups to risky and discriminatory practices.”<sup>191</sup>

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<sup>188</sup> CEDAW Committee, *General Recommendation No. 21*, *supra* note 75, para. 11.

<sup>189</sup> *Ibid.*, para. 12.

<sup>190</sup> Anand Grover, *supra* note 183, para. 59 [citations omitted].

<sup>191</sup> Vernor Muñoz, *Report of the Special Rapporteur on the right to education*, UN Doc. A/65/162 (23 July 2010), para. 69.



#### 4.7 Political and public life, including employment

As identified in section 4.6, a number of UN human rights mechanisms have recognised that gender stereotypes/stereotyping frequently operate to limit women’s participation in political and public life as well as in other areas of employment. They have also explained that gender stereotypes/stereotyping often result in the segregation of women into areas typically associated with women (e.g., caring and nurturing roles) and affect the quality and conditions of women’s employment, including their ability to access equal pay for work of equal value. And a number of mechanisms have recognised that women who play an active and/or leading role in political and public life often experience discrimination, violence, harassment and other forms of intimidation based on their actual or perceived non-conformity with gender stereotypes. More often than not, UN human rights mechanisms have identified the same stereotypes that undermine women’s rights within marriage and family relations – sex-role stereotypes of women as carers and homemakers and of men as breadwinners and heads of households – as the stereotypes undermining women’s rights in political and public life.

##### **CEDAW Committee**

- “Stereotyping ... confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution.”<sup>192</sup>
- “In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. Many men influence or control the votes of women by persuasion or direct action, including voting on their behalf.”<sup>193</sup>

##### **Working Group on discrimination against women in law and in practice**

- “Effective political participation of women requires not only admission to political institutions but also integration into their decision-making forums. Women’s full participation requires concerted action to overcome the de facto segregation of women’s political participation in sectors which are stereotypically associated with women’s gender roles. It requires that women be integrated into positions with decision-making power across the spectrum of issues dealt with by the institutions to which they have been elected or appointed.”<sup>194</sup>
- “Stereotypes of women’s capacities and roles that negatively affect women’s effective participation in political and public life persist around the world. Despite evidence of women’s important contributions in other fields of life, including in the labour market, stereotypes of female inadequacy in politics continue to be used as a basis for their marginalization and segregation in decision-making positions, with care and distributive tasks such as health and

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<sup>192</sup> CEDAW Committee, *General Recommendation No. 23*, *supra* note 69, para. 12.

<sup>193</sup> *Ibid.*, para. 20.

<sup>194</sup> *Report of the Working Group on the issue of discrimination against women in law and in practice*, *supra* note 6, para. 41.

social welfare allocated to women, while men are assigned to economic and defence affairs, distorting the power structure and resource allocation.”<sup>195</sup>

- “Women who belong to vulnerable groups, based on race, class, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity, are effectively barred from political and public life based on multiple stereotyping. In its concluding observations, the Committee on the Elimination of Discrimination against Women has expressed concern about stereotyped media portrayals of women’s roles within the family and society.”<sup>196</sup>
- “The Working Group notes that negotiation by international, regional and State agencies with sectoral or minority groups is negatively influenced by gender stereotyping when conducted solely with the male community leadership, thereby making women’s leadership effectively invisible and further marginalizing women.”<sup>197</sup>
- “Particularly during times of political transitions, in highly polarized discourse regarding national identity, gender stereotypes can be magnified and undermine progress in eliminating discrimination against women.”<sup>198</sup>

#### CESCR

- “Discrimination on the basis of sex may be based on the differential treatment of women because of ... stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are unwilling to commit as much time to their work as men.”<sup>199</sup>
- “[T]he allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination.”<sup>200</sup>

#### Summary

- Gender stereotypes and gender stereotyping influence all areas of life and, consequently, can undermine all of women’s human rights and fundamental freedoms.
- The breadth of harms identified by the UN human rights mechanisms reinforces the importance of modifying or transforming harmful gender stereotypes and eliminating wrongful gender stereotyping for the achievement of substantive equality between women and men.
- Whilst a wide range of UN human rights mechanisms are cognisant of the harms of gender stereotyping, they infrequently have examined those harms in depth.
- Some gender stereotypes – for example, the sex-role stereotypes of women as carers and

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<sup>195</sup> Ibid., para. 69 [citations omitted].

<sup>196</sup> Ibid., para. 70.

<sup>197</sup> Ibid., para. 71.

