

C<sub>5</sub>

## Article 5

- C<sub>5P1</sub> States Parties shall take all appropriate measures
- C<sub>5P2</sub> (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.

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## A. Introduction

### I. The Place and Function of Article 5 in the Convention

Eliminating all forms of discrimination against women requires more than adopting a prohibition of sex discrimination. It was the great achievement of the drafters of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to incorporate this insight into the Convention through the inclusion of Article 5. The Convention was the first international law document in which references to (what we now call) gender stereotypes were included. Culturally inscribed ideas about the inferiority of women, gender stereotypes, and traditional gender roles in the family lie at the root of many forms of exclusion, oppression, and violence against women. Article 5 addresses these root causes of women's human rights violations. In that sense, it is a radical provision: Article 5 demands deep-rooted change. The implementation of Article 5 is therefore crucial to achieve the Convention's overall objective.

Article 5 contains both self-standing and transversal norms, acting as both a substantive provision and an interpretative tool.<sup>1</sup> As a transversal norm, Article 5 forms part of the general interpretative framework of the Convention as a whole, together with Articles 1–4 and 24.<sup>2</sup> Article 5 is particularly closely linked to Article 2(f), which contains the obligation to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women. It is also specially connected to Article 10(c), which contains the obligation to eliminate gender stereotypes from education. The Committee regularly states that Articles 6–16 should be 'read with' Article 5.<sup>3</sup> The Committee recognizes the provision's cross-cutting relevance, for example, by describing the discriminatory situation in a State party 'in which extremely stereotyped social, economic, political and cultural roles were

<sup>1</sup> E Sepper, 'Confronting the "Sacred and Unchangeable": The Obligation to Modify Cultural Patterns under the Women's Discrimination Treaty' (2008) 30 University of Pennsylvania Journal of International Law 585.

<sup>2</sup> GR No 25 para 6.

<sup>3</sup> See, eg CEDAW/C/OP.8/KGZ/1 para 84.

assigned to men and women; that situation resulted in subordination of ... women in virtually all the areas and at all the levels covered by the articles of the Convention'.<sup>4</sup>

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As a self-standing norm, Article 5 should be regarded on its own merits. As this chapter will explain, it contains the obligation to modify gender stereotypes and fixed parental gender roles and to eliminate gender stereotyping that leads to discrimination. In this regard, the obligations contained in Articles 2(f) and 5(a) also go beyond the rights that are explicitly mentioned in the Convention and cover other rights which can impact gender equality.<sup>5</sup> For example, in the case of *Karen Tayag Vertido v The Philippines*, the Committee noted 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 ... merely on preconceived notions'.<sup>6</sup> Thus, while the Convention does not expressly contain the right to a fair trial,<sup>7</sup> Articles 2(f) and 5(a) protect women from gender stereotyping in this area.

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## II. The Dynamic and Progressive Interpretation of Article 5

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The Committee is very active in its consideration of Article 5. In terms of numbers, as of 31 December 2020, the Committee had handed down thirty-eight decisions in which it adopted substantive views. Of those thirty-eight, the Committee found in twenty cases that Article 5 or 5(a) of the Convention was violated<sup>8</sup> and in three cases that there had not

<sup>4</sup> CO Guatemala, A/49/38 (1994) para 78. CO South Africa, CEDAW/C/ZAF/CO/4 (2011) para 20; CO Kirgizstan, CEDAW/C/KGZ/CO/4 (2015) para 15; CO Russian Federation, CEDAW/C/RUS/CO/8 (2015) para 19.

<sup>5</sup> S Cusack, 'The CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping' in A Hellum and H Sinding Aassen (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (CUP 2013), 133. See also GR No 28 para 7: 'The spirit of the Convention covers other rights that are not explicitly mentioned in the Convention, but that have an impact on the achievement of equality of women with men, which impact represents a form of discrimination against women.'

<sup>6</sup> *Karen Tayag Vertido v The Philippines* CEDAW Communication No 18/2008 (views of 16 July 2010) CEDAW/C/46/D/18/2008 para 8.4; Cusack (n 5) 133.

<sup>7</sup> Though elements of it are contained in Art 15. See further the chapter on Art 15.

<sup>8</sup> *AT v Hungary* CEDAW Communication No 2/2003 (views of 25 January 2005) CEDAW/C/36/D/2003; *Karen Tayag Vertido v The Philippines* (n 6); *VK v Bulgaria* CEDAW Communication No 20/2008 (views of 25 July 2011) CEDAW/C/49/D/20/2008; *TPF v Peru* CEDAW Communication No 22/2009 (views of 17 October 2011) CEDAW/C/50/D/22/2009; *Inga Abramova v Belarus* CEDAW Communication No 23/2009 (views of 29 August 2011) CEDAW/C/49/D/23/2009; *X and Y v Georgia* CEDAW Communication No 24/2009 (views of 13 July 2015) CEDAW/C/61/D/24/2009; *RKB v Turkey* CEDAW Communication No 28/2010 (views of 24 February 2012) CEDAW/C/51/D/28/2010; *SVP v Bulgaria* CEDAW Communication No 31/2011 (views of 12 October 2012) CEDAW/C/53/D/31/2011; *Isatou Jallow v Bulgaria* CEDAW Communication No 32/2011 (views of 23 July 2012) CEDAW/C/52/D/32/2011; *Anna Belousova v Kazakhstan* CEDAW Communication No 45/2012 (views of 13 July 2015) CEDAW/C/61/D/45/2012; *MW v Denmark* CEDAW Communication No 46/2012 (views of 22 February 2016) CEDAW/C/63/D/46/2012; *González Carreño v Spain* CEDAW Communication No 47/2012 (views of 16 July 2014) CEDAW/C/58/D/47/2012; *ES and SC v United Republic of Tanzania* CEDAW Communication No 48/2013 (views of 2 March 2015) CEDAW/C/60/D/48/2013; *ST v Russian Federation* CEDAW Communication No 65/2014 (views of 25 February 2019) CEDAW/C/72/D/65/2014; *Reyna Trujillo Reyes and Pedro Arguello Morales v Mexico* CEDAW Communication No 075/2014 (views of 21 July 2017) CEDAW/C/67/D/75/2014; *OM v Ukraine* CEDAW Communication No 87/2015 (views of 19 July 2019) CEDAW/C/73/D/87/2015; *OG v Russian Federation* CEDAW Communication No 91/2015 (views of 6 November 2017) CEDAW/C/68/D/91/2015; *SL v Bulgaria* CEDAW Communication No 99/2016 (views of 19 July 2019) CEDAW/C/73/D/99/2016; *X and Y v Russian Federation* CEDAW Communication No 100/2016 (views of 16 July 2019) CEDAW/C/73/D/100/2016; *SFM v Spain* CEDAW Communication No 138/2018 (views of 28 February 2020) CEDAW/C/75/D/138/2018.

been a violation of Article 5.<sup>9</sup> Thus, Article 5 has been examined in the majority of individual decisions which the Committee considered on their merits. As regards the inquiry procedure, the Committee has held that Article 5 was violated in all of its inquiries to date, namely, regarding: Mexico,<sup>10</sup> Canada,<sup>11</sup> the Philippines,<sup>12</sup> Kyrgyzstan,<sup>13</sup> the United Kingdom of Great Britain and Northern Ireland,<sup>14</sup> and Mali.<sup>15</sup>

The Convention is a ‘dynamic instrument’, which is subject to continuous and progressive interpretation.<sup>16</sup> In line with this, while the Committee has stressed the importance of the correct and timely implementation of Article 5 from its inception<sup>17</sup> (indeed, one of its first general recommendations concerned Article 5),<sup>18</sup> the Committee has significantly expanded its understanding of this provision over the past decades.

Originally, the meaning and scope of Article 5 was widely underestimated. This may have been due to the fact that—contrary to, for example, Article 16, which obliges States parties to change existing family laws—Article 5 seems to contain relatively vague obligations. The wording of Article 5 is open. The drafters needed to find a language acceptable for all States, considering opposing standpoints about the value of motherhood and whether the traditional division of family roles was standing in the way of full equality of women.<sup>19</sup> This led to the Preamble affirming maternity as a positive value instead of a ground to discriminate against women and recognizing that change in the traditional role of men and women in society and in the family is a prerequisite for achieving full equality between men and women.<sup>20</sup> The two issues are reflected in Article 5, subsections (a) and (b), with early scholarship assuming that these provisions would merely obligate States parties to launch information and education campaigns.<sup>21</sup>

Since these beginnings, at least two important developments have taken place regarding the interpretation of Article 5. The first and most pronounced, as will be discussed further in this chapter, is that the Committee has stretched the meaning and scope of the Article well beyond the modification of cultural ideas and practices to include the transformation of societal structures and institutions that are based on and

<sup>9</sup> *FFM v Denmark* CEDAW Communication No 070/2014 (views of 21 July 2017) CEDAW/C/67/D/70/2014; *AM v Denmark* CEDAW Communication No 077/2014 (views of 21 July 2017) CEDAW/C/67/D/77/2014; *NM v Denmark* CEDAW Communication No 078/2014 (views of 21 July 2017) CEDAW/C/67/D/78/2014.

<sup>10</sup> CEDAW/C/2005/OP.8/Mexico, 14. <sup>11</sup> CEDAW/C/OP.8/CAN/1.

<sup>12</sup> CEDAW/C/OP.8/PHL/1. <sup>13</sup> CEDAW/C/OP.8/KGZ/1. <sup>14</sup> CEDAW/C/OP.8/GBR1.

<sup>15</sup> CEDAW/C/IR/MLI/1. <sup>16</sup> GR No 25 para 3.

<sup>17</sup> As early as its fifth session in 1986, the Committee appealed to the States parties to consider the introduction of appropriate measures to implement Art 5(a): UN Doc A/41/45 para 365.

<sup>18</sup> GR No 3.

<sup>19</sup> LA Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Martinus Nijhoff Publishers 1993) 79–88, including references to the relevant UN documents concerning the drafting process. See, for a summary of these discussions, the first edition of this *Commentary*, 151–53. Also see the chapter in this volume on the Preamble.

<sup>20</sup> CEDAW, Preamble paras 13–14.

<sup>21</sup> See, eg M Wadstein, ‘Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women’ (1988) 10 *Human Rights Quarterly* 5–21. The Convention was criticized for not being progressive enough, precisely because it supposedly only addressed gender ideology, not systemic or structural discrimination against women. H Charlesworth, C Chinkin, and S Wright, ‘Feminist Approaches to International Law’ (1991) 85 *American Journal of International Law* 613, 634. This restrictive reading of Art 5 was prevalent in the legal literature until the end of the 1990s. For an overview of the early literature, see R Holmaat, *Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination* (Ministry of Social Affairs and Employment 2004) 61–68.

reinforce gender stereotypes.<sup>22</sup> This far-reaching interpretation of Article 5 was initiated by General Recommendation No 25 from 2004, in which the Committee stated that one of the three central obligations of States parties under the CEDAW Convention is ‘to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions’.<sup>23</sup> Article 5 is central to this obligation. From General Recommendation No 25 onwards, the Committee has given a more prominent place to Article 5 (or, in more general terms, the topic of gender stereotypes) in most of its general recommendations and concluding observations, as well as in many individual complaint procedures and in all inquiry procedures.

The second development is that the Committee has expanded its vision of who suffers from gender stereotyping. In recent years, the Committee has acknowledged that gender stereotypes also negatively affect LGBTI persons mostly by invoking the concept of intersectional or multiple discrimination,<sup>24</sup> although the Committee has been very cautious in this regard,<sup>25</sup> for which it has been criticized.<sup>26</sup> The Committee has said, for example, that gender recognition needs to be carried out ‘without requiring transgender persons to conform to stereotypical ideas of masculine or feminine appearance or behavior and that it does not require individuals to consent to sterilization’.<sup>27</sup> The Committee has also recognized that boys and men can suffer from gender stereotypes and oppressive ideas regarding maleness and masculinity,<sup>28</sup> but again, to a limited extent.<sup>29</sup> In General Recommendation No 31, the Committee recognized that boys are also the victims of violence, harmful practices, and bias and that their rights must be addressed for their protection and to prevent gender-based violence and the perpetuation of bias and gender inequality later in their lives.<sup>30</sup>

### III. Core Concepts: Gender, Gender Stereotypes, and Fixed Parental Gender Roles

Subsection (a) of Article 5 obliges States parties to eliminate all social and cultural practices ‘based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’, and subsection 5 (b) addresses the necessary change of the traditional roles within the family.<sup>31</sup> Negative and detrimental traditional, cultural, customary, or religious beliefs, ideas, rules, and practices concerning women’s

<sup>22</sup> In this chapter, unless otherwise indicated, ‘culture’ is used in the broad sense, including cultural expressions, language, custom, religion, tradition, institutional settings, etc.

<sup>23</sup> GR No 25 para 7.

<sup>24</sup> See also section B, where we discuss the topic of intersectional discrimination.

<sup>25</sup> R Holtmaat and P Post, ‘Enhancing LGBTI Rights by Changing the Interpretation of the Convention on the Elimination of All Forms of Discrimination against Women?’ (2015) 33 *Nordic Journal of Human Rights* 319–36.

<sup>26</sup> D Otto, ‘Queering Gender [Identity] in International Law’ (2015) 33 *Nordic Journal of Human Rights*, 4, 299–318, 308–09. For further discussion, see section A.II.2.

<sup>27</sup> CO Finland, CEDAW/C/FIN/CO/7 (2014) para 29.

<sup>28</sup> Gender stereotypes also affect men who want to break away from their pre-designed role. See, eg JM Kang, ‘The Burdens of Manliness’ (2010) 33 *Harvard Journal of Law & Gender* 477–507.

<sup>29</sup> See, eg GR No 35 para 30(i), where the Committee suggests that media should not only eliminate gender stereotypes relating to women but also to men.

<sup>30</sup> GR No 31 para 4.

<sup>31</sup> This section concerns ‘the most universal traditionalist cultural norm that disadvantages women, which is the stereotypical assignment of sole or major responsibility for childcare to women’: F Raday, ‘Culture, Religion, and CEDAW’s Article 5(a)’ in HB Schöpp-Schilling and C Flinterman (eds), *The Circle of*

role in private and public life should be replaced by a positive appreciation of women's contribution to society and by a practice of sharing parental responsibilities.<sup>32</sup> The two subsections of Article 5 are connected: realization of either of these objectives depends on realization of the other. In this chapter, for reasons of clarity and brevity, we have chosen to 'summarize' the two subsections of Article 5 into two core concepts, namely, *gender stereotypes* and *fixed parental gender roles*. Article 5 can therefore be summarized as the obligation to modify gender stereotypes and fixed parental gender roles. We now analyse the meaning of these terms in the Committee's work and in feminist legal scholarship.

### 1. Sex/Gender/Gender Identity and Contestations

The Committee's understanding of gender stereotypes has evolved hand in hand with its conceptualization of gender. According to the Committee, the concept of gender 'refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences',<sup>33</sup> while 'sex' here refers to 'biological differences between men and women'.<sup>34</sup> Feminist theorists emphasize that gender is active; every person and every social or cultural structure contributes to it,<sup>35</sup> including the law.<sup>36</sup> Male and female gender identities are imposed by culture and society in the same way as (inter alia) national, racial, or ethnic identities, which may take on an appearance of being 'natural', that is, being determined by nature.<sup>37</sup> The Committee stresses that gender is a product of culture and society and that it 'can likewise be changed by culture, society and community'.<sup>38</sup>

In many patriarchal narratives, women are described not as inferior but as inherently *different* from men. In that context, the Committee expresses its concern when 'gender equality is being openly and increasingly undermined by vaguely defined concepts of "gender equity" or "gender justice"'.<sup>39</sup> A State party's statement that the 'question of modification of "patterns" referred to in article 5(a) must not be understood as encouraging women to abandon their role as mothers and their role in child-rearing, thereby undermining the structure of the family' was recently met with concern by the Committee.<sup>40</sup>

The use of the concept of gender is met with a lot of resistance by a diverse array of theorists, politicians, and religious leaders who do not want to change or who believe that it is impossible to change the 'natural' or 'God-given' relations between the two biological sexes.<sup>41</sup> This resistance has grown in the past decade, and the Committee expresses

*Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (2007) 74. For an overview of the extent to which care work is gendered around the world, see ILO, 'Care Work and Care Jobs: For the Future of Decent Work' (2018) <[https://www.ilo.org/global/publications/books/WCMS\\_633135/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_633135/lang-en/index.htm)> accessed 31 May 2021.