<sup>198</sup> Ibid., para. 72.

<sup>199</sup> CESCR, *General Comment No. 16*, *supra* note 125, para. 11.

<sup>200</sup> CESCR, *General Comment No. 20*, *supra* note 126, para. 20.

nurturers and men as breadwinners and heads of households – cause harm in multiple areas of life and in a myriad of ways.

- Institutions (e.g., educational institutions) can both perpetuate and modify harmful gender stereotypes and, therefore, they can both cause women harm and prevent or alleviate that harm.

## 5. Challenges in addressing gender stereotyping

Important progress has been made through the work of the UN human rights mechanisms in respect of harmful gender stereotypes and wrongful gender stereotyping, particularly over the past five years. There has certainly been a resurgence of interest in gender stereotypes and gender stereotyping during this period and recognition of the significance of addressing these issues for the full realisation of women's human rights appears to be growing, if only slowly. Nonetheless, there are a number of challenges that appear to be hampering the efforts of UN human rights mechanisms to address harmful gender stereotypes and wrongful gender stereotyping. Chapter 5 considers some of the most common challenges, namely: lack of understanding of key concepts; limited awareness of state obligations; lack of awareness of good practices in addressing gender stereotypes/stereotyping; missed opportunities to address gender stereotypes/stereotyping; and balancing competing human rights obligations. Chapter 5 is not intended to be exhaustive, but merely illustrative of some of the main challenges observed in analysing the work of the UN human rights mechanisms over the past five years.

### 5.1 Lack of understanding of key concepts

A significant challenge in addressing gender stereotypes and gender stereotyping is the high level of confusion about the meaning of these key concepts. The terms “gender stereotype” and “gender stereotyping” are often used interchangeably by UN human rights mechanisms and are frequently misapplied by many mechanisms when discussing related, but distinct, terms such as “myths”<sup>201</sup> (e.g., perpetrators of rape are strangers) and “prejudices”<sup>202</sup> (e.g., women are inferior to men). The views of the CEDAW Committee in *L.C. v. Peru* provide a case in point.

#### *L.C. v. Peru*

In *L.C. v. Peru*, the CEDAW Committee found that the State Party had violated article 5 of CEDAW when its doctors treated a pregnant minor on the basis of a stereotype, specifically the stereotype “that protection of the foetus should prevail over the health of the mother.”<sup>203</sup> It is suggested respectfully that the relevant stereotype in *L.C. v. Peru* is that “women should be mothers” and the assumption underpinning that belief is that women should prioritise childbearing and childrearing over their own lives and health and over all other roles they might perform or choose. In other words, it is suggested that the CEDAW Committee identified the underpinning assumption and not

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<sup>201</sup> Simone Cusack and Rebecca J. Cook, “Concept Note: General Recommendation on Wrongful Gender Stereotyping,” Submitted to the Committee on the Elimination of Discrimination against Women (3 January 2012), para. 12 n 4 (defining “myths” as “widely held but false beliefs”).

<sup>202</sup> *Ibid.*, para. 12 n 5 (defining “prejudices” as “preconceived, usually negative, attitudes or opinions about a group or members of a group that are not based on reason or actual experience”).

<sup>203</sup> *L.C. v. Peru*, *supra* note 73, para. 8.15.

the operative stereotype relied upon by L.C.'s doctors, despite labelling it as such.

A further illustration of the confusion surrounding the meaning of the terms “gender stereotypes” and “gender stereotyping” can be found in the 2011 interim report of the UN Special Rapporteur on the independence of judges and lawyers.

**UN Special Rapporteur on the independence of judges and lawyers<sup>204</sup>**

In her 2011 report to the UN General Assembly, the Special Rapporteur on the independence of judges and lawyers identified the stereotype that “women bear the responsibility for sexual attacks or invite them by being out late or in isolated places or by dressing in a particular manner.”<sup>205</sup> It is suggested respectfully that, just like the CEDAW Committee did in *L.C. v. Peru*, the Special Rapporteur identified the assumption underpinning the stereotype, rather than the stereotype itself. The Special Rapporteur might, instead, have identified the stereotype as “women should be modest” and explained that this belief may cause its holder to assume that women who are immodest invite sexual assaults. She might also have identified the further stereotype that “men have strong libidos” and explained that holders of this belief may assume that men are unable to control their hormonal urges.

There are undoubtedly a range of reasons why confusion persists about the meaning of the terms “gender stereotype” and “gender stereotyping.” The failure of human rights treaties to define these key terms is likely a contributing factor, as, too, are the limited attention given previously to gender stereotypes/stereotyping in human rights discourses and the overlap that exists between gender stereotypes and other related concepts like myths and prejudices. Considering that States Parties are required under international human rights law to address gender stereotypes/stereotyping, further work is needed to ensure that both States Parties and the UN human rights mechanisms understand these key concepts. As has been explained elsewhere, “[w]hile the inability to pinpoint a definition or definitions of these terms may be of little consequence in our day-to-day lives, certainty of meaning becomes increasingly important where legal obligations are involved.”<sup>206</sup> It is therefore important that the UN human rights mechanisms give consideration to the meaning of the terms “gender stereotype” and “gender stereotyping.” Simply put, what, in the view of the UN human rights mechanisms, are the “gender stereotypes” that States Parties are required to address? And what, in their view, is encompassed by the practice of “gender stereotyping?”

## 5.2 Limited awareness of state obligations

A further challenge is the limited awareness amongst UN human rights mechanisms and States Parties of the obligations to modify or transform harmful stereotypes and eliminate wrongful stereotyping. Whilst it appears to be widely

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<sup>204</sup> Gabriela Knaul, *supra* note 5.

<sup>205</sup> *Ibid.*, para. 48.

<sup>206</sup> Simone Cusack, *supra* note 1, at 126-127.

known that CEDAW contains obligations to address gender stereotypes/stereotyping – as evident in the many references to article 5 of CEDAW in the work of other UN human rights mechanisms – it is suggested that many UN human rights mechanisms and States Parties would be surprised to learn that similar obligations are also contained in the other international human rights treaties as well as in numerous regional human rights treaties and that those obligations extend to other types of stereotypes and forms of stereotyping. Certainly, much of the discourse and scholarship on stereotyping has focused on the obligations imposed by CEDAW, with limited attention being paid to the obligations in other international and regional treaties. Moreover, even where the existence of obligations to address gender stereotypes/stereotyping is known, there appears to be limited awareness of the content and scope of those obligations. In point of fact, understanding of these obligations is in its embryonic stages.

It is respectfully argued that the limited understanding of States Parties obligations to modify and transform harmful gender stereotypes and eliminate wrongful gender stereotyping has been driven, at least in part, by the failure of the UN human rights mechanisms to provide clear and detailed guidance on those obligations. What measures, for example, are States Parties required under article 8(1)(b) of the CRPD to take to combat stereotypes of women with disabilities? Are the measures limited to awareness-raising initiatives or do they extend beyond such initiatives to, for instance, legal protections and remedies? Considering the significance of the obligations to address gender stereotypes/stereotyping for the achievement of equality, clear and comprehensive guidance is needed from the UN human rights mechanisms on the obligations to modify or transform harmful stereotypes and eliminate wrongful stereotyping. As the UN Special Rapporteur in the field of cultural rights has explained, the content and scope of the obligation to eradicate all forms of structural and systemic discrimination, including those forms based on gender stereotypes/ stereotyping, need to be further elaborated.<sup>207</sup>

It is understood that it was Frances Raday, former CEDAW Committee member and current Working Group member, who first suggested that guidance on the content and scope of States Parties' obligations to address gender stereotypes/ stereotyping could usefully be provided in a General Recommendation. Talking specifically about CEDAW, she asserted that "[i]n order to further assist legislatures, governments, and courts to implement the gender equality obligations that States Parties have undertaken in ratifying CEDAW's Article 5, it would certainly be helpful if the CEDAW Committee were to formulate a new general recommendation on this issue."<sup>208</sup> In addition to the guidance that would be provided by a General Recommendation, the UN human rights mechanisms must be vigilant in ensuring that, wherever relevant and possible, they articulate the content and meaning of

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<sup>207</sup> Farida Shaheed, *Report of the Special Rapporteur in the field of cultural rights*, UN Doc. A/67/287 (10 August 2012), paras. 43-44.

<sup>208</sup> Frances Raday, "Culture, Religion, and CEDAW's Article 5 (a)" in Hanna Beate Schöpp-Schilling and Cees Flinterman (eds.), *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (The Feminist Press at the City University of New York, 2007), 68, at 81.

States Parties' obligations to address gender stereotypes/ stereotyping. A good illustration of this is the 2011 interim report of the UN Special Rapporteur on the independence of judges and lawyers, on the need to consider and integrate a gender perspective in the criminal justice system as a fundamental step towards allowing equal access to justice.