<sup>32</sup> The final phrase about the interest of the child being primordial should be interpreted and implemented in a manner that does not reinforce gender stereotypes or fixed parental gender roles. See the discussion in the chapter on Art 16.

<sup>33</sup> GR No 33 para 7. <sup>34</sup> GR No 28 para 5.

<sup>35</sup> See, eg S Gherardi, 'The Gender We Think, the Gender We Do in Our Everyday Organizational Lives' (1994) 6 *Human Relations* 591–610.

<sup>36</sup> C Smart, 'The Women in Legal Discourse' (1992) 1 *Social and Legal Studies* 29–44.

<sup>37</sup> AM Gross, 'Sex, Love, and Marriage: Questioning Gender and Sexuality Rights in International Law' (2008) 21 *Leiden Journal of International Law* 235, 251.

<sup>38</sup> GR No 28 para 5.

<sup>39</sup> CO Turkey, CEDAW/C/TUR/CO/7 (2016) para 28.

<sup>40</sup> CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 25.

<sup>41</sup> See, generally, D Paternotte and R Kuhar, *Anti-Gender Campaigns in Europe: Mobilizing against Equality* (Rowman & Littlefield 2017).



its deep concerns about the rise of ‘anti-gender movements seeking to exclude reference to gender from the political, educational and social discourse’<sup>42</sup> and about ‘vigorous campaigns by non-State actors, including religious and civic organizations, the media and politicians, advocating traditional family values, overemphasizing the roles of women as mothers and caretakers and criticizing gender equality as “gender ideology”’.<sup>43</sup>

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On the other side of the political spectrum, the Committee’s understanding of sex and gender has been criticized for being rooted in the male/female binary and for presenting ‘sex’ as something that is biological and fixed rather than fluid and socially constructed.<sup>44</sup> This, critics argue, both severely limits the Convention’s potential to protect LGBTI people and men from gender discrimination as well as cis-women.<sup>45</sup> Of all the provisions in the Convention, Article 5 has unique potential to construct an interpretation of CEDAW as prohibiting all forms of sex/gender/gender identity discrimination, including those experienced by men and other genders.<sup>46</sup> That is because the construction of gender stereotypes and fixed parental gender roles ultimately rests upon the assumption that there are two opposite and mutually exclusive biological sexes who are attracted to each other.<sup>47</sup> A blatant transgression of the patriarchal female gender identity and her fixed gender role is the lesbian woman who chooses to renounce a male sexual partner and thereby also rejects the protection of the male head of household and all other forms of male supervision and control of her life. Lesbian women and girls, but also bisexual, transgender, intersex, and cross-dressing persons experience particularly severe forms of violence, including (gang) rape in order to ‘cure’ their ‘abnormal’ sexual preference or gender identity.<sup>48</sup> If Article 5 is given a wide reading, which would be correct according to the present authors, ‘the obligation to modify gender stereotypes and fixed parental roles should enable everyone to express their gender identity in the way they choose, without suffering adverse discriminatory consequences’.<sup>49</sup>

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## 2. Gender Stereotypes

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There are various understandings of stereotypes, depending on academic discipline and focus.<sup>50</sup> The Committee itself has not provided a definition of stereotypes. Rebecca Cook and Simone Cusack have developed a definition that is often used in human rights law scholarship and which is also used by the Office of the UN High Commissioner for Human Rights.<sup>51</sup> According to Cook and Cusack, a stereotype is ‘a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should

<sup>42</sup> CO Paraguay, CEDAW/C/PRY/CO/7 (2017) para 8; CO Armenia, CEDAW/C/ARM/CO/5–6 (2016) para 14; CO Bosnia and Herzegovina, CEDAW/C/BIH/CO/6 (2019) para 23.

<sup>43</sup> CO Slovakia, CEDAW/C/SVK/CO/5–6 (2015) para 18.

<sup>44</sup> eg D Rosenblum, ‘Unsex CEDAW, or What’s Wrong with Women’s Rights’ (2011) 20(2) Columbia Journal of Gender and Law 98; Otto (n 26) 299–318. For further discussion, see also B Hernández-Truyol, ‘Unsex CEDAW? No! Super-Sex It!’ (2011) 20 Columbia Journal of Gender and Law 195.

<sup>45</sup> Otto (n 26) 299–318.

<sup>46</sup> R Holtmaat, ‘The CEDAW: A Holistic Approach to Women’s Equality and Freedom’ in Hellum and Sinding Assen (n 5) 112–16; Holtmaat and Post 2015 (n 25); Otto (n 26) 303–04.

<sup>47</sup> See, eg Gross (n 37).

<sup>48</sup> See, eg CO Haiti, CEDAW/C/HTI/CO/8–9 (2016) para 47; CO Mozambique, CEDAW/C/MOZ/CO/3–5 (2019) para 41.

<sup>49</sup> Otto (n 26) 303.

<sup>50</sup> For an overview of non-legal definitions and approaches, see PR Hinton, *Stereotypes and the Construction of the Social World* (Routledge 2019) ch 1.

<sup>51</sup> OHCHR, ‘Gender Stereotyping’ <OHCHR | Gender stereotyping> accessed 31 May 2022.

be performed by, members of a particular group'.<sup>52</sup> The 'are or should' part of this definition points at an important aspect of stereotypes: they can be both descriptive and normative.<sup>53</sup> The line between descriptive and normative stereotypes is very thin, however, since many descriptions of what women are—for example, the idea that 'women are nurturing'—also function as prescriptions of how they should behave.<sup>54</sup> Descriptive stereotypes can be statistically accurate, but they can also be false.<sup>55</sup> Regardless of statistical accuracy, however, a stereotype about a certain social group does not necessarily fit individuals from that group.

Cook and Cusack's definition leaves the content of stereotypes rather open—they can be both overtly negative and benign. An example of an overtly negative stereotype would be the idea that women are irrational and prone to exaggeration.<sup>56</sup> The more insidious gender stereotypes are those that are seemingly positive and are therefore characterized as being benign.<sup>57</sup> These stereotypes put women on a pedestal, often referencing motherhood or a woman's perceived nurturing capacities. The caring qualities of women often serve to justify a system of patriarchy where men perform the leading roles and women the supportive ones. The Committee has made it clear that both types of gender stereotypes, the negative ones as well as the seemingly benign or positive ones, can be harmful.<sup>58</sup> That is because stereotypes, whether positive or negative, are not constructed randomly. As Fenton wrote: 'Social power, its acquisition and maintenance, is the driving force behind the formulation of stereotypes.'<sup>59</sup>

While the Committee has not made this explicit in its work, what makes combatting stereotypes so difficult is that everyone holds them. Social psychological research has established that individuals hold stereotypes often unconsciously, which are then triggered when they come into contact with members of a stereotyped group.<sup>60</sup> People categorize others for various reasons; the two main ones appear to be to provide predictability and to feel good about ourselves and the groups we belong to (identity construction).<sup>61</sup> At the same time, stereotypes are undoubtedly also a collective, cultural, phenomenon.<sup>62</sup> Stereotypes are social norms, and which stereotypes people hold and the extent to which people express stereotypes depends on their social environment.<sup>63</sup> Reflecting the

<sup>52</sup> R Cook and S Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 9.

<sup>53</sup> ST Fiske and others, 'Social Science Research on Trial: Use of Sex Stereotyping Research in *Price Waterhouse v Hopkins*' (1991) 46 *American Psychologist* 1049–60.

<sup>54</sup> KA Appiah, 'Stereotypes and the Shaping of Identity' (2000) 88 *California Law Review* 41, 49.

<sup>55</sup> See, eg A Timmer, 'Judging Stereotypes: What the European Court of Human Rights Can Borrow from American and Canadian Equal Protection Law' (2015) 63 *American Journal of Comparative Law* 1. Hinton emphasizes, though, that a decision about the validity of stereotypes '(as "true" or "false") does not necessarily relate to the state of the social world but to an ideological position': Hinton (n 50) 198.

<sup>56</sup> See, eg the case of *SFM v Spain*, where the psychological harm that the author suffered as a result of obstetric violence was characterized by a national court as 'mere perception': *SFM v Spain* CEDAW Communication No 138/2018 (2020) CEDAW/C/75/D/138/2018 para 7.5.

<sup>57</sup> See, eg M Baretto and N Ellemers, 'The Burden of Benevolent Sexism: How It Contributes to the Maintenance of Gender Inequalities' (2005) 35 *European Journal of Social Psychology* 633–42.

<sup>58</sup> MJ Añón, 'Transformations in Anti-Discrimination Law: Progress against Subordination' (2020) 40 *Revus* 27–43 para 29.

<sup>59</sup> ZE Fenton, 'Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence' (1998–99) 8/1 *Columbia Journal of Gender and Law* 15. See also Hinton (n 50) 197.

<sup>60</sup> See, eg PG Devine and LB Sharp, 'Automaticity and Control in Stereotyping and Prejudice' in TD Nelson (ed), *Handbook of Prejudice, Stereotyping and Discrimination* (Psychology Press 2009) 61–62.

<sup>61</sup> See, eg C Stangor, 'Volume Overview' in C Stangor (ed), *Stereotypes and Prejudice: Essential Readings* (Psychology Press 2000) 11–16.

<sup>62</sup> See, eg Hinton (n 50) ch 1.

<sup>63</sup> See, eg Stangor (n 61).



Committee's concern with structural inequalities,<sup>64</sup> the Committee's focus has been more on the collective than on the individual level. Much of the Committee's work on stereotypes, as will be further discussed in this chapter, concerns the ways in which gender stereotypes are structurally embedded in societies and their institutions.

Stereotyping is likely to remain a complex topic for lawyers.<sup>65</sup> How far does the obligation to eliminate gender stereotyping go? Clearly, stereotyping which leads to discrimination or in any way infringes women's human rights needs to be eliminated. But distinguishing harmful gender stereotyping from allowable uses of gender stereotypes can, at times, be a complex undertaking. Gender stereotypes can be deployed to upend stereotyping (eg in positive action measures<sup>66</sup> or in comedy and art). The fact that everyone harbours stereotypes and that stereotyping is so fundamental to human processes of cognition and identity construction<sup>67</sup> adds further complexity.

### 3. Fixed Parental Gender Roles

Article 5(b) addresses the issue of fixed parental gender roles that derive from the stereotyped roles for men and women addressed in the last phrase of Article 5(a). Similar to the concept of gender as such, the idea that these roles might need to be changed meets with a lot of resistance. Stereotyping women 'exclusively as mothers and housewives' is 'globally pervasive', as Raday has pointed out.<sup>68</sup> In some countries, this serves as an excuse to keep them in the 'safe haven' of the male-controlled family.<sup>69</sup> In some countries, this gender order is still legitimized in state or customary law.<sup>70</sup> The gender role of a 'man' in patriarchal systems of unequal gender relations is that of the breadwinner and the person in charge of maintaining and preserving the 'natural family order' and preventing 'his' women (wife, sister, daughter, or any other female relative) from bringing shame on the family. At the same time, gender stereotypes and fixed parental gender roles are also oppressive for men; those who do not live up to them may bring shame upon the family and may be punished socially and/or legally.<sup>71</sup> The Committee's focus, however, is on women.

## IV. Related Provisions in Other Human Rights Documents

As mentioned above, Article 5 CEDAW was the first norm imposing a duty on States to work towards socio-cultural change. The necessity of modifying gender stereotypes and fixed parental gender roles can nowadays also be found in several regional treaties,<sup>72</sup>

<sup>64</sup> See further, section B on structural discrimination.

<sup>65</sup> See also L. Clérico, 'Derecho Constitucional y Derechos Humanos: Haciendo Manejable el Analisis de Estereotipos' (2017) REDEA Derechos en Acción 206–41; S. Moreau, 'Equality Rights and Stereotypes' in D. Dyzenhaus and M. Thorburn (eds), *Philosophical Foundations of Constitutional Law* (OUP 2016) 283–303.

<sup>66</sup> JC Suk, 'Are Gender Stereotypes Bad for Women? Rethinking Antidiscrimination Law and Work Family Conflict' (2010) 110 Columbia Law Review 1–69.

<sup>67</sup> Appiah (n 54). See also FJ Arena, 'The Pragmatics of Stereotypes in Legal Decision-Making' in F. Poggi and A. Capone (eds), *Pragmatics and Law: Practical and Theoretical Perspectives* (Springer 2017) 379–99.

<sup>68</sup> F. Raday, 'Gender and Democratic Citizenship: The Impact of CEDAW' (2012) 10 International Journal of Constitutional Law 512, 518–19.

<sup>69</sup> Raday, 'Culture, Religion, and CEDAW's Article 5(a)' (n 31) 69.

<sup>70</sup> See, eg CO Oman, CEDAW/C/OMN/CO/2–3 (2017) para 21; CO Angola, CEDAW/C/AGO/CO/7 (2019) para 13; CEDAW/C/JPN/CO/7–8 (2016) paras 20–21.

<sup>71</sup> GR No 31, para 4. See also, eg R. Collier, 'Masculinities and Families: Fragmenting Laws Family Man' in C. Ashford (ed), *Research Handbook on Gender, Sexuality and the Law* (Edward Elgar 2020) 443–56.

<sup>72</sup> See, eg Istanbul Convention, Art 12(1); the Convention of Belém do Para, Arts 7(e), 8(b); the Protocol to the Banjul Charter on the Rights of Women in Africa, Arts 2(2), 4(d), 6, 13.

as well as soft-law instruments.<sup>73</sup> For example, the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) states that:

C5P66 **parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.**<sup>74</sup>

C5P67 Article 8(1)(b) of the Convention on the Rights of Persons with Disabilities (CRPD) contains a provision similar to Article 5 CEDAW, obliging States to combat stereotypes based on disability.<sup>75</sup> Other UN human rights treaty bodies have addressed stereotyping as well.<sup>76</sup> Anti-gender stereotyping reasoning is also becoming more prominent in the case law of the European Court of Human Rights and the Inter-American Court of Human Rights.<sup>77</sup>

## B. Issues of Interpretation

C5S9

C5P68

The CEDAW Committee has clarified that a very wide range of ideas, beliefs, social and cultural practices, and institutional arrangements (official State legislation and policies) fall under the scope of Article 5. This section is therefore divided in two. Part I discusses how the norms contained in Article 5 relate to the non-discrimination norms in the Convention. Part II describes the topics that the Committee sees as the main areas of concern in relation to gender stereotypes and fixed parental gender roles.

C5S10

### I. Article 5 in Relation to the Prohibition of Discrimination against Women

C5P69

Although Article 5 does not speak of discrimination, and although the definition of discrimination in Article 1 does not mention gender stereotypes or fixed parental gender roles, these phenomena are closely related to discrimination against women. Article 2 establishes the link since, in order to eliminate discrimination, States parties are required to abolish ‘existing laws, regulations, customs and practices’ which discriminate against women (Article 2(f)).