#### UN Special Rapporteur on the independence of judges and lawyers

In her 2011 report to the UN General Assembly, the Special Rapporteur made a number of recommendations that were useful in elucidating the content and meaning of States Parties' obligations to modify or transform harmful gender stereotypes and to eliminate wrongful gender stereotyping. The following recommendations, among others, were central to her report.

- "Judges must also be willing to challenge stereotyping and discrimination by not detracting from women's testimony or discounting their credibility, which applies whether women are the accused or victims."<sup>209</sup>
- "Challenging gender stereotyping further means challenging common assumptions: about male perpetrators — such as, for instance, their entitlement to control women in various ways and their supposed inability to control their own sexual urges; about male victims, for example, their ability, in cases of male rape, to have defended themselves; and about women as perpetrators of crimes of violence against men. Similar sensitivity is required when dealing with gender norms and expectations regarding lesbian, gay, bisexual and — particularly — transgender victims and perpetrators."<sup>210</sup>
- "Pervasiveness and persistence of gender stereotypes continue, leading to discriminatory treatment of women in the criminal justice system. Judicial officers are not immune to such stereotypes. There is a strong need for studies designed to examine the integration, or lack thereof, of gender and women's perspectives into judging, judicial procedures and the judicial branch at large. Traditional notions of judging and judicial authority must be challenged and the representation of women in the judiciary encouraged. At the same time, men, also, have the opportunity to play a crucial role, whether as judges, prosecutors or lawyers, in making the criminal justice system more accessible to women, and therefore more equal."<sup>211</sup>
- "States should take all measures available to combat gender-based stereotyping, bias and prejudices in all aspects of the criminal justice system, including investigation, prosecution, interrogation and protection of victims and witnesses, and sentencing, including by training judicial actors."<sup>212</sup>

### 5.3 Lack of awareness of good practices in addressing gender stereotyping

Another challenge is the lack of awareness of good practices in addressing gender stereotypes and gender stereotyping. As awareness of the harms of gender stereotypes/stereotyping grows, so, too, does interest in the identification of

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<sup>209</sup> Knaul, *supra* note 5, para. 75.

<sup>210</sup> *Ibid.*, para. 77.

<sup>211</sup> *Ibid.*, para. 83.

<sup>212</sup> *Ibid.*, para. 93.

effective responses to addressing such beliefs/practices. There certainly appears to be a keen appetite amongst States Parties for information about good practice examples, as evidenced, *inter alia*, in the question the Swiss Government posed about good practices in addressing gender stereotyping in the context of violence against women during the Human Rights Council's 2013 annual full-day discussion on women's human rights. It appears that this interest extends also to the UN human rights mechanisms. For example, in her 2012 report, in a section entitled "[s]tereotypes restricting cultural rights of women," the Special Rapporteur on the field of cultural rights lamented the lack of "sufficient information on best practices developed at the national level ... to enhance the realization of the cultural rights of women on an equal basis with men."<sup>213</sup> She even went on to urge "interested Governments, national human rights institutions and non-governmental organizations [to] gather good practices enabling women to enjoy their equal cultural rights."<sup>214</sup>

The interest in examples of concrete and practical steps to address gender stereotypes/ stereotyping is understandable given the complexity of the challenges confronted by States Parties in addressing such beliefs/practices. Regrettably, however, there appears to have been little to no discussion in the work of the UN human rights mechanisms of good practice examples of addressing gender stereotypes/stereotyping. A rare exception is the 2011 report of the UN Special Rapporteur on the independence of judges and lawyers, which highlighted the Canadian sexual assault case of *R v. Ewanchuk*, as a good practice example of the application of international human rights treaties and standards related to gender stereotyping.<sup>215</sup> Further work is therefore needed to identify, monitor, evaluate and highlight the measures States Parties have adopted to implement their obligations to modify or transform harmful gender stereotypes and eliminate wrongful gender stereotyping.

In this connection, it is worth noting that in or around 2010, the (then) UN Division for the Advancement of Women (DAW) and the Institute of Development Studies (University of Sussex, UK) established a project that was to culminate in the publication, by DAW, of an exploratory report on challenging gender stereotypes. The stated objectives of the report were to: improve understanding of gender stereotypes and how they hinder the achievement of women's human rights and gender equality; map out policy interventions that seek to challenge gender stereotypes; contribute to the development of new policy recommendations; bolster commitment to tackle gender stereotypes; and identify gaps in knowledge about gender stereotypes and key questions for further research. A main strategy of the report was to highlight good practice policy interventions related to gender stereotypes/stereotyping. The project partners intended that the report, which was workshopped in 2010 by a group of international experts, would inform the 55<sup>th</sup>

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<sup>213</sup> Shaheed, *supra* note 217, para. 54.

<sup>214</sup> *Ibid.*, para. 83.

<sup>215</sup> Knaul, *supra* note 5, para. 40.



session of the UN Commission for the Status of Women. However, it is understood that the finalisation of the report coincided with the creation of UN Women and that the report has never been finalised or published. The OHCHR should consider making enquiries with UN Women to determine the current status of the report, with a view to encouraging its finalisation and dissemination amongst UN human rights mechanisms and States Parties.

#### 5.4 Missed opportunities to address gender stereotypes/stereotyping

Missed opportunities to address gender stereotypes/stereotyping, including accurately naming the operative stereotypes, pose another key challenge. The CEDAW Committee showed great leadership and vision when, in its *General Recommendation No. 25*, it characterised the obligation to address gender stereotypes/stereotyping as one of three categories of obligations central to the achievement of substantive equality. The modest and incremental attention paid to gender stereotypes/stereotyping by the Committee in the years immediately following the release of its *General Recommendation No. 25* was therefore disappointing and, in many respects, undermined its characterisation of that obligation. *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*, which concerned the succession of Muñoz-Vargas y Sainz de Vicuña to her father's title of nobility, provides an apt illustration.

##### *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*<sup>216</sup>

Following the death of her father, Muñoz-Vargas challenged the succession of her younger brother to her father's title of Count of Bulnes, claiming that male primacy in the order of succession to nobility titles (as provided for under a Decree then in effect in the State Party) was discriminatory and, thus, unconstitutional. Her claim was dismissed, however. Muñoz-Vargas subsequently submitted a communication under the Optional Protocol to CEDAW, which also failed when a majority of the CEDAW Committee declared it inadmissible. However, one Committee member, Shanthi Dairiam, issued a dissenting opinion in which she declared the communication admissible and found a violation, in principle, of the rights to non-discrimination and equality and a violation of art 5(a) on gender stereotyping. Dairiam took the view that the communication was not concerned with a right to succeed to a title of nobility, which she conceded does not exist but, rather, with gender stereotypes and the different treatment of women and men in the distribution of social privileges. For Dairiam, the case concerned formal discrimination based on stereotypes that entrenched the notion of the inferiority of women. By contrast, the concurring members failed to identify the same gender stereotypes implicit in the Decree, resulting in their finding that the communication was inadmissible *ratione materiae*. Had those members recognised such a connection, they might have declared the communication admissible and engaged in an analysis of the operative stereotypes and the harm they caused Muñoz-Vargas. (The majority members declared the communication inadmissible *ratione temporis* and therefore didn't consider the compatibility of Muñoz-Vargas's claim with article 5 of CEDAW.)

Recent work,<sup>217</sup> however, points to an increasingly sophisticated analysis of gender stereotypes/stereotyping by the CEDAW Committee and a concerted effort

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<sup>216</sup> *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*, UN Doc. CEDAW/C/39/D/7/2005 (9 August 2007).

by the Committee to articulate the obligations of States Parties with respect to gender stereotypes/stereotyping. The Committee still has much work ahead of it to improve understanding of states' obligations with respect to gender stereotyping, particularly in respect of accurately naming gender stereotypes and making robust recommendations related to stereotypes/stereotyping. However, it is pleasing that the Committee is once again beginning to play a leadership role in addressing this root cause of discrimination against women.

Unfortunately, though, other UN human rights mechanisms continue to lag behind, frequently missing opportunities to address harmful gender stereotypes and wrongful gender stereotyping, even while embracing the concept of substantive equality. A recent example is the decision of the HRC in *L.N.P. v. Argentine Republic*,<sup>218</sup> which concerned discrimination against, and the gang rape of, a 15 year-old girl from the Qom ethnic group in Argentina.