C5P70

The Committee conceives of wrongful gender stereotyping as the ‘root cause and consequence’ of discrimination<sup>78</sup> as well as a form of discrimination in itself. This reflects

<sup>73</sup> See, eg Council of Europe Recommendation on Preventing and Combating Sexism, CM/Rec (2019) 1.

<sup>74</sup> Istanbul Convention, Art 12(1).

<sup>75</sup> CRPD Art 8(1)(b). See also, eg CRPD, ‘General Comment 6’ (2018) UN Doc CRPD/C/GC/6 paras 2, 29.

<sup>76</sup> See, eg CESCR, ‘General Comment 20’ (2009) UN Doc E/C.12/GC/20 para 20; CESCR, ‘General Comment 22’ (2016) UN Doc E/C.12/GC/22 paras 27, 31, 35, 36; CCPR, ‘General Comment 28’ (2000) UN Doc CCPR/C/21/Rev.1/Add.10 paras 5, 25.

<sup>77</sup> See, eg Timmer, ‘Judging Stereotypes’ (n 55); V Undurraga, ‘Gender Stereotyping in the Case Law of the Inter-American Court of Human Rights’ in E Brems and A Timmer (eds), *Stereotyping and Human Rights Law* (CUP 2016) 67–94.

<sup>78</sup> See, eg *RKB v Turkey* CEDAW Communication No 28/2010 (2012) CEDAW/C/51/D/28/2010 para 8.8; *ST v Russian Federation* CEDAW Communication No 65/2014 (2019) CEDAW/C/72/D/65/2014 para 9.4.

the complexity of the relationship between stereotypes and discrimination,<sup>79</sup> which some commentators have characterized as an invidious self-reinforcing cycle.<sup>80</sup> Besides the term ‘root cause’, the Committee uses several formulations to express how gender stereotypes can cause discrimination against women.<sup>81</sup> For example, it states that stereotypes ‘constitute barriers’<sup>82</sup> and that they ‘constitute the most serious obstacles’ to achieving equality.<sup>83</sup> In its concluding observations as of 2009, the Committee often includes a section entitled ‘Discriminatory gender stereotypes’, reflecting that the Committee considers that gender stereotypes can be discriminatory in themselves.<sup>84</sup> Sometimes, the Committee mentions that stereotypes perpetuate discrimination and that they are discriminatory in themselves in one document.<sup>85</sup>

### 1. Direct Discrimination

Direct discrimination (namely, ‘different treatment explicitly based on grounds of sex and gender differences’<sup>86</sup>) is often motivated by gender stereotypes and fixed parental gender roles and at the same time likely perpetuates these stereotypes and roles. The Committee has made clear that gender stereotypes cannot serve as justification or rationalization for direct discrimination against women. One such reason that is sometimes brought forward by States in an attempt to justify direct discrimination is the need to preserve culture or the need of women for special protection because of their roles as mothers or care-givers.<sup>87</sup> The Committee expresses special concern about ‘Laws that reinforce discriminatory stereotypes, [ ... ], which stipulates that the duty of the wife is to obey the husband, to be responsible for the household and to take care of children’.<sup>88</sup> Men then often have special rights as breadwinners or heads of households.<sup>89</sup> Existing discriminatory legislation may also contribute to the perpetuation of negative cultural patterns and harmful practices.<sup>90</sup>

Direct discrimination against women sometimes results from States parties’ recognition of customary or religious laws and practice. Many States parties, although not allowing sex discrimination in their state laws and policies or practices, either de facto or officially recognize the validity of customary or religious laws in the constitution and/or State (federal) laws, even when such laws are contrary to the principle of sex equality.<sup>91</sup> On the basis of Articles 5 and/or 2(f), the Committee rejects any direct discrimination against women that flows from the official recognition of religious or customary laws in those countries

<sup>79</sup> See, eg Nelson (n 60).

<sup>80</sup> See, eg V Schultz, ‘Taking Sex Discrimination Seriously’ (2014) *Denver University Law Review* 995, 1106; Timmer, ‘Judging Stereotypes’ (n 55) 281–82.

<sup>81</sup> The Committee also mentions various other causes, such as ‘adverse cultural norms’ (eg CO Madagascar, CEDAW/C/MDG/CO/5 (2008) para 16); ‘patriarchal attitudes’ (eg CO Czech Republic, CEDAW/C/CZE/CO/6 (2016) para 23); or ‘patriarchal norms’ (eg CO Angola, CEDAW/C/AGO/CO/7 (2019) para 23).

<sup>82</sup> CO Cook Islands, CEDAW/C/COK/CO/1 (2007) para 28.

<sup>83</sup> CO Cyprus, A/51/38 (1996) para 45.

<sup>84</sup> See, eg CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 21.

<sup>85</sup> CO Bahamas, CEDAW/C/BHS/CO/1–5 (2012) paras 21–22. <sup>86</sup> GR No 28 para 16.

<sup>87</sup> See, eg CO Democratic People’s Republic of Korea, CEDAW/C/PRK/CO/2–4 (2017) para 23.

<sup>88</sup> CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 25.

<sup>89</sup> See, eg CO Indonesia, CEDAW/C/IDN/CO/4–5 (2012) para 18; CO Singapore, CEDAW/C/SGP/CO/5 (2017) para 18.

<sup>90</sup> See, eg CO Syria, CEDAW/SYR/CO/2 (2014) para 21.

<sup>91</sup> See, eg CO Botswana, CEDAW/C/BOT/CO/3 (2010) para 23; CO Angola, CEDAW/C/AGO/CO/7 (2019) para 13.

that practice legal pluralism.<sup>92</sup> ‘With reference to its General Recommendation No 33 (2015) on women’s access to justice, the Committee recalls the State parties’ obligation to ensure that ‘women’s rights are protected against violations by all components of plural justice systems’.<sup>93</sup> The Committee ‘notes with great concern that, although the national laws guaranteed the equal status of women, the continued existence of and adherence to customary laws perpetuated discrimination against women, particularly in the context of the family’.<sup>94</sup>

## 2. Indirect Discrimination

The Committee has stated that ‘[i]ndirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure’.<sup>95</sup> Indirect discrimination can reflect and perpetuate gender stereotypes. But stereotyping might also be connected to indirect discrimination in another way. Lingering stereotypes can be the reason why certain actors (eg organizations that have to develop tests for applicants to enter a certain profession<sup>96</sup>) fail to develop practices that do not disproportionately disadvantage women.<sup>97</sup> In other words, both conscious and unconscious gender stereotyping can be understood as important underlying reasons for why actors fail to take action against indirect discrimination.

The Committee has not yet elaborated much on the relationship between gender stereotyping and indirect discrimination on a general level, but it has pointed at several ways in which gender stereotypes sustain indirect discrimination. For example, gender stereotyping in education can perpetuate both direct and indirect discrimination against girls and women.<sup>98</sup> The Committee also connects the persistence of stereotypical and traditional attitudes to the prevalence of women among part-time workers and to their differential treatment in social laws and policies.<sup>99</sup> The Committee has stated that providing formal equal rights by law or making laws formally sex-neutral is not enough if they negatively impact women disproportionately. Sex-neutral legal language may in fact hide direct or indirect discrimination.<sup>100</sup> Where there is a disproportionate impact on women, the gender stereotypes that underlie these laws must be questioned.<sup>101</sup>

With the rise of artificial intelligence (AI) and the growing use of algorithms, scholars have indicated that gender stereotypes also increasingly cause indirect gender discrimination through digital technologies.<sup>102</sup> Indirect gender discrimination can occur, for

<sup>92</sup> See, eg CO Burundi, CEDAW/C/BDI/CO/4 (2008) para 13; CO Angola, CEDAW/C/AGO/CO/7 (2019) para 13. GR No 33 paras 61–64; *ES and SC v United Republic of Tanzania* CEDAW Communication No 48/2013 (2015) CEDAW/C/60/D/48/2013 para 7.2.

<sup>93</sup> CO Niger, CEDAW/C/NER/CO/3–4 (2017) para 15.

<sup>94</sup> CO Zimbabwe, A/53/38 (1998) para 139; also CO Niger, CEDAW/C/NER/CO/3–4 (2017) para 15.

<sup>95</sup> GR No 28 para 16.

<sup>96</sup> cf CJEU *Kalliri*, Case C-409/16, concerning a minimum height requirement to enter the police force.

<sup>97</sup> S Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination* (OUP 2020) 204.

<sup>98</sup> GR No 36 para 27.

<sup>99</sup> CO Germany, A/55/38 (2000) paras 313, 314; CO Luxembourg, CEDAW/C/LUX/CO/6–7 (2018) para 25.

<sup>100</sup> CO CEDAW/C/LUX/6–7 (2018) paras 11–12b; CO CEDAW/C/NZL/8 (2018) para 11.

<sup>101</sup> CO Slovenia, A/52/38 (1997) para 89. See also GR No 28 para 5.

<sup>102</sup> R Adams and N Ní Loideáin, ‘Addressing Indirect Discrimination and Gender Stereotypes in AI Virtual Personal Assistants: The Role of International Human Rights Law’ (2019) 8/2 Cambridge International

example, in online advertising or through the use of virtual personal assistants. As these technologies develop, the ways in which stereotyping causes and sustains indirect discrimination are therefore likely to receive more attention in the future.

### 3. Structural Discrimination and Transformative Equality

The main contribution of Article 5 is to address the systemic and structural nature of discrimination.<sup>103</sup> On the basis of Article 5, States parties are required to combat structural discrimination.<sup>104</sup> The Committee often emphasizes the structural aspects of women's inequality. In General Recommendation No 28, for example, the Committee has spoken of the 'structural and historical patterns of discrimination and unequal power relationships between women and men'.<sup>105</sup> Similarly, in General Recommendation No 33, the Committee noted the 'structural context of discrimination and inequality'.<sup>106</sup>

The Committee has not (yet) provided a definition of structural discrimination,<sup>107</sup> but in General Recommendation No 36, the Committee noted that 'In article 5(a), the structural dimension of discrimination is described as being rooted in 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'.<sup>108</sup> The Committee sometimes distinguishes between three levels of discrimination: individual, institutional, and structural.<sup>109</sup> The Committee takes a very broad view of what is 'structural': it includes more formal institutions (laws, policies, programmes)<sup>110</sup> but also any kind of cultural practices and interactions.<sup>111</sup>

The core concept that guides the implementation of Article 5, and specifically the obligation to combat structural discrimination, is what scholars have termed 'transformative equality'.<sup>112</sup> This *Commentary* uses the term 'transformative equality' to denote change of a fundamental and far-reaching nature, an objective which is embodied in the text and

Law Journal 241–57; R Xenidis and L Senden, 'EU Non-Discrimination Law in the Era of Artificial Intelligence: Mapping the Challenges of Algorithmic Discrimination' in U Bernitz, X Groussot, J Paju, and S de Vries (eds), *General Principles of EU Law and the EU Digital Order* (Wolters Kluwer 2020) 151–82.

<sup>103</sup> Holtmaat, 'The CEDAW' (n 46) 95.

<sup>104</sup> See, eg GR No 30 para 77: 'States parties' obligations under the Convention require them to address all violations of women's rights as well as the underlying structural sex and gender-based discrimination that underpinned such violations.'

<sup>105</sup> GR No 28 para 16. <sup>106</sup> GR No 33 para 3.

<sup>107</sup> Scholarship on Art 5 CEDAW and related topics does provide such definitions; see, eg EV Henn, *International Human Rights Law and Structural Discrimination: The Example of Violence against Women* (Springer 2019) 37–38.

<sup>108</sup> GR No 36 para 26. <sup>109</sup> GR No 35 para 33(b). <sup>110</sup> See, eg GR No 36 para 25.

<sup>111</sup> Political theorists have further elaborated the notion of structure. Famously, IM Young, *Political Responsibility and Structural Injustice*, The Lindley Lecture, 5 May (Lawrence, KS: University of Kansas 2003) 6: 'structures refer to the relation of social positions that condition the opportunities and life prospects of the persons located in those positions'. See also A Nuti, *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress* (CUP 2019) 33, arguing that there are two types of structures: environmental and rule-based.

<sup>112</sup> N Fraser, *Justice Interruptus; Critical Reflections on the 'Post-Socialist' Condition* (Routledge 1997) 23; S Fredman, 'Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights' in I Boerefijn and others (eds), *Temporary Special Measures: Accelerating De Facto Equality of Women under Article 4(1) UN Convention on the Elimination of all Forms of Discrimination against Women* (2003) 116. See also S Fredman, *Discrimination Law* (2nd edn, OUP 2011) ch 1. More recent literature includes, eg A Coddou McManus, 'Addressing Poverty through a Transformative Approach to Anti-Discrimination Law in Latin America' in P Fortes, L Boratti, A Lieras, and T Daly (eds), *Law and Policy in Latin America* (Palgrave Macmillan 2017) 221–37.

spirit of the Convention'.<sup>113</sup> The Committee has consistently underlined the importance of transformation: 'States parties are to adopt measures towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.'<sup>114</sup> In General Recommendation No 38, the Committee formulated it as follows: States are to '[a]dopt a transformative approach, promoting gender equality and the empowerment of women, in order to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights'.<sup>115</sup> In relation to women in conflict and post-conflict situations, the Committee has stated that 'reparation measures should seek to transform the structural inequalities that led to the violations of women's rights, respond to women's specific needs and prevent their recurrence'.<sup>116</sup>

#### 4. *Intersectional Discrimination*

The concept of intersectionality has gained ground in the work of the CEDAW Committee, especially during the past decade.<sup>117</sup> In earlier statements, the Committee had already recognized, for example, the human rights violations suffered by disabled women,<sup>118</sup> rural women,<sup>119</sup> and older women.<sup>120</sup> Then, in General Recommendation No 28, adopted in 2010, the Committee stated:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.<sup>121</sup>

Strictly speaking, intersectional discrimination ought not to figure as a separate form of discrimination in this chapter. Intersectional discrimination can be direct, indirect, or structural in nature. The concept of intersectionality is specifically linked, however, in the literature as well as in the work of the CEDAW Committee, to structural discrimination.<sup>122</sup>

<sup>113</sup> See the chapter on Art 1, section A.II.3.

<sup>114</sup> GR No 25 para 10; GR No 36 para 26. GR No 36 also refers to transformation in many other paragraphs. See also, eg GR No 31 para 17, where the Committee addresses the necessary transformation of harmful cultural practices, and GR No 33 para 18, where the Committee uses the term 'transformative justice'.

<sup>115</sup> GR No 38 para 49.

<sup>116</sup> GR No 30 para 79. See also GR No 35 para 33(b), where the Committee recommends States parties to 'design transformative reparations programmes that help to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation'.

<sup>117</sup> For an account of this, see, eg S Atrey, 'Women's Human Rights: From Progress to Transformation: An Intersectional Response to Martha Nussbaum' (2018) 40/4 Human Rights Quarterly 859–904. See also PYS Chow, 'Has Intersectionality Reached Its Limits: Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence' (2016) 16 Human Rights Law Review 453; L Sosa, *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins* (CUP 2017) 62–101.

<sup>118</sup> GR No 18 preamble.

<sup>119</sup> GR No 24.

<sup>120</sup> GR No 27.

<sup>121</sup> GR No 28 para 18. The Committee also (still) sometimes uses the terminology of multiple discrimination. It appears that multiple and intersectional discrimination are used almost synonymously.

<sup>122</sup> Atrey (n 117). See also S Cho, K Crenshaw, and L McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications and Praxis' (2013) 38 Signs 797.