#### ***L.N.P. v. Argentine Republic***

The HRC concluded in *L.N.P. v. Argentine Republic* that the decision of the State Party to acquit the perpetrators of rape violated article 26 of the ICCPR, among other articles. It explained that the trial court

invoked discriminatory and offensive criteria, such as “the presence of long-standing defloration” of the author to conclude that a lack of consent to the sexual act had not been demonstrated. The author further maintain[ed] that all the witnesses were asked whether she was a prostitute. The Committee considers that all the above statements, which have not been contested by the State party, reflect discriminatory treatment by the police, health and judicial authorities aimed at casting doubt on the morality of the victim. The Committee observe[d], in particular, that the judgement (sic) of the Criminal Chamber ... base[d] its analysis of the case on the sexual life of the author and whether or not she was a “prostitute”. The Chamber also takes the author’s loss of virginity as the main factor in determining whether she consented or not to the sexual act.

Regrettably, however, the HRC failed to identify the role that gender stereotyping – specifically, sexual stereotyping – had played in the acquittal, despite recognising in its *General Comment No. 28* that the ICCPR requires States Parties to ensure that such stereotyping does not affect women’s legal rights and protections, including against rape.<sup>219</sup> The failure of the HRC to condemn gender stereotyping explicitly is significant as it had the effect of leaving this structural cause of discrimination and gender-based violence intact. It simultaneously rendered other survivors of rape vulnerable to gender stereotyping by the Argentinian judicial system.

Part of the challenge of missed opportunities to address gender stereotypes/stereotyping are the limited examples of robust recommendations made by the UN human rights mechanisms on addressing harmful gender stereotypes and wrongful gender stereotyping. The limited number of robust recommendations is due sometimes to the failure of the UN human rights

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<sup>217</sup> See Section 3.1 above.

<sup>218</sup> *L.N.P. v. Argentine Republic*, UN Doc. CCPR/C/102/D/1610/2007 (16 August 2011).

<sup>219</sup> HRC, *General Comment No. 28*, *supra* note 108, para. 20.

mechanisms to identify harmful gender stereotypes or wrongful gender stereotyping as a cause of the particular violations of women's human rights. For example, the failure of the HRC in *L.N.P. v. Argentine Republic* to identify the role that wrongful gender stereotyping had played in the rape and subsequent inability of L.N.P. to obtain justice meant that it did not consider the harm such stereotyping had caused and simultaneously reduced significantly the likelihood that it would urge the State Party to take steps to eliminate this practice.

Yet, even when gender stereotypes/stereotyping have been identified in the work of UN human rights mechanisms, there often is a disconnect between that identification and the subsequent recommendations put forward by those mechanisms. In other words, despite identifying gender stereotypes/ stereotyping as a problem, the UN human rights mechanisms often fail to include in their work recommendations to address this problem or, if they do make recommendations, they are often general in nature and provide only limited assistance to States Parties. For example, despite concluding in *A.T. v. Hungary* that wrongful gender stereotyping had played a central role in the violence experienced by A.T.,<sup>220</sup> the Committee did not make any specific recommendations in respect of how the State Party might go about the difficult tasking of modifying or transforming the operative stereotypes or eliminating the practice of wrongful gender stereotyping.

Missed opportunities to address gender stereotypes/stereotyping, including in the form of robust recommendations, are significant as they leave the structural causes of discrimination and other rights violations in tact, thereby leaving women vulnerable to stereotyping and therefore further violations of their human rights. At the same time, the failure to challenge harmful gender stereotypes and wrongful gender stereotyping contributes to the further perpetuation of those beliefs and practices, making the UN human rights mechanisms complicit in potential future harm to women. The UN human rights mechanisms need to exercise constant vigilance and, whenever possible, name gender stereotyping (including operative gender stereotypes), identify consequent harms to women, articulate clearly the obligations of States Parties to address gender stereotypes/stereotyping and make robust recommendations to ensure States Parties comply fully with their obligations under international human rights law.

## 5.5 Balancing competing human rights obligations

The final challenge that will be mentioned here is the important question of how to balance the right to be free from harmful gender stereotypes and wrongful gender stereotyping against other, potentially competing human rights, such as the freedom from arbitrary interference in private life, the freedom of expression and cultural rights. Interestingly, concerns about the potential impact of the scope of the obligations in article 5 of CEDAW on other human rights and fundamental freedoms

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<sup>220</sup> *A.T. v. Hungary*, *supra* note 46, para. 9.4.

were raised as early as during the drafting process of the treaty.<sup>221</sup> One commentator worried more recently that the breadth of Article 5(a), in particular,

might permit States to curtail to an undefined extent privacy and associational interests and the freedom of opinion and expression. Moreover, since social and cultural behavior may be patterned according to factors such as ethnicity or religion, state action authorized by [paragraph] (a) ... may conflict with the principles of forbidding discrimination [on those bases]. The danger of intrusive state action and possible violation of the rights of ethnic or religious groups might have been mitigated by limiting state action to education measures.<sup>222</sup>

Until recently, the question of balancing rights in the context of gender stereotyping had gone largely unaddressed by the UN human rights mechanisms, at least publicly. The 2012 report of the UN Special Rapporteur in the field of cultural rights changed this, as the detailed excerpts below show, with its initial consideration of how to balance the freedom from harmful gender stereotypes/stereotyping against the cultural rights of women and men.

#### Special Rapporteur in the field of cultural rights

- “All societies have to address three incontrovertible facts of life: birth, death and the existence of two sexes (at least). Consequently, all societies are obliged to construct gender systems defining the roles, responsibilities and rights of girls/women and boys/men. Whether of great inequality or more equality, the constructs of gender play a central role in people’s self-definition as a social collectivity’, and permeates all aspects of life.”<sup>223</sup>
- “Frequently, the norms and practices assigned through unequal gender roles and rights are projected as essential core values of a particular community, centrally important to collective identity. Cast as the ‘privileged signifiers’ of community differences, women’s conformity to the status quo becomes equated with the ‘preservation of culture’ and challenges to existing norms and practices equated with ‘cultural betrayals’. ... Those contesting prevailing norms and practices to promote gender equality may be condemned as ‘cultural traitors’.”<sup>224</sup>
- “Women’s role as important signifiers of cultural groups stands in sharp contrast to their lack of influence in relevant decision-making processes and their limited opportunities to further develop cultural life. When women do claim their right to not participate in specific customs, to interpret, amend and reshape the contours of their cultural communities, they often confront disproportionate opposition, including different forms of violence, for acts as apparently simple as freely choosing who to marry, how to dress or where to go. The severity of such reactions stems from the centrality of gender constructs in collective life. The disruption of prescribed gender rules, roles and concepts in fact demands a

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<sup>221</sup> Lars. A. Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Dordrecht, Boston: M. Nijhoff Publishers, 1993), 80 (noting concerns raised during the drafting process regarding potential conflicts with other human rights, including the freedom of expression).

<sup>222</sup> T. Meron, *Human Rights Law-Making in the United Nations: A Critique of Instruments and Process* (Oxford: Clarendon Press, 1986), 66, quoted in Brad R. Roth, “The CEDAW as A Collective Approach to Women’s Rights” (2002-2003) 24 *Michigan Journal of International Law* 187, at 193.

<sup>223</sup> Shaheed, *supra* note 217, para. 15 [citations omitted].

<sup>224</sup> *Ibid.*, para. 19 [citations omitted].

reconfiguration of the community's collective identity as a whole."<sup>225</sup>

- "Not all women challenge the dominant cultural norms for a number of reasons: they may benefit, at least in part, from the overall arrangements; they may fear the consequences of challenging existing norms and practices or lack the support mechanisms necessary to act; they may not have access to alternative views and ways of life; or they may not adhere to emancipatory values. Consequently, intentionally or unintentionally, women may reproduce and contribute to sustaining harmful practices that violate the rights of other women...."<sup>226</sup>
- "International law has moved away from a narrow interpretation of the concept of discrimination on the ground of sex. In addition to direct and indirect discrimination between men and women, ... the concept now encompasses 'discrimination on the basis of gender stereotypes' ...."<sup>227</sup>
- "Systemic and structural discrimination refers to the ways in which laws and regulations, as well as cultural or religious traditions have constructed and maintained women's disadvantage based on socially and legally entrenched gender stereotypes; it thus overlaps direct and indirect discrimination. With respect to cultural rights, concepts that view males to be the head of household and the authoritative voice on matters relating to culture are especially problematic. Neither direct nor indirect sex discrimination can be overcome without combating systemic and structural discrimination."<sup>228</sup>
- "Across the world and throughout history, different visions of men and women, presuming dissimilar capabilities and separate spheres of operation, have defined expectations about appropriate behaviour. While some gender differences are real, most are not, and constructed differences 'have served in family and law, in church and state to prevent women from enjoying full personhood' and human rights, including cultural rights."<sup>229</sup>
- "In the view of the Special Rapporteur, more attention should be paid to situations where publicly disseminated reports on cultural, scientific or sporting activities or events, including cultural and artistic performances and practices, mainly depict the participation of men. Media coverage may underrepresent women's role in creating, transmitting, performing and safeguarding cultural practices and expressions, as well as their role in scientific research and applications."<sup>230</sup>
- "Women and girls must not be obliged to choose between community belonging and citizenship, or between any of their other identities. ... States have the predominant role in ensuring that women as well as men recognize women's right to be rights claimants, in assisting women and girls to claim and exercise their rights and in supporting women to reshape the various communities they desire to be a part of."<sup>231</sup>
- "Equality and non-discrimination on the basis of sex are paramount principles in international and regional human rights law. States have the obligation under international law to put an end to stereotypes that lie at the root of multiple discriminations, as recognized in particular in article 5 of the Convention on the Elimination of All Forms of

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<sup>225</sup> Ibid., para. 22.