C5P82 The Committee has addressed intersectional gender stereotypes in many concluding observations,<sup>123</sup> general recommendations,<sup>124</sup> and inquiry procedures.<sup>125</sup> The Committee has acknowledged that certain women particularly suffer from intersectional stereotyping, such as Aboriginal women,<sup>126</sup> older women,<sup>127</sup> disabled women,<sup>128</sup> women of a particular ethnic background (eg Roma), and rural women.<sup>129</sup> Since General Recommendation No 28, the Committee has also sometimes dealt with the intersectional discrimination that lesbian, bisexual, and transgender women and intersex persons experience.<sup>130</sup> In its individual decisions, the Committee has also taken care to point out intersectional stereotypes. In *Vertido v The Philippines*, for example, which concerned judicial reliance on gender stereotypes in a case of rape, the Committee exposed stereotypes employed on the basis of a combination of age and gender.<sup>131</sup>

## C5P15 II. Main Areas of Concern in Relation to Gender Stereotypes and Fixed Parental Gender Roles

### C5P16 1. The Committee's Approach to Culture and Cultural Essentialism

C5P83 Article 5(a) mentions culture in terms of 'cultural patterns of conduct' and 'customary practices', but it does not contain the words 'culture', 'tradition', or 'religion'. In practice, the Committee often uses these terms while discussing the obligations under Article 5. Included in the Committee's wide concept of culture are social and economic arrangements, political structures, and legal regulations.

C5P84 Culture should not be seen as having a particular essence which is monolithic, static, and unchangeable.<sup>132</sup> Since the content of each culture is constructed by human beings, its structure and content is subject to continuous alterations.<sup>133</sup> The Committee has urged States 'to view culture as a dynamic aspect of the country's social fabric and life and therefore subject to change'.<sup>134</sup> The Committee shares the view of the Committee on Economic, Social and

<sup>123</sup> The Committee mentions intersectional or multiple discrimination against older women and women and girls with disabilities in, eg CO Mozambique, CEDAW/C/MOZ/CO/3–5 (2019) para 41; persons living with albinism in, eg CO Ethiopia, CEDAW/C/ETH/CO/8 (2019) para 21; Roma women and women living with HIV in, eg CO Serbia, CEDAW/C/SRB/CO/2–3 (2013) para 20; Muslim women, migrant women, and asylum seekers in CO The Netherlands, CEDAW/C/NLD/CO/6 (2016) para 21; and indigenous women, women of African descent, and lesbian, bisexual, and transgender women and intersex persons in CO Chile, CEDAW/C/CHL/CO/7 (2018) para 21. See also chapter on Art 1, section B.II.6.

<sup>124</sup> See, eg GR No 27 para 16; GR No 31 para 16; GR No 32 para 6; GR No 38 para 28.

<sup>125</sup> See, eg CEDAW/C/OP8/CAN/1 para 200.

<sup>126</sup> CEDAW/C/CAN/CO/8–9 (2016) paras 12–13, 48–49; CEDAW/C/OP8/CAN/1 paras 138–40, 200.

<sup>127</sup> GR No 27 paras 14–16. <sup>128</sup> CO Hungary C/HUN/CO/7–8 (2013) para 18.

<sup>129</sup> GR No 34 para 22. <sup>130</sup> See, eg GR No 28 para 31; GR No 33 paras 8, 49.

<sup>131</sup> *Karen Tayag Vertido v The Philippines* CEDAW Communication No 18/2008 (views of 16 July 2010) CEDAW/C/46/D/18/2008 para 8.6. See also the case of *RPB v The Philippines*, which was very similar, but which was oddly decided on the basis of Art 2(f) alone, without Art 5(a). In *RPB*, the Committee remarked: 'In the particular case, the compliance of the State party's obligation to banish gender stereotypes on the grounds of art 2(f) needs to be assessed in the light of the level of gender, age and disability sensitivity applied in the judicial handling of the author's case': *RPB v The Philippines* Communication No 34/2011 (views of 21 February 2014) CEDAW/C/57/D/34/2011 para 8.8.

<sup>132</sup> Essentialist approaches to culture may not only be found with defenders of the values of a certain culture but also with advocates for human rights; R Holtmaat and J Naber, *Women's Human Rights and Culture: From Deadlock to Dialogue* (CUP 2010).

<sup>133</sup> M Sunder, 'Piercing the Veil' (2002–03) 112 Yale Law Journal 1399, 1423, discussing this stance in relation to religion.

<sup>134</sup> CO Angola, A/59/38 (2004) para 147; CO Japan, CEDAW/C/JPN/CO/7–8 (2016) paras 20–21.

Cultural Rights (CESCR) that the ‘expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future’.<sup>135</sup> Not only is cultural change possible, but under Article 5 it is also obligatory.<sup>136</sup>

On the one hand, culture may be an important positive (re)source for the (re)construction of gender identities.<sup>137</sup> The Committee sometimes explicitly recognizes the rich culture and traditions of a State party and their importance to daily life.<sup>138</sup> It acknowledges ‘that culture is a positive vehicle for influencing the advancement of women, and suggested that cultural art forms be used as a vehicle to promote respect for women’.<sup>139</sup> On the other hand, in many instances, in all parts of the world, particular religious or cultural beliefs and practices still contribute to establishing damaging or negative gender stereotypes or fixed parental gender roles. These stereotypes and gender roles stand in the way of women’s equality and dignity and lead to discrimination, harmful practices, and violence against them. Observations by the Committee about the positive contribution of cultural ideas and practices in a particular State party are often followed by serious concerns about the negative impact that the same culture may have on women’s human rights.<sup>140</sup> With respect to religion, the Committee has noted that States parties do not make sufficient effort to counteract the damaging effects of some (fundamentalist) religious beliefs or practices.<sup>141</sup> It sees traditionalism which is justified in the name of preserving national identity as a cause of discrimination<sup>142</sup> and, in a similar vein, expresses concern ‘that the concept of Asian values’<sup>143</sup> regarding the family, including that of the husband having the legal status of head of household, might be interpreted so as to perpetuate stereotyped gender roles in the family and reinforce discrimination against women’.<sup>144</sup>

When confronted with damaging cultural beliefs and practices, the Committee makes clear that ‘cultural characteristics could not be allowed to undermine the principle of the universality of human rights, which remained inalienable and non-negotiable, nor to prevent the adoption of appropriate measures in favour of women’.<sup>145</sup> Touching on

<sup>135</sup> See, eg CESCR, ‘General Comment 21’ (2009) UN Doc E/C.12/GC/21 para 11.

<sup>136</sup> See section C in this chapter and also CEDAW/C/WSM/CO/6 (2018) paras 21–22; CEDAW/C/CHL/CO/7 (2018) paras 20–21; CEDAW/C/SAU/CO/3–4 (2018) paras 15–16.

<sup>137</sup> Report on ‘Cultural Rights of Women’ by UN Special Rapporteur on Cultural Rights, Farida Shaheed (2012) UN Doc A/67/287. According to Shaheed, culture should not be seen as an obstacle to the full enjoyment of women’s human rights but as a possible positive resource for the empowerment of women. The report underlines ‘the right of women to have access to, participate in and contribute to all aspects of cultural life. This encompasses their right to actively engage in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded’ (summary).

<sup>138</sup> See, eg CO Lesotho, CEDAW/C/LSO/CO/1–4 (2011) para 20; CO Zimbabwe, CEDAW/C/ZWE/CO/2–5 (2012) para 21.

<sup>139</sup> CO Antigua and Barbuda, A/52/38 (1997) para 270; similarly, CO Guyana, A/49/38 (1994) para 101.

<sup>140</sup> See, eg CO Cook Islands, CEDAW/C/COK/CO/1 (2007) para 22 and CO Zimbabwe, CEDAW/C/ZWE/CO/2–5 (2012) para 21; CO Jamaica, CEDAW/C/JAM/CO/6–7 (2012) para 19.

<sup>141</sup> See, eg CO Indonesia, CEDAW/C/EST/IDN/CO/5 (2007) para 12; CO Syria, CEDAW/SYR/CO/2 (2014) para 21; CO Maldives, CEDAW/C/MDV/CO/4–5 (2015) para 20; CO Slovakia, CEDAW/C/SVK/CO/5–6 (2015) para 18; CO Madagascar, CEDAW/C/MDG/CO/6–7 (2015) paras 18–19; CO Malaysia, CEDAW/C/MYS/3–5 (2018) paras 53–54.

<sup>142</sup> CO Mozambique, CEDAW/C/MOZ/CO/2 (2007) para 22.

<sup>143</sup> Reference is made to the Bangkok Declaration (7 April 1993) UN Doc A/CONF.157/ASRM/8-A/CONF.157/PC/59.

<sup>144</sup> CO Singapore, A/56/38 (2001) para 79; also CO Singapore, CEDAW/C/SGP/CO/5 (2017) para 18.

<sup>145</sup> CO Morocco, A/52/38 (1997) para 64.

the debate about the concept of the universality of human rights,<sup>146</sup> according to the Committee, the principles of equality and non-discrimination and respect for women's dignity clearly prevail over claims about the values of religion, culture, or tradition and the wish of States parties to preserve these values.

## 2. Principal Areas of Concern in Relation to Article 5

On analysing the Committee's concerns and recommendations as regards stereotypes and gender roles, we have found eight main areas of concern, which will be discussed in this section. It is important to note, however, that gender stereotyping can affect women in all areas of life. Sport, for example, is not discussed in depth here, but the Committee has condemned the purely 'decorative roles' that women are allowed to play at certain sporting events.<sup>147</sup>

### a) Gender-Based Violence against Women

Gender based violence against women is the first category of issues that are very frequently discussed by the Committee in relation to the overall topic of gender stereotypes, specifically in relation to Article 5(a).<sup>148</sup> The link between gender stereotyping and gender-based violence against women goes two ways: gender stereotyping causes gender-based violence against women, and its existence perpetuates stereotypical roles for men and women. A cycle of violence is the end result.

First, the Committee has emphasized time and again that gender stereotypes are a root cause of gender-based violence against women.<sup>149</sup> The general obligations arising from the Convention 'also require, in accordance with articles 2(f) and 5(a) of the Convention, the adoption and implementation of measures to eradicate prejudices, stereotypes and practices that are the root causes of gender-based violence against women'.<sup>150</sup> Gender stereotypes label women as inferior and subordinate to men, and that legitimizes violence.

It is important to note that the gender stereotypes causing violence are intersectional and that they can concern specific subgroups of women.<sup>151</sup> For example, in the inquiry procedure regarding Canada, which considered the high levels of violence, murder, and disappearance suffered by Aboriginal women in Canada, the Committee found that

<sup>146</sup> See, eg CI Nyamu, 'How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?' (2000) 41 Harvard International Law Journal 381–418; L Volpp, 'Feminism versus Multiculturalism' (2001) 101 Columbia Law Review 1181; A Phillips, *Multiculturalism without Culture* (PUP 2007); see, eg Holtmaat and Naber (n 132); A Xanthaki, 'When Universalism Becomes a Bully: Revisiting the Interplay between Cultural Rights and Women's Rights' (2019) 41 Human Rights Quarterly 701–24; J Fraser, *Social Institutions and International Human Rights Law Implementation: Every Organ of Society* (CUP 2020).

<sup>147</sup> CO Monaco, CEDAW/C/MCO/CO/1–3 24 (2017) paras 23–24.

<sup>148</sup> See, eg R Biholar, *Transforming Discriminatory Sex Roles and Gender Stereotyping: The Implementation of Article 5(A) CEDAW for the Realisation of Women's Right to Be Free from Gender-Based Violence in Jamaica* (Intersentia 2013); A Śledzińska-Simon, 'Making Progress in Elimination of Gender Stereotypes in the Context of Gender-Based Violence: The Role of the CEDAW Committee' (2013) *Tijdschrift voor Genderstudies* 41–53 See also the chapter on Art 2 and the chapter on 'Violence against Women'.

<sup>149</sup> See, eg CO Kirgizstan, CEDAW/C/KGZ/CO/4 (2015) para 15; CO Japan, CEDAW/C/JPN/CO/7–8 (2016) para 20; CEDAW/C/COD/CO/8 (2019) paras 24–25.

<sup>150</sup> GR No 35 para 26.

<sup>151</sup> While not directly addressing intersectionality in relation to stereotypes in GR No 35, the Committee does emphasize that gender-based violence affects women in different ways, depending on intersectional factors such as race, disability, and gender identity. See GR No 35 paras 12, 14. See further, eg Sosa (n 117).

the violence Aboriginal women suffer is the result of racism and sexism.<sup>152</sup> In General Recommendation No 38, the Committee pointed out that ‘Members of certain ethnic or racial groups may be targeted for trafficking-related exploitation on the basis of such racist or culturally discriminatory assumptions as those relating to their sexuality, servility or work capacity.’<sup>153</sup>

While gender stereotyping can cause gender-based violence against women, the Committee also observed that stereotypes often lie at the root of the State’s lack of response to this form of violence<sup>154</sup> and that the existence of gender stereotypes contributes more generally to its social acceptance and widespread impunity.<sup>155</sup> This happened in many of the individual cases decided by the Committee.<sup>156</sup> Among the stereotypes that impede the State from adopting proper measures to prevent gender-based violence against women, the Committee mentions, as an example, ‘the commonly held victim-blaming beliefs under which women are responsible for their own safety and for the violence that they suffer’.<sup>157</sup> Women in particularly vulnerable situations (eg migrant women who do not speak the language of the country where they live very well) are even more likely to experience lack of protection by State authorities.<sup>158</sup>

Second, reflecting on the interrelated nature of gender stereotyping, discrimination against women, and gender-based violence against women, the Committee has also pointed out that the latter perpetuates stereotyped roles for men and women.<sup>159</sup> It ‘considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated’.<sup>160</sup> Gender-based violence against women, or the threat of it, can lock women in traditional roles and force them, for example, to be modest and submissive.

The Committee has found that many forms of gender-based violence against women are based on gender stereotypes, such as, for example, forms of sexual violence (eg the practice of the raping of girls known as ‘beading’,<sup>161</sup> practicing sex with girls or women with albinism as a cure for HIV,<sup>162</sup> and sexual cleansing<sup>163</sup>) and domestic violence.<sup>164</sup> Also, the Committee frequently expresses concerns about gender stereotypes leading to sexual harassment at the workplace<sup>165</sup> or sexual harassment and abuse in schools.<sup>166</sup> All of these forms of violence are based on gender stereotypes and cultural notions about different sexual roles of women and men and stereotypical views on the different ‘nature’ of male and female sexuality.

<sup>152</sup> CEDAW/C/OP.8/CAN/1.

<sup>153</sup> GR No 38 para 29.

<sup>154</sup> See, eg GR No 35 para 30.

<sup>155</sup> GR No 35 para 19. See also, eg CO Ecuador, A/49/38 (1994) para 524; similarly, CO Chile, CEDAW/C/CHL/CO/7 (2018) para 20.

<sup>156</sup> See, eg *AT v Hungary* (n 8); *Anna Belousova v Kazakhstan* (n 8).

<sup>157</sup> GR No 35 para 30(b)(ii).

<sup>158</sup> See, eg *Isatou Jallow v Bulgaria* CEDAW Communication No 32/2011 (views of 2012) CEDAW/C/52/D/32/2011 para 8.6.

<sup>159</sup> GR No 35 para 10; GR No 37 para 55.

<sup>160</sup> GR No 35 para 10.

<sup>161</sup> CO Kenya, CEDAW/C/KEN/CO/8 (2017) para 18.

<sup>162</sup> CO Tanzania, CEDAW/C/TZA/CO/7–8 (2016) para 18.

<sup>163</sup> CO Zambia, CEDAW/C/ZMB/CO/5–6 (2011) para 19.

<sup>164</sup> See, eg CO Guatemala, CEDAW/C/GTM/CO/8–9 (2018) para 18; CO Argentina, CEDAW/C/ARG/CO/7 (2017) para 18.

<sup>165</sup> See, eg CO Kazakhstan, CEDAW/C/KAZ/CO/5 (2019) para 37; CO Argentina, CEDAW/C/ARG/CO/7 (2017) para 18.

<sup>166</sup> See, eg GR No 36 para 46; CO Argentina, CEDAW/C/ARG/CO/7 (2017) para 18; CO Ethiopia, CEDAW/C/ETH/CO/8 (2019) para 33.

**b) Other Harmful Practices**

Closely related to gender-based violence against women are other harmful practices. The Committee has stated that ‘harmful practices are often associated with serious forms of violence or are themselves a form of violence’.<sup>167</sup> Gender stereotypes are one of the causes of harmful practices. The Committee states: ‘The causes of harmful practices are multi-dimensional and include stereotyped sex- and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures.’<sup>168</sup>

In General Recommendation No 31/General Comment No 18, which the Committee authored together with the Committee on the Rights of the Child (CRC) and which concerns the elimination of harmful practices,<sup>169</sup> the Committee presents its criteria for what constitutes harmful practices. A central element in this definition is that such practices ‘constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions’.<sup>170</sup> The concluding observations contain many examples of practices that lead to violations of the human rights of women and girls. In the first place, there are practices that violate women’s right to life. The Committee expresses deep concerns, for example, about killings committed in the name of honour;<sup>171</sup> femicide;<sup>172</sup> the killing of women and children believed to be witches;<sup>173</sup> ritual killings and attacks on persons with albinism, including women and girls, and the use of their body parts for the purposes of witchcraft;<sup>174</sup> and practices such as son preference, sex-selective abortions, forced abortion and sterilization, and the infanticide of girls.<sup>175</sup>

Second, there are harmful practices that violate a woman’s right to bodily integrity and seriously affect her physical or mental health and her reproductive capacities.<sup>176</sup> The Committee expresses concern about the impact of patriarchal attitudes and discriminatory stereotypes on sexual relations<sup>177</sup> and states that discriminatory gender stereotypes and attitudes regarding the sexuality of women and girls should be eliminated.<sup>178</sup> In that context, the Committee discusses *inter alia* female genital mutilation (FGM);<sup>179</sup>

<sup>167</sup> GR No 31 para 7. GR No 31 para 9 contains a list of practices that are based on gender stereotypes and are considered to be harmful.

<sup>168</sup> *ibid* para 17.

<sup>169</sup> CRC oversees the implementation of the UN Convention on the Rights of the Child. See CEDAW/C/GC/31/CRC/C/GC/18. This GR is the first that two treaty bodies developed jointly.

<sup>170</sup> GR No 31 para 16.

<sup>171</sup> See, eg CO Pakistan, CEDAW/C/PAK/CO/4 (2013); CO Iraq, CEDAW/C/IRQ/CO/7 (2019) para 19.

<sup>172</sup> See, eg CO Argentina, CEDAW/C/ARG/CO/7 (2017) para 18; CO Guatemala, CEDAW/C/GTM/CO/8–9 (2018) para 18.

<sup>173</sup> See, eg CO Zimbabwe, CEDAW/C/ZWE/CO/2–5 (2012) para 21; CO Togo, CEDAW/C/TGO/CO/6–7 (2012) para 20; CO Benin, CEDAW/C/BEN/CO/4 (2013) para 16.

<sup>174</sup> CO Tanzania, CEDAW/C/TZA/CO/7–8 (2016) para 18.

<sup>175</sup> See, eg CO China, CEDAW/C/CHN/CO/7–8 (2014) para 24; CO Montenegro, CEDAW/C/MNE/CO/2 (2017) para 18; CO Kazakhstan, CEDAW/C/KAZ/CO/5 (2019) para 23.

<sup>176</sup> See, eg CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) para 22.

<sup>177</sup> CO former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6 (2018) para 33.

<sup>178</sup> CO Seychelle, CEDAW/C/SYC/CO/6 (2019) para 40.

<sup>179</sup> See, eg CO Italy, CEDAW/C/ITA/CO/6 (2011) para 52; CO Liberia, CEDAW/C/LBR/CO/7–8 (2015) para 21; CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) para 22.



intersex genital mutilation;<sup>180</sup> forced de-homosexualization treatment;<sup>181</sup> forced medical treatment, including the sterilization of and administration of contraceptives to women with disabilities, in particular women and girls with intellectual disabilities;<sup>182</sup> virginity testing of girls;<sup>183</sup> breast ironing;<sup>184</sup> withholding sufficient food to women;<sup>185</sup> isolating women while menstruating;<sup>186</sup> purification rites for adulterous women;<sup>187</sup> and widowhood rites.<sup>188</sup> Also, the Committee expresses great concerns about deeply entrenched cultural stereotypes that lead to practices whereby women and girls are abducted and enslaved for (sexual) ritual or religious purposes.<sup>189</sup> The Committee also takes issue with ‘medically irreversible sex reassignment surgery and other treatments [that] are performed on intersex children’.<sup>190</sup>

Besides practices that are a direct threat to women’s and girls’ life and health, the Committee is concerned about practices that have a serious impact on their right to a personal civil status or the right to freely choose a spouse. It condemns *inter alia*: polygamy,<sup>191</sup> the sale of wives and girl and the practice of ‘buying’ child brides,<sup>192</sup> bride price<sup>193</sup> and dowry,<sup>194</sup> levirate (wife inheritance)<sup>195</sup> and sororate (a widower marries the sister of his deceased spouse),<sup>196</sup> forced marriages of women and girls through abduction,<sup>197</sup> (forced) child marriage,<sup>198</sup> *badal* (exchange marriages),<sup>199</sup> *baad* (settlement of disputes by giving away girls),<sup>200</sup> and temporary marriage.<sup>201</sup> Within marital and family relationships, women often lack any kind of decision-making power because legislation

<sup>180</sup> See, eg CO Ireland, CEDAW/C/IRL/CO/6–7 (2017) para 24; CO New Zealand, CEDAW/C/NZL/CO/8 (2018) para 23; CO Chile, CEDAW/C/CHL/CO/7 (2018) para 21; CO Luxembourg, CEDAW/C/LUX/CO/6–7 (2018) para 27.

<sup>181</sup> CO Ecuador, CEDAW/C/ECU/CO/8–9 (2015) para 18.

<sup>182</sup> CO Luxembourg, CEDAW/C/LUX/CO/6–7 (2018) para 27.

<sup>183</sup> See, eg CO South Africa, CEDAW/C/ZAF/CO/4 (2011) para 22; CO Turkmenistan, CEDAW/C/TKM/CO/5 (2018) para 20.

<sup>184</sup> CO Cameroon, CEDAW/C/CMR/CO/4–5 (2014) para 16.

<sup>185</sup> CO Nepal, CEDAW/C/NPL/CO/4–5 (2011) para 32; CO Senegal, CEDAW/C/SEN/CO/3–7 (2015) para 8.

<sup>186</sup> CO Nepal, CEDAW/C/NPL/CO/6 (2018) para 18.

<sup>187</sup> CO Benin, CEDAW/C/BEN/CO/4 (2013) para 16.

<sup>188</sup> CO Cameroon, CEDAW/C/CMR/CO/4–5 (2014) para 16.

<sup>189</sup> See, eg CO South Africa, CEDAW/C/ZAF/CO/4 (2011) para 20; CO Togo, CEDAW/C/TGO/CO/6–7 (2012) para 20; CO Cameroon, CEDAW/C/CMR/CO/4–5 (2014) para 16; CO Niger, CEDAW/C/NER/CO/3–4 (2017) para 20; CO Nepal, CEDAW/C/NPL/CO/6 (2018) para 18.

<sup>190</sup> CO The Netherlands, CEDAW/C/NLD/CO/6 (2016) para 21.

<sup>191</sup> See, eg CO Madagascar, CEDAW/C/MDG/CO/6–7 (2015) para 18; CO Nepal, CEDAW/C/NPL/CO/6 (2018) para 18; CO Indonesia, CEDAW/C/IDN/CO/4–5 (2012) para 19.

<sup>192</sup> See, eg CO Madagascar, CEDAW/C/MDG/CO/6–7 (2015) para 18; the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6 (2018) para 21.

<sup>193</sup> See, eg CO Lesotho, CEDAW/C/LSO/CO/1–4 (2011) para 20; CO Mexico, CEDAW/C/MEX/CO/7–8 (2012) para 34; CO Albania, A/58/38 (2003) para 69.

<sup>194</sup> See, eg CO Botswana, CEDAW/C/BOT/CO/3 (2010) para 23; CO Bangladesh, CEDAW/C/BGD/CO/8 (2016) para 16; CO Angola, CEDAW/C/AGO/CO/7 (2019) para 23.

<sup>195</sup> See, eg CO Central African Republic, CEDAW/C/CAF/CO/1–5 (2014) para 25; CO Angola, CEDAW/C/AGO/CO/7 (2019) para 23.

<sup>196</sup> See, eg CO Chad, CEDAW/C/TCD/CO/1–4 (2011) para 20; CO Senegal, CEDAW/C/SEN/CO/3–7 (2015) para 18.

<sup>197</sup> See, eg CO South Africa, CEDAW/C/ZAF/CO/4 (2011) para 20.

<sup>198</sup> See, eg CO Bangladesh, CEDAW/C/BGD/CO/8 (2016) para 16; CO the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6 (2018) para 22; CO Ethiopia, CEDAW/C/ETH/CO/8 (2019) para 21.

<sup>199</sup> CO Afghanistan, CEDAW/C/AFG/CO/1–2 (2013) para 22. <sup>200</sup> *ibid.*

<sup>201</sup> CO Iraq, CEDAW/C/IRQ/CO/7 (2019) para 19.



or local customs grant all these powers to husbands or other men in the family.<sup>202</sup> Also, cultural beliefs as well as state legislation sometimes still ordain the subordination of women to their husbands and other male relatives.<sup>203</sup>

Other harmful practices that are critically scrutinized by the Committee concern women's limited access to property rights and land rights as a consequence of such stereotypes. Examples include women's limited access to family chiefly titles;<sup>204</sup> barriers to access for rural women to land titles, ownership, and inheritance;<sup>205</sup> and property-grabbing.<sup>206</sup> Also, the Committee has considered practices that impede women's rights to travel freely and make it hard or impossible to obtain or renew a driver's licence;<sup>207</sup> or imposing restrictions on dress, hair, nails, and behaviour for women.<sup>208</sup>

### c) Sexual and Reproductive Health

The Committee emphasizes that gender stereotyping has particularly pernicious effects in the area of women's sexual and reproductive health.<sup>209</sup> Some of the most pervasive of these stereotypes are the idea that the primary role of women is as mothers; the idea that women are weak, vulnerable, and in need of protection; and the idea that women are incompetent decision-makers.<sup>210</sup> General Recommendation No 24 sets out the requirement that State parties make reference to Article 5(b) when reporting on their compliance with their obligations under Article 12.<sup>211</sup> In Northern Ireland, where the Committee considered the issue of the continued criminalization of abortion, its inquiry found a strong correlation between stereotypes depicting Northern Irish women primarily as mothers and the government's policy position.<sup>212</sup> In the Philippines, where the local government in Manila had placed severe restrictions on female access to modern contraceptives, the Committee determined that such policies stem from the stereotype of the woman's primary role being that of a child bearer and caregiver.<sup>213</sup>

In the *LC v Peru* case relating to a young girl denied emergency spinal surgery due to her early-term pregnancy status, the Committee found a violation of Article 5, stating, 'the decision to postpone the surgery due to the pregnancy was influenced by the stereotype

<sup>202</sup> CO Côte d'Ivoire, CEDAW/C/CIV/CO/1–3 (2011) para 26.

<sup>203</sup> See, eg CO Kirgizstan, CEDAW/C/KGZ/CO/4 (2015) para 15; CO Oman, CEDAW/C/OMN/CO/2–3 (2017) para 21.

<sup>204</sup> CO Samoa, CEDAW/C/WSM/CO/4–5 (2012) para 20.

<sup>205</sup> See, eg GR No 34 para 22; CO the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6 (2018) para 33.

<sup>206</sup> CO Zambia, CEDAW/C/ZMB/CO/5–6 (2011) para 19.

<sup>207</sup> CO Turkmenistan, CEDAW/C/TKM/CO/5 (2018) para 20.

<sup>208</sup> See, eg CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) para 19; CO Turkmenistan, CEDAW/C/TKM/CO/5 (2018) para 20; CO Saudi Arabia, CEDAW/C/SAU/CO/3–4 (2018) para 29.

<sup>209</sup> See, eg C O'Connell and C Zampas, 'The Human Rights Impact of Gender Stereotyping in the Context of Reproductive Health Care' (2019) *International Journal of Gynecology & Obstetrics* 116–12.

<sup>210</sup> See, eg S Cusack and RJ Cook, 'Stereotyping Women in the Health Sector: Lessons from CEDAW' (2009) 16 *Washington & Lee Journal of Civil Rights & Social Justice* 47.

<sup>211</sup> GR No 24 para 28.

<sup>212</sup> CEDAW Committee, 'Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', CEDAW/C/OP.8/GBR/1 (2018) 12.

<sup>213</sup> CEDAW Committee, 'Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', CEDAW/C/OP.8/PHL/1 (2014) 12–13.

that protection of the foetus should prevail over the health of the mother'.<sup>214</sup> In another case, *SFM v Spain*, the Committee recognized that gender stereotyping can lead to obstetric violence.<sup>215</sup>

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In its concluding observations, the Committee has expressed concern at 'pronatalist policy on population, which strengthens discriminatory stereotypes against women and may lead to poverty'<sup>216</sup> and '[t]he recent resurgence of stereotypical discourse by political figures and religious non-State actors [ ... ] in relation to the sexual and reproductive health rights of women'.<sup>217</sup>

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#### d) The Impact of Gender Stereotypes on Social and Economic Rights

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Gender stereotypes and fixed parental gender roles, including the unequal division of tasks and responsibilities that come with the upbringing of children and care for elderly and other dependent persons in the family, have an enormous impact on women's social and economic rights. The Committee expresses concerns about a State party's approach to women's rights which 'reflects a protectionist attitude that reinforces cultural and social values ascribing a particular role to women as caregivers and subservient to men and does not result in the substantive equality required under the Convention'.<sup>218</sup> Such protection restricts women's enjoyment of their human rights, most significantly the right to be economically active and financially independent and the right to choose an education that will give them a good position on the labour market.<sup>219</sup> Women should have a right to free choice as to their employment.<sup>220</sup> The Committee expresses concern about a law that 'stipulates that the duty of the wife is to obey the husband, to be responsible for the household and to take care of children' and about 'programmes and policies aimed at assisting women to reconcile family and professional duties that reinforce such stereotypes'.<sup>221</sup> The overemphasis on legislative protection for and cultural promotion of motherhood and family roles for women, rather than on women as individuals, limits the economic possibilities for women and reinforces the lack of participation fathers have in childcare.<sup>222</sup>

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The Committee is also concerned about the persistence of male breadwinner models and the lack of facilities that would stimulate the sharing of responsibilities within the family, which is of special concern to Article 5(b).<sup>223</sup> Men, in such systems, are seen as head of the household and on that ground are regarded as deserving special rights in the area of economic subsistence by the State and have legal control of family members' actions.<sup>224</sup> This situation is based on 'entrenched stereotypical attitudes to women in society, and the idea of an exclusively male head of household' and it 'encourages segregation in employment, and a denial of the economic

<sup>214</sup> *LC v Peru* (n 8) para 8.15. <sup>215</sup> *SFM v Spain* (n 8) CEDAW/C/75/D/138 (2018) para 7.5.

<sup>216</sup> *CO Mongolia*, CEDAW/C/MNG/CO/8–9 (2016) para 28.

<sup>217</sup> *CO Romania*, CEDAW/C/ROU/CO/7–8 (2017) para 16.

<sup>218</sup> *CO Democratic People's Republic of Korea*, CEDAW/C/PRK/CO/2–4 (2017) para 23. This issue is also discussed in the chapters on Arts 4 and 11.

<sup>219</sup> See, eg *CO Russian Federation*, CEDAW/C/RUS/CO/8 (2015) paras 19, 33.

<sup>220</sup> *CO Ukraine*, A/51/38 (1996) para 286; *CO Russian Federation*, CEDAW/C/RUS/CO/8 (2015) para 33.

<sup>221</sup> *CO Qatar*, CEDAW/C/QAT/CO/2 (2019) para 25.

<sup>222</sup> *CO Slovakia*, A/53/38 (1998) para 74; *CO Czech Republic*, CEDAW/C/CZE/CO/6 (2016) para 16.

<sup>223</sup> *CO Austria*, CEDAW/C/AUT/CO/6 (2007) para 17; *CO Luxembourg*, CEDAW/C/LUX/CO/6–7 (2018) para 25; *CO Malaysia*, CEDAW/C/MYS/CO/3–5 (2018) para 20.

<sup>224</sup> See, eg *CO Singapore*, CEDAW/C/SGP/CO/4/Rev1 (2011) para 21.

contribution of women'.<sup>225</sup> The Committee connects this issue to 'women's predominance in part-time work, their main responsibility for family and caring work, occupational segregation, men's extremely low participation in parental leave and the taxation of married couples'.<sup>226</sup> The Committee expressly rejects the encouragement of part-time work as a solution to the problem of combining paid work and care activities.<sup>227</sup> That mainly women work part-time is an indication of hidden or indirect discrimination and reflects and perpetuates sexist stereotypes.<sup>228</sup> Governments are urged to take measures allowing women to choose to work full-time.<sup>229</sup> In the same vein, the Committee links gender stereotyping to the persistence of the gender pay gap<sup>230</sup> and warns that job evaluation and pay schemes may be based on gender stereotypes.<sup>231</sup> Gender stereotyping and fixed parental gender roles may lead to a lack of social arrangements in both the private and the public sectors, which could facilitate the reconciliation of paid work and care obligations of both men and women. In this context, the Committee often mentions childcare facilities and parental leave for both fathers and mothers.<sup>232</sup> In relation to the rights women have during and after divorce, the Committee makes it clear that the 'division of roles and functions during the spouses' life together should not result in detrimental economic consequences for either party'.<sup>233</sup>

Women's access to the labour market and possibilities for promotion can also be impeded by stereotypes about their sexuality. In the case of *RKB v Turkey*, a woman who was dismissed from her job and then subsequently challenged the dismissal before a court had it put against her by her former employer that her dismissal was a result of her alleged 'inappropriate' behaviour towards men.<sup>234</sup> The Committee held that 'the court proceedings were based on the stereotyped perception of the gravity of extramarital affairs by women, that extramarital relationships were acceptable for men and not for women and that only women had the duty to "refrain from even the slightest offence against morality"',<sup>235</sup> an example of the double standard of sexual behaviour imposed on women.

The Committee has also expressed concern about the use of masculine professional functional titles for women, even when the language would allow to employ a feminine version.<sup>236</sup>

The Committee has recognized that women and girls living in rural areas are particularly likely to be disadvantaged by stereotyping which impedes their enjoyment of social and economic rights. 'They are also disadvantaged by practices such as inheritance of ancestral debt, which perpetuates cycles of poverty, and by discriminatory stereotypes and

<sup>225</sup> CO Fiji Islands, A/57/38 (2002) para 31; CO Singapore, CEDAW/C/SGP/CO/5 (2017) para 18. Women's economic and social rights are also discussed in the chapters on Arts 11 and 13.

<sup>226</sup> See, eg CO Germany, CEDAW/C/DEU/CO/7–8 (2017) para 35; CO Czech Republic, CEDAW/C/CZE/CO/6 (2016) para 16.

<sup>227</sup> CO Australia, A/50/38 (1995) para 600; CO Armenia, CEDAW/C/ARM/CO/5–6 (2016) para 24.

<sup>228</sup> See, eg CO Belgium, A/51/38 (1996) para 187; CO Czech Republic, CEDAW/C/CZE/CO/6 (2016) para 16; CO Luxembourg, CEDAW/C/LUX/CO/6–7 (2018) para 25.

<sup>229</sup> See, eg CO The Netherlands, A/56/38 (2001) para 214.

<sup>230</sup> See, eg CO United Kingdom, A/54/38 (1999) para 308; CO Russian Federation, CEDAW/C/RUS/CO/8 (2015) para 33.

<sup>231</sup> CO Finland, A/56/38 (2001) para 298.

<sup>232</sup> See, eg CO France, CEDAW/C/FRA/CO/6 (2008) para 27; CO Guyana, CEDAW/C/GUY/CO/9 (2019) para 24; CO Lebanon, CEDAW/C/LBN/CO/4–5 (2015) paras 35–36.

<sup>233</sup> GR No 29 para 45.

<sup>234</sup> *RKB v Turkey* CEDAW Communication No 28/2010 (2012) CEDAW/C/51/D/28/2010.

<sup>235</sup> *ibid* para 8.7. <sup>236</sup> CO Monaco, CEDAW/C/MCO/CO/1–3 (2017) para 23–24.

related practices which prevent them from enjoying rights over land, water and natural resources, such as male primogeniture and widows' property-grabbing.<sup>237</sup>

#### e) Access to Justice

In General Recommendation No 33, the Committee has emphasized the grave consequences that gender stereotyping has for women's ability to access justice. In two separate paragraphs devoted to stereotyping, the Committee remarked:

Stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. [ ... ] In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants.<sup>238</sup>

Therefore, 'eliminating stereotyping in the justice system' is crucial.<sup>239</sup> The Committee has outlined several obligations that the State has in this respect, which will be further discussed in section C of this chapter.

The Committee explained that gender stereotyping can occur in all stages and by all actors involved in the justice system: judges, magistrates, and adjudicators but also prosecutors, law enforcement officials, and others.<sup>240</sup> Several individual decisions of the Committee also illustrate this.<sup>241</sup>

The Committee also regularly pays attention to the detrimental impact of gender stereotypes on women's access to justice in its concluding observations. It has (inter alia) noticed 'that women rarely seek justice and legal accountability [ ... ], and that, in instances when they begin legal proceedings, they are often hampered by a range of obstacles, such as social stigma and persisting pejorative stereotypes'.<sup>242</sup> Legal pluralism in a State party can expose women to multiple barriers to obtaining access to justice and deprive women of the constitutional guarantee of equality owing to inter alia 'the lack of capacity-building programmes for actors involved in traditional conflict resolution mechanisms and the limited oversight over their functions, which heightens the risk of such institutions perpetuating discriminatory gender stereotypes and harmful practices'.<sup>243</sup>

#### f) Education

Gender stereotypes are still frequent in educational materials as well as in the attitudes and language of educational staff, creating serious obstacles for achieving equal rights for women. In General Recommendation No 36 on the right of girls and women to education, the Committee notes that '[i]nstead of challenging entrenched discriminatory

<sup>237</sup> GR No 34 para 24.

<sup>238</sup> GR No 33 para 26.

<sup>239</sup> *ibid* para 28.

<sup>240</sup> *ibid* para 27. See also, eg CO Peru, CEDAW/C/PER/CO/7–8 (2014) para 20.

<sup>241</sup> See, eg *Karen Tayag Vertido v The Philippines* (n 8); *RKB v Turkey* (n 8).

<sup>242</sup> CO Kazakhstan, CEDAW/C/KAZ/CO/3–4 (2014) para 12; CO Guatemala, CEDAW/C/GTM/CO/8–9 (2017) paras 12–13.

<sup>243</sup> CO Angola, CEDAW/C/AGO/CO/7 (2019) para 13.

gender norms and practices, in many societies, gender stereotypes are reinforced through schooling and it maintains the gender order of society, expressed through the reproduction of the female/male and subordination/domination hierarchies and the reproductive/productive and private/public dichotomies'.<sup>244</sup>

C5P113 From the start of its work, the Committee has addressed this topic with virtually all States parties. The topic is discussed under the heading 'Gender stereotypes and harmful practices' or under 'Women's right to education'.<sup>245</sup> The Committee is 'concerned about the consequences of gender stereotyping in curricula and the impact of the fact that girls take traditional "female" courses and boys traditional "male" courses on women's employment options and income'<sup>246</sup> and has drawn attention to stereotypical cultural attitudes which are reflected in the segregation of the labour market and in educational choices of girls and boys.<sup>247</sup> As a result, 'women continue to be concentrated in a narrow range of employment'.<sup>248</sup> A widespread culture of depicting women as sex objects and the stereotyped roles and responsibilities of women and men in the family and in society will (inter alia) affect 'women's choices in their studies and professions [ ... ]'.<sup>249</sup>

C5P114 Stereotypes also inhibit girls and women—particularly from disadvantaged and marginalized groups—from accessing education and enjoying other rights and benefits through education.<sup>250</sup> A recent problem addressed by the Committee is the cyber-bullying in high schools which affects female students and disproportionately vulnerable groups of them.<sup>251</sup>

#### C5S24 g) Political Participation

C5P115 The Committee has long recognized that gender stereotypes, which reflect and reinforce the public–private divide, impede women from entering into politics and public life. In General Recommendation No 23 (1997), the Committee emphasized that stereotypes also tend to confine women in politics 'to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution'.<sup>252</sup>

C5P116 Since approximately 2010, the concluding observations denounce more and more often the detrimental effects of gender stereotyping on women's political participation. For example, 'socio-cultural constraints and deeply rooted stereotypes have relegated women's participation in political life at a minimal level [ ... ] women are excluded from participating in decision-making positions because it is believed that repeated pregnancy and motherhood are incompatible with positions of responsibility'.<sup>253</sup> Prevailing machismo culture and lack of resources for female candidates may effectively stand in the way of their political participation, as well as discriminatory stereotypes, nepotism, and

<sup>244</sup> GR No 36 para 16. <sup>245</sup> See also the chapter on Art 10.

<sup>246</sup> CO Trinidad and Tobago, A/57/38 (2002) para 33; CO Australia, CEDAW/C/AUS/CO/8 (2018) para 32.

<sup>247</sup> CO Norway, CEDAW/C/NOR/CO/7 (2007) para 17.

<sup>248</sup> CO France, CEDAW/C/FRA/CO/6 (2008) para 18; CO Republic of Korea, CEDAW/C/KOR/CO/7 (2011) para 28.

<sup>249</sup> CO Italy, CEDAW/C/ITA/CO/6 (2011) para 22. <sup>250</sup> GR No 36 paras 25–27.

<sup>251</sup> CO New Zealand, CEDAW/C/NZL/CO/8 (2018) para 23; CO Fiji, CEDAW/C/FJI/CO/5 (2018) para 37; GR No 36 paras 70–72.

<sup>252</sup> GR No 23 para 12.

<sup>253</sup> CO Central African Republic, CEDAW/C/CAF/CO/1–5 (2014) para 31; CO Cyprus, CEDAW/C/CYP/CO/8 (2014) para 30; CO Bolivia, CEDAW/C/BOL/CO/5–6 (2015) para 23; CO Micronesia, CEDAW/C/FSM/CO/1–3 (2017) para 30.

favouritism.<sup>254</sup> Politicians sometimes publicly make discriminatory stereotypical statements about their female colleagues.<sup>255</sup> Female politicians are sometimes portrayed as sex objects and experience the consequences of gender stereotyping and cyber-bullying while doing their political work.<sup>256</sup> The Committee acknowledges that the media may perpetuate discriminatory gender stereotypes and prevent women and men who stand for election and who serve as elected representatives receiving equal visibility.<sup>257</sup> Entrenched gender stereotypes impede women also from fully participating in formal peacemaking and post-conflict reconstruction processes as these stereotypes lead to a traditionally male leadership of both State and non-State groups.<sup>258</sup> The Committee has addressed these issues in a Joint Statement with the Interparliamentary Union on the occasion of the Fortieth Anniversary of the Convention on the Elimination of Discrimination against Women.<sup>259</sup>

#### **h) Media and Advertising**

The Committee is concerned about the ways in which women are depicted in advertising and in the media as sex objects and in traditional roles.<sup>260</sup> Sometimes such stereotyped images are particularly targeted at indigenous women, women of African descent, migrant women, and refugee and asylum-seeking women.<sup>261</sup> It criticizes that ‘a process of mainstreaming pornography, also known as “sexualization of the public sphere”, is occurring in the State party<sup>262</sup> and that media and advertising ‘are becoming increasingly pornographic, focus on idealized body shape and portray women as sex objects, which may also contribute to the increasing problem of eating disorders among young women and girls’.<sup>263</sup> In a similar vein, the stereotypical imaging of thin fashion models may contribute to the increasing problem of eating disorders and girls and women resorting to aesthetic surgery in order to conform to an idealized model presented by the media.<sup>264</sup>

The Committee has also taken issue with the way in which media content is created. It has expressed concern about ‘women’s participation in the evaluation process and the creation of radio and television content’.<sup>265</sup>

<sup>254</sup> CO Dominican Republic, CEDAW/C/DOM/6–7 (2013) para 28; CO Guatemala, CEDAW/C/GTM/CO/8–9 (2017), para 24.

<sup>255</sup> See, eg CO Italy, CEDAW/C/ITA/CO/7 (2017) para 31; CO Japan, CEDAW/C/JPN/CO/7–8 (2016) para 20; CO Costa Rica, CEDAW/C/CRI/CO/7 (2017) para 14; CO Malaysia, CEDAW/C/MYS/3–5 (2018) para 20.

<sup>256</sup> CO Slovenia, CEDAW/C/SVN/CO/5–6 (2015) para 23. See also Inter-Parliamentary Union, ‘Sexism, Harassment and Violence against Women in Parliaments in Europe’ (2018) <<https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>> accessed 31 May 2022.

<sup>257</sup> CO Guatemala, CEDAW/C/GTM/CO/8–9 (2018) para 27; CO Antigua and Barbuda, CEDAW/C/ATG/CO/4–7 (2019) para 32.

<sup>258</sup> GR No 30 para 43.

<sup>259</sup> International Women’s Day Joint Statement by the United Nations Committee on the Elimination of Discrimination against Women and the Inter-Parliamentary Union (IPU), ‘Women’s Political Leadership: Striving for Balance: 50/50 by 2030’ (Geneva, 8 March 2019).

<sup>260</sup> CO Germany, CEDAW/C/DEU/CO/6 (2009) para 27; also, eg CO Singapore, CEDAW/C/SGP/CO/4/Rev.1 (2011) para 21; CO Norway, CEDAW/C/NOR/CO/9 (2017) para 22; CO Lebanon, CEDAW/C/LBN/CO/4–5 (2015) paras 25–26; CO Japan, CEDAW/C/JPN/CO/7–8 para 20.

<sup>261</sup> See, eg CO Mexico, CEDAW/C/MEX/CO/9 (2018) para 20.

<sup>262</sup> CO Sweden, CEDAW/C/SWE/CO/7 (2008) para 22.

<sup>263</sup> CO Finland, CEDAW/C/FIN/CO/7 (2014) para 14; also CO Norway, CEDAW/C/NOR/CO/9 (2017) para 22.

<sup>264</sup> CO Austria, CEDAW/C/AUT/CO/7–8 (2013) para 22.

<sup>265</sup> CO Andorra, CEDAW/C/AND/CO/4 (2019) para 23(c). See also GR No 35 para 30.



C5P119 Internet and modern social media may aggravate the consequences of gender stereotyping and depicting women as sexual objects by increasing the number of girls and women affected<sup>266</sup> and by bringing about new phenomena such as online hate speech on internet forums<sup>267</sup> and cyber-bullying of women and girls.<sup>268</sup> At the same time, the Committee recognizes that social media and information and communications technology (ICT) also have the power to transform cultural and social stereotypes in a positive way.<sup>269</sup>

C5S26 **i) Women in Particularly Vulnerable Situations**

C5P120 The Committee emphasizes that women who are in particularly vulnerable situations run an increased risk of being stereotyped, which further exacerbates their vulnerability. For example, the Committee has recognized in General Recommendation No 37 that even though climate change and disasters push women in particular to migrate, gender stereotypes frequently impede their ability to do so.<sup>270</sup> The idea that women and girls are passive and a ‘vulnerable group’ in need of protection is ‘a negative gender stereotype that fails to recognize the important contributions of women in the areas of disaster risk reduction, post-disaster management and climate change mitigation and adaptation strategies’.<sup>271</sup>

C5P121 Regarding asylum, the Committee has stated in General Recommendation No 32 that:

C5P122 Article 5 of the Convention requires States parties to assess women’s claims for asylum without prejudicial and stereotyped notions of women that are based on the inferiority or superiority of either sex. Gender stereotyping affects the right of women to a fair and just asylum process and the asylum authorities must take precautions not to create standards that are based on preconceived notions of gender-based violence and persecution.<sup>272</sup>

C5P123 In relation to peacemaking, post-conflict transition, and recovery processes, the Committee regularly addresses gender stereotypes impeding women from taking leadership positions.<sup>273</sup>

C5S27 **C. States Parties’ Obligations**

C5S28 **I. The Nature of the Obligations under Article 5**

C5P124 The drafters of the Convention left open what States parties should do to implement their obligations under Article 5.<sup>274</sup> The Chapeau of Article 5 speaks of taking ‘all

<sup>266</sup> GR No 31 para 18: ‘The efforts to combat harmful practices notwithstanding, the overall number of women and girls affected remains extremely high and may be increasing, including, for example, in conflict situations and as a result of technological developments such as the widespread use of social media.’

<sup>267</sup> CO Austria, CEDAW/C/AUT/CO/9 (2019) para 22; CO Finland, CEDAW/C/FIN/CO/7 (2014) para 14.

<sup>268</sup> CO New Zealand, CEDAW/C/NZL/CO/8 (2018) para 23.

<sup>269</sup> See, eg GR No 33 para 35(b). This is further discussed in section C.I.2.

<sup>270</sup> GR No 37 paras 74–76. See also GR No 38 para 26.

<sup>271</sup> GR No 37 para 7.

<sup>272</sup> GR No 32 para 31. It might be difficult to prove that gender stereotypes influenced decisions on asylum applications; see, eg *AM v Denmark* CEDAW Communication No 077/2014 (2017) CEDAW/C/67/D/77/2014, where the Committee found that the Convention was not violated. See also, eg L Peroni, ‘The Protection of Women Asylum Seekers under the European Convention on Human Rights: Unearthing the Gendered Roots of Harm’ (2018) Human Rights Law Review 347–70.

<sup>273</sup> GR No 30 para 43.

<sup>274</sup> Rehof (n 19) 77; Holtmaat, *Towards Different Law and Public Policy* (n 21) 64ff.

appropriate measures' to 'modify' (section a) and to 'ensure' (section b). In general, States parties' obligations under international human rights law may be divided into obligations to respect, to protect, and to fulfil.<sup>275</sup> However, the Committee hardly uses this typology when discussing obligations under Article 5.<sup>276</sup> Therefore, we have also chosen not to follow this typology in our discussion of the States parties' obligations under this article.<sup>277</sup>

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Instead, the Committee deems two main types of measures obligatory in relation to combating gender stereotyping and fixed parental gender roles. First, States parties are under an obligation to scrutinize their own laws, policies, and practices in order to reveal the presence of gender stereotypes and fixed parental gender roles and to amend such laws and policies, including the removal of obstacles to the sharing of family responsibilities between men and women. Briefly put, this is the obligation to eliminate all forms of gender stereotyping that lead to direct, indirect, and structural discrimination. Broadly speaking, this first obligation corresponds to the obligation to respect (in so far as the State is to refrain from gender stereotyping) and the obligation to protect (in so far as the State is to protect women from stereotyping by non-State actors). The second obligation is to change stereotypes and promote positive roles for men and women. This largely corresponds to the obligation to fulfil. It is important to note that in the Committee's work there is no clear line between the first type and the second type of obligation. Eliminating harmful stereotypes and promoting more positive views go hand in hand. For the sake of clarity, however, these two obligations are discussed separately below (subsections C.I.1 and C.I.2).

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The Committee regularly stresses that effective measures against structural discrimination and measures that promote more positive roles can only be developed with the participation of women, especially women from marginalized groups, as well as civil society organizations representing them.<sup>278</sup> A positive dialogue between the government and religious leaders as well as representatives of civil society organizations is necessary to find solutions to conflicts that may arise between norms and practices that are culturally based and human rights standards set by the Convention.<sup>279</sup> The Committee requests intervention by the State party when women's rights are violated based on culture or customary law, including religious practices or beliefs.<sup>280</sup> A change of culture requires the strong political will of a State party to go against forces and powers that stand in the way of such change, including religious authorities.<sup>281</sup>

<sup>275</sup> See the discussion in the chapter on Art 1 and the Introduction.

<sup>276</sup> An exception is GR No 33 para 61: 'States parties have obligations under arts 2, 5(a) and 15 of the Convention and under other international human rights instruments to ensure that women's rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.'

<sup>277</sup> Cook and Cusack, *Gender Stereotyping* (n 52) 76ff do analyse the obligations following from Art 5(a) along the lines of the tripartite framework.

<sup>278</sup> See, eg GR No 35 para 30(b); CO Costa Rica, CEDAW/C/CRI/CO/7 (2017) para 15.

<sup>279</sup> See, eg CO Nigeria, CEDAW/C/NGA/6 (2008) para 323; CO Costa Rica, CEDAW/C/CRI/CO/7 (2017) para 15. In the past, the Committee sometimes went rather far in obliging State parties to change or abolish certain cultural or religious practices. See Introduction, section G.II.

<sup>280</sup> See, eg CO Pakistan, CEDAW/C/PAK/CO/3 (2007) para 29; CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) para 20; CO Saudi Arabia, CEDAW/C/SAU/CO/3–4 (2018) para 30.

<sup>281</sup> See, eg CO Ecuador, A/49/38 (1994) para 524; CO Poland, CEDAW/C/POL/CO/7–8 (2014) para 23.

*1. Eliminate Gender Stereotyping that Leads to All Forms of Discrimination*

**a) Revealing Gender Stereotypes**

In order to eliminate stereotypes, it is first necessary to unveil them and understand the harm they cause. General Recommendation No 33 states: ‘Under article 5(a) of the Convention, States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies.’<sup>282</sup> This is in line with legal scholarship on gender stereotyping, which has emphasized the importance of identifying and ‘naming’ stereotypes.<sup>283</sup> Because gender stereotypes are so deeply entrenched in culture and society, as well as institutions, exposing them can be difficult. It requires education and training of lawyers and civil servants amongst others.<sup>284</sup> Furthermore, States parties must undertake gender impact assessments and integrate gender perspectives in all areas of government action,<sup>285</sup> including the justice system,<sup>286</sup> which assist in revealing gender stereotypes. In order to fulfil the obligations under Articles 5(a) and 2(f), the Committee has recommended ‘that the State party further clarify the causes of persistent inequality between women and men, including through studies on the institutional rules that reinforce gender-role stereotyping, [and] the specific manifestations of stereotypical ideology in the State party’.<sup>287</sup> In order to fully understand the impact of stereotypes, the Committee has also urged ‘the State party to conduct a study on the possible impact of over-sexualized representation of girls and women in the media on increasing levels of gender-based violence against women’.<sup>288</sup>

**b) Eliminating Wrongful Gender Stereotyping: Abolishing and Amending Stereotypical Laws and Regulations, Policies, and Customs and Practices**

Article 5 calls for transformative equality, including the abolition of all forms of direct, indirect, or structural discrimination that exists as a consequence of gender stereotypes and fixed parental gender roles.<sup>289</sup> The Committee has often repeated that:

the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors.<sup>290</sup>

In the inquiry procedure regarding Canada on missing and murdered Aboriginal women, the Committee introduced the term ‘institutionalized stereotyping’ to

<sup>282</sup> GR No 33 para 7.

<sup>283</sup> See, eg Cook and Cusack, *Gender Stereotyping* (n 52) ch 2; A Timmer, ‘Towards an Anti-Stereotyping Approach for the European Court of Human Rights’ (2011) 11 Human Rights Law Review 4.

<sup>284</sup> See, eg CO Oman, CEDAW/C/OMN/CO/2–3 (2017) para 14.

<sup>285</sup> CO Germany, CEDAW/C/DEU/CO/6 (2009) para 30; CO Luxembourg, CEDAW/C/LUX/CO/6–7 (2018) para 26.

<sup>286</sup> See, eg CO Peru, CEDAW/C/PER/CO/7–8 (2014) para 20(d).

<sup>287</sup> See, eg CO Greece, CEDAW/C/GRC/CO/6 (2007) para 14.

<sup>288</sup> CO Norway, CEDAW/C/NOR/CO/8 (2012) para 22(a).

<sup>289</sup> This includes stereotypical provisions in a country’s constitution, as is the case in, eg Ireland—CO Ireland, CEDAW/C/IRL/CO/6–7 (2017) para 11.

<sup>290</sup> See, eg *RKB v Turkey* CEDAW Communication No 28/2010 (2012) CEDAW/C/51/D/28/2010 para 8.8; *OG v Russian Federation* CEDAW Communication No 91/2015 (2017) CEDAW/C/68/D/91/2015 para 7.2.

address the pervasiveness of gender stereotyping in all levels of government and social institutions.<sup>291</sup>

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The Committee consistently calls on States parties to ‘review their legislative frameworks and to amend and/or repeal provisions that discriminate against women’.<sup>292</sup> It is important ‘to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women’<sup>293</sup> or that ‘perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women’.<sup>294</sup> The Committee’s individual decisions contain many examples of such practices, including, for example, actions based on gender stereotypes by judges,<sup>295</sup> medical personnel,<sup>296</sup> prison staff,<sup>297</sup> and the police.<sup>298</sup>

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In order to abolish gender stereotyping, the Committee expects States parties to have a strategy in place. In the inquiry regarding the extremely restrictive abortion regime in Northern Ireland, the Committee recommended that the State ‘[a]dopt a strategy to combat gender-based stereotypes regarding women’s primary role as mothers in order to improve the sexual and reproductive health services’.<sup>299</sup> The Committee has also urged States parties to adopt ‘a comprehensive strategy to eliminate discriminatory stereotypes with regard to the roles and responsibilities of women and men in the family and in society, which should include a monitoring mechanism to assess the impact of the measures taken and design remedial action’.<sup>300</sup>

C5P133

An important part of these strategies are awareness-raising and capacity-building programmes. These should address the negative impact of gender stereotyping on women.<sup>301</sup> The Committee regularly underlines the importance of building capacity on the Convention and women’s rights for specific sectors, such as the judiciary, customary law judges, lawyers, legislators and law enforcement officers, politicians, medical personnel, health-care professionals, and social workers.<sup>302</sup> In line with Article 10(c), also of importance are ‘awareness-raising programmes in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys’.<sup>303</sup> Regarding gender based-violence, States parties should develop awareness-raising programmes that dismantle victim-blaming beliefs.<sup>304</sup>

AQ: Please provide year for "CO Panama, CEDAW/C/PAN/CO/7."

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### c) Obligations as Regards Non-State Actors

C5P134

The Committee has stated that the obligation of ‘States parties [ . . . ] to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise’, which is the obligation of due diligence, underpins the Convention as a whole,<sup>305</sup> thus also Article 5. States parties are required to ‘protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women’.<sup>306</sup>

<sup>291</sup> CEDAW/C/OP.8/CAN/1 paras 140, 205.

<sup>292</sup> See, eg GR No 33 para 21.

<sup>293</sup> See, eg *VK v Bulgaria* (n 8) para 9.11.

<sup>294</sup> GR No 28 para 9.

<sup>295</sup> See, eg *Karen Tayag Vertido v The Philippines* (n 8); *RKB v Turkey* (n 8).

<sup>296</sup> *TPF v Peru* (n 8); *SFM v Spain* (n 8).

<sup>297</sup> *Inga Abramova v Belarus* (n 8).

<sup>298</sup> See, eg *X and Y v Georgia* (n 8).

<sup>299</sup> CEDAW/C/OP.8/GBR 1 para 86(f).

<sup>300</sup> CO Israel, CEDAW/C/ISR/6 (2017) para 27. See also, eg CO Panama, CEDAW/C/PAN/7 (2010) para 23.

<sup>301</sup> See, eg GR No 33 para 29; GR No 35 para 30(e), (i).

<sup>302</sup> See eg GR No 33 para 29; GR No 35 para 30(e), (i); CO Niger, CEDAW/C/NER/CO/3–4 (2017) para 15; *Karen Tayag Vertido v The Philippines* (n 8) para 8.9.

<sup>303</sup> See eg CO Panama, CEDAW/C/PAN/CO/7 para 23. See also GR No 36 para 27.

<sup>304</sup> GR No 35 para 30(b)(ii).

<sup>305</sup> *ibid* para 24(b).

<sup>306</sup> GR No 28 para 9.

C5P135 In order to ‘address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men’,<sup>307</sup> the Committee recommends that States parties take a range of measures involving non-State actors. These measures include, for example, incorporating gender equality content in educational materials;<sup>308</sup> awareness-raising programmes targeting State officials but also traditional and religious leaders as well as perpetrators of violence;<sup>309</sup> and encouraging self-regulatory mechanism by media organizations ‘aimed at the elimination of gender stereotypes relating to women and men, or to specific groups of women’.<sup>310</sup>

## C5S33 2. *Promote Positive Roles and Proactively Change Stereotypical Attitudes*

C5P136 It is never too soon to promote positive roles in a person’s life. As the Committee stated, ‘Childhood, and early adolescence at the latest, are entry points for assisting both girls and boys and supporting them to change gender-based attitudes and adopt more positive roles and forms of behaviour’.<sup>311</sup> Discussions should be facilitated with children on ‘social norms, attitudes and expectations that are associated with traditional femininity and masculinity and sex- and gender-linked stereotypical roles and working in partnership with them to support personal and social change aimed at eliminating gender inequality’.<sup>312</sup> The Committee mentions education and the media as the two most important sectors in promoting positive roles and changing stereotypical attitudes,<sup>313</sup> which will be discussed further below. Financial support from the State may be needed to enable people to make choices that do not perpetuate stereotypes.<sup>314</sup>

### C5S34 a) *In Education*

C5P137 We have described the Committee’s concerns regarding the ways in which gender stereotypes are perpetuated in education materials and processes.<sup>315</sup> However, education at all levels is also a key site ‘to promote more balanced, accurate, healthy and positive projections of the images and voices of women and girls’,<sup>316</sup> and also to promote ‘non-violent masculinities’.<sup>317</sup> In General Recommendation No 36, the Committee has noted that ‘the education system is an example of an area for transformation that, once achieved, can accelerate positive change in other areas’.<sup>318</sup> In order to achieve such change, it is particularly important that curricula should contain ‘sexuality education that addresses the social relations of gender and the impact of patriarchal attitudes and discriminatory stereotypes on sexual relations’.<sup>319</sup> The Committee also often recommends that State parties ‘[A]dress gender stereotypes and structural barriers that may deter girls from enrolling in traditionally male-dominated fields of study and take the measures necessary, including scholarships and other incentives, to encourage

<sup>307</sup> GR No 35 para 30(b). <sup>308</sup> Further discussed below in section C.I.2(a).

<sup>309</sup> GR No 35 para 30(b). Also, eg CO Colombia, CEDAW/C/COL/CO/9 (2019) para 42.

<sup>310</sup> GR No 35 para 30(d). Also, eg CO The Netherlands, CEDAW/C/NLD/CO/6 (2016) para 22; CO Paraguay, CEDAW/C/PAR/CO/6 (2011) para 19.

<sup>311</sup> GR No 31/GC No 18 para 67.

<sup>312</sup> GR No 31/GC No 18 para 67. <sup>313</sup> See, eg CO Lithuania, A/55/38 (2000) para 139.

<sup>314</sup> See, eg CO United Kingdom of Great Britain and Northern Ireland, CEDAW/C/OP.8/GBR1 (2018) para 65.

<sup>315</sup> See the introduction to section C.I.2. <sup>316</sup> GR No 36 para 27(d).

<sup>317</sup> GR No 35 para 30(b). <sup>318</sup> GR No 36 para 26.

<sup>319</sup> See, eg CO the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6 (2018) paras 33–34.

them to choose non-traditional fields of study, including science, technology, engineering and mathematics.<sup>320</sup>

### b) The Role of the Media

The Committee recognizes that the role of the media is double-edged in the sense that media ‘play an important role in both reinforcing and reproducing gender stereotypes as well as in overcoming them’.<sup>321</sup> In that context, the Committee has linked the role of the media with civil society and the use of ICT, which can similarly hinder as well as assist in the dismantling of stereotypes.<sup>322</sup> The Committee urges States parties to encourage ‘the media to project positive and non-sexualized images of women, including women and girls from ethnic minority groups, older women and women and girls with disabilities, and promote the value of gender equality for society as a whole’.<sup>323</sup> It has urged a State party to ‘[u]se innovative measures that target media people to strengthen understanding of the equality of women and men and through the educational system to enhance a positive and non-stereotypical portrayal of women’.<sup>324</sup> Recommended measures include ‘encouraging the creation or strengthening of self-regulatory mechanisms by media organizations, aimed at the elimination of gender stereotypes’.<sup>325</sup> ‘[W]omen’s involvement in creating content for mass media’ should be ensured.<sup>326</sup>

### c) Awareness-Raising and Capacity-Building

Awareness-raising and capacity-building are both crucial to the elimination of harmful gender stereotypes and the promotion of more positive roles and images of women and men. This section discusses that second aspect: promoting positive roles.

The Committee regularly underlines the importance of civil society, the media, the education system, and local communities in awareness-raising.<sup>327</sup> Awareness-raising campaigns should target women and girls as well as boys and men, ‘and should take account of the relevance and potential of ICT to transform cultural and social stereotypes’.<sup>328</sup> Such campaigns should sensitize people ‘to gender equality and the important role of women and their contributions in the public and private domains’.<sup>329</sup> Regarding Article 5(b), the Committee has remarked that awareness-raising should be done in order to ‘promote equal sharing of domestic and family responsibilities between women and men’ and to encourage fathers to take paternity leave.<sup>330</sup> Similarly, the State should ‘encourage the involvement of men in domestic and childcare responsibilities’, including ‘by launching public campaigns portraying men in such roles and the resulting benefits to the family and society as a whole’.<sup>331</sup>

Awareness-raising should extend to intersectional gender stereotypes. The Committee has recommended Colombia, for instance, to ‘[c]onduct inclusive awareness-raising

<sup>320</sup> CO Seychelles, CEDAW/C/SYC/CO/6 (2019) para 34; CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) para 36.

<sup>321</sup> GR No 33 para 34. <sup>322</sup> *ibid.* <sup>323</sup> GR No 36 para 27(c).

<sup>324</sup> See, eg CO Singapore, CEDAW/C/SGP/CO/4/Rev.1 (2011) para 22; CO Cambodia, CEDAW/C/KHM/CO/6 (2019) para 23. What these innovative measures might be is not entirely clear to the authors.

<sup>325</sup> GR No 35 para 30; CO Paraguay, CEDAW/C/PAR/CO/6 (2011) para 19; CO The Netherlands, CEDAW/C/NLD/CO/6 (2016) para 21.

<sup>326</sup> CO Andorra, CEDAW/C/AND/CO/4 (2019) para 24(d).

<sup>327</sup> See, eg GR No 33 paras 34–35; CEDAW/C/OP.8/KGZ/1 paras 54–55.

<sup>328</sup> GR No 33 para 35. <sup>329</sup> CO Nauru, CEDAW/C/NRU/CO/1–2 (2017) para 19.

<sup>330</sup> CO Czech Republic, CEDAW/C/CZE/CO/ (2016) paras 16–17.

<sup>331</sup> CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 26.



campaigns on the principles of non-discrimination and gender equality, through cooperation with civil society and women's organizations, political parties, education professionals and the media, aimed at enhancing a positive and non-stereotypical portrayal of Colombian women of African descent and indigenous women'.<sup>332</sup> This would contribute 'to transforming narratives and challenge stereotypes affecting indigenous women and Colombian women of African descent'.<sup>333</sup> In the inquiry procedure regarding Canada, the Committee recommended '[t]o significantly strengthen awareness-raising on aboriginal culture for judges, lawyers, prosecutors, police, other law enforcement officers and service providers; to develop such training in collaboration with aboriginal organizations, including training aimed at eliminating acts of racism and sexism'.<sup>334</sup>

#### d) Enacting Socio-Economic Rights

In order to fully implement this provision, States parties are bound to create certain socio-economic entitlements such as by providing high-quality education that is free from the kinds of gender stereotyping discussed above. Creating new laws and policies requires the allocation of sufficient budgetary resources, as the Committee has recognized in the context of gender-based violence.<sup>335</sup> Article 5(b) also calls for the enactment of new laws and policies in the area of economic and social rights, including the right to childcare and the right to parental leave. Concrete measures are needed to promote the role of men in unpaid care activities.<sup>336</sup> A State party should 'Encourage the involvement of men in domestic and childcare responsibilities, in line with article 5(b) of the Convention, including by launching public campaigns portraying men in such roles and the resulting benefits to the family and society as a whole'.<sup>337</sup> However, the enactment of pregnancy leave and/or parental leave may not be sufficient for that purpose as they will not automatically lead to a substantial change in gender roles.<sup>338</sup> In fact, as noted in 2001 regarding one country (and seemingly never tackled again), such policies may 'continue to place primary responsibility for family work and childcare on women, rather than emphasizing the shared responsibility of men and women'.<sup>339</sup> The low rates of fathers taking up parental leave may perpetuate stereotypes about women's roles in the upbringing of the children and hamper their careers.<sup>340</sup>

### 3. Temporary Special Measures to Implement Article 5

General Recommendation No 25 reminds States parties 'that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behavior that discriminate against or are disadvantageous for women'.<sup>341</sup> Occasionally, the Committee has expressed its concern regarding the lack of temporary special measures that are directly aimed at eliminating gender stereotypes.<sup>342</sup> More frequently, the Committee mentions these measures in relation to overcoming the

<sup>332</sup> CO Colombia, CEDAW/C/COL/CO/9 (2019) para 42. <sup>333</sup> *ibid.*

<sup>334</sup> CEDAW/C/OP:8/CAN/1 para 217(t). <sup>335</sup> GR No 35 para 26(a), (b).

<sup>336</sup> See, eg CO Guyana, CEDAW/C/GUY/CO/ (2019) para 24.

<sup>337</sup> CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 26.

<sup>338</sup> See, eg CO Sweden, CEDAW/C/SWE/CO/7 (2008) para 26.

<sup>339</sup> See, eg CO Finland, A/56/38 (2001) para 298.

<sup>340</sup> CO Czech Republic, CEDAW/C/CZE/CO/6 (2016) para 16.

<sup>341</sup> GR No 25 para 38. Similarly, GR No 31/GC No 18 para 31.

<sup>342</sup> CO Comoros, CEDAW/C/COM/CO/1–4 (2012) para 27; CO Ireland, CEDAW/C/IRL/CO/6–7 (2017) para 39.

underrepresentation of women in certain areas that are of particular importance for eliminating gender stereotypes, such as in education.<sup>343</sup> Temporary special measures are also mentioned in relation to changing men's roles in the family.<sup>344</sup> However, some measures that are presented by States parties as positive for women may be stereotypical in and of themselves.<sup>345</sup> For example, when a programme concerns 'non-academic training such as embroidery, industrial sewing, etc., conducted as a positive discrimination programme', it 'would only contribute to keeping women to the feminized sector of the economy'.<sup>346</sup>

## II. The Extent of the Obligations

### 1. Immediate or Gradual Implementation

States parties are under all circumstances required to implement Convention obligations (including Article 5) in a timely fashion and in good faith.<sup>347</sup> On several occasions, the Committee has 'emphasized the fact that, despite the country's current economic problems, initiatives could be developed in favour of equality at minimal expense, and indeed must be developed'.<sup>348</sup> Economic or financial crises and/or ensuing austerity programmes do not relieve States from their obligations to fight against discrimination and take measures for particularly exposed groups of women.<sup>349</sup> The Committee regularly stresses that a State party should implement its obligations under this Article 'without delay'.<sup>350</sup> As is also stated in Article 2, which is of immediate application, the reference to 'all appropriate means' found in both articles means that the question is then to determine the measures appropriate in a particular case. Sometimes, the Committee adds that the State party is urged 'to put in place, without delay, a comprehensive strategy, including clear goals and timetables, to modify and eliminate negative cultural attitudes and practices and deep-rooted stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention'.<sup>351</sup> The obligation to eliminate structural discrimination requires that States parties (re-)examine and amend their laws and policies. This requires gender expertise and the existence of an adequate machinery to fulfil the obligations in this respect, which may take some time to develop; in that context, the Committee often uses the phrase that the State party should act within a clearly defined time frame.<sup>352</sup>

<sup>343</sup> CO Antigua and Barbuda, CEDAW/C/ATG/CO/4–7 (2019) para 35; CO Mauritius, CEDAW/C/MUS/CO/8(2018) para 24; CO Samoa, CEDAW/C/WSM/CO/6 (2018) para 29.

<sup>344</sup> CO Czech Republic, A/53/38 (1998) para 206.

<sup>345</sup> CO Democratic People's Republic of Korea, CEDAW/C/PRK/CO/2–4 (2017) para 22(b), where the Committee remarks that the State Party '[I]n line with article 5 of the Convention, (should) review the special measures establishing the minimum proportion of women in each category of employment with a view to correcting the stereotyped segregation of posts'.

<sup>346</sup> CO Mauritius, A/50/38 (1995) para 213.

<sup>347</sup> RJ Cook, 'State Accountability under the Convention on the Elimination of All Forms of Discrimination against Women' in RJ Cook (ed), *Human Rights of Women. National and International Perspectives* (University of Pennsylvania Press 1994) 229ff.

<sup>348</sup> CO Ecuador, A/49/38 (1994) para 540; similarly, CO Morocco, A/52/38 (1997) para 71.

<sup>349</sup> CO Portugal, CEDAW/C/PRT/CO/8–9 (2015) para 8.

<sup>350</sup> See, eg CO Bangladesh, CEDAW/C/BGD/CO7 (2011) para 16; CO Guyana, CEDAW/C/GUY/CO/9 (2019) para 24.

<sup>351</sup> See, eg CO Nicaragua, CEDAW/C/NIC/CO/6 (2007) para 12; similarly, CO Niger, CEDAW/C/NER/CO/3–4 (2017) para 20; CO Cameroon, CEDAW/C/CMR/CO/4–5 (2014) para 17; CEDAW/C/VUT/CO/4–5 (20) paras 18–19; see the chapter on Art 2.

<sup>352</sup> CO Japan, CEDAW/C/JPN/CO/7–8 (2016) para 16; CO Malaysia, CEDAW/C/MYS/CO/3–5 (2018) paras 11–12, 54; CO Japan, CEDAW/C/JPN/CO/7–8 (2016) paras 12–13.

C5P145 In 2002, the Committee decided that its concluding observations would include a section on ‘factors and difficulties’ affecting the implementation of the Convention only in the most exceptional circumstances. The Committee stated that ‘The persistence of stereotypical attitudes relating to the roles of women and men would not be categorized as such a factor or difficulty.’<sup>353</sup> The Committee has refused to accept a State party’s claim of societal support for discriminatory practices as a rationale for failing to deal with them.<sup>354</sup> States parties, in this regard, have to act efficiently, and the Committee is critical when it finds ‘limited commitment to combating persistent gender stereotypes’ and a lack of a clear time frame to implement such policies.<sup>355</sup>

## C5S41 2. *Justiciability*

C5P146 Article 5 is conceived of as a justiciable right. Article 5 (and in particular 5(a)) has been invoked by the authors of numerous communications under the Optional Protocol.<sup>356</sup> The provision has thus far never been invoked alone but always in conjunction with other articles from the Convention. The main function of Article 5, however, seems to be to provide a basis on which to evaluate the norms and customs of each society and to provide tools to address structural discrimination.

## C5S42 3. *Reservations*

C5P147 Only two States parties have entered express reservations to Article 5, which is a remarkably small number considering its far-reaching content and scope.<sup>357</sup> Article 5, in combination with Article 2(f), belongs at the very core of the Convention.<sup>358</sup> The reservations that do exist are therefore incompatible with the object and purpose of the Convention<sup>359</sup> under Article 28(2), as has been argued by several objecting States parties, including Mexico, Norway, France, and the Netherlands. The Committee has noted that reservations to the Convention<sup>360</sup> cannot be justified with reference to traditions and religion.<sup>361</sup> This point of view has also been laid down in a general statement about the acceptability of reservations: ‘Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention.’<sup>362</sup> The Committee makes the same point with regards to reservations on the ground of respect for religious or customary law.<sup>363</sup> States parties are, instead, encouraged to enter into a discussion with

<sup>353</sup> UN Doc A/57/38 (Part II) ch VI: ‘Ways and Means of Expediting the Work of the Committee’ para 374.

<sup>354</sup> CO Gabon, CEDAW/C/GAB/CC 2–5 (2005) para 30.

<sup>355</sup> CO Bulgaria, CEDAW/C/BGR/CO/8 (2020) para 21; CO Democratic Republic of Congo, CEDAW/C/COD/CO/8 (2019) para 25.

<sup>356</sup> For the full overview of decisions where Art 5 was held to be violated, see n 8 above.

<sup>357</sup> See also the discussion in the chapter on Art 28. The countries that have listed express reservations are New Zealand (on behalf of the Government of the Cook Islands—reservation to Art 5(a)) and Niger (reservation to Art 5(a)).

<sup>358</sup> S Cusack and RJ Cook, ‘Combating Discrimination on Sex and Gender’ in C Krause and M Scheinin (eds), *International Protection of Human Rights: A Textbook* (2009) 223.

<sup>359</sup> See also GR No 31 para 14.

<sup>360</sup> See, eg CO Niger, CEDAW/C/NER/CO/3–4, (2017) para 8; CO Federated States of Micronesia, CEDAW/C/FSM/CO/1–3 (2016) para 8. Sometimes a reservation takes the form of a declaration, in which the State party renounces Art 5(a); see, eg CO Qatar, CEDAW/C/QAT/CO/2 (2019) para 25.

<sup>361</sup> See, eg CO Israel, A/52/38 (1997) para 157.

<sup>362</sup> CEDAW, ‘General Statement on the Impact of Reservations’ (1998) UN Doc A/53/38, Nineteenth Session, Part II para 17.

<sup>363</sup> See, eg CO Israel, CEDAW/C/ISR/CO/3 (2005) para 25; CO India, CEDAW/C/IND/CO/3 (2007) para 10; CO Saudi Arabia, CEDAW