<sup>226</sup> Ibid., para. 23.

<sup>227</sup> Ibid., para. 40 [citations omitted].

<sup>228</sup> Ibid., para. 43 [citations omitted].

<sup>229</sup> Ibid., para. 45 [citations omitted].

<sup>230</sup> Ibid., para. 50.

<sup>231</sup> Ibid., para. 51.

Discrimination against Women.”<sup>232</sup>

- “The Special Rapporteur ... recommends that States: (a) Abolish or modify laws and regulations, policies and programmes that are based on, apply or sustain negative or harmful gender stereotypes, including through legislative measures and social policies and information and educational programmes; (b) Adopt all measures necessary to eliminate gender stereotyping among State officials in all fields and at all levels, in particular those dealing with education, culture, sports and science, and ensure that women’s contributions to culture are fully reflected, especially in educational institutions, textbooks and curricula, in particular in the teaching of history; ....”<sup>233</sup>
- “The Special Rapporteur suggests that the Committee on the Elimination of Discrimination against Women envisage adopting, when its schedule permits, a general recommendation on article 13 (c) of the Convention, possibly in relation to articles 2 (f), 5 (a) and (b), and 10 (c).”<sup>234</sup>

The insights offered by the Special Rapporteur, though useful, show that the conversation about competing human rights obligations is only in its nascent stages as far as gender stereotypes/stereotyping is concerned. It is clear that there is a real need for a holistic conversation about competing human rights obligations, one that considers the freedom from harmful gender stereotypes and wrongful gender stereotyping in relation to all human rights and fundamental freedoms. Any such conversation will necessarily need to consider permissible limitations on the freedom from harmful gender stereotypes and wrongful gender stereotyping. By this it is meant that careful consideration will need to be given to when gender stereotyping might be justified under international human rights law. As has been suggested elsewhere,

[n]ot all differences of treatment based on gender stereotypes will constitute a form of discrimination prohibited under the Convention. This is because not every form of differential treatment in practice will be characterized in law as a form of discrimination. Differences in treatment based on gender stereotypes might be justified, for example, if that treatment served a legitimate purpose and the means chosen to attain that purpose were both reasonable and proportionate. An example might include measures designed to alleviate women’s immediate disadvantage (e.g., disproportionate burden of caring responsibilities, unequal pay for work of equal value), which do not necessarily serve the longer-term purpose of substantive equality and may, in fact, be based on gender stereotypes. Differences in treatment might also be justified if that treatment results from the adoption of temporary special measures, pursuant to article 4 of the Convention, which are intended to accelerate the transformation of gender stereotypes and the elimination of wrongful gender stereotyping.<sup>235</sup>

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<sup>232</sup> Ibid., para. 55.

<sup>233</sup> Ibid., para. 80.

<sup>234</sup> Ibid., para. 82.

<sup>235</sup> Cusack and Cook, *supra* note 210, para. 31 [citations omitted].

### Summary

- Further work is needed to ensure that States Parties and UN human rights mechanisms understand the meaning of the terms “gender stereotypes” and “gender stereotyping.”
- There is an urgent need for clear and comprehensive guidance from the UN human rights mechanisms, including in the form of a General Recommendation, on the scope and content of the obligations to modify or transform harmful gender stereotypes and eliminate wrongful gender stereotyping.
- Further work is needed to identify, monitor, evaluate and highlight the measures States Parties have adopted to implement their obligations related to gender stereotypes/stereotyping, with a view to identifying good practice examples.
- UN human rights mechanisms need to be more vigilant about naming gender stereotyping, accurately identifying operative stereotypes, identifying consequent harms, articulating the obligations of States Parties, and making robust recommendations on addressing gender stereotypes/stereotyping.
- Consideration needs to be given to how best to balance the right to be free from harmful gender stereotypes and wrongful gender stereotyping against other, potentially competing human rights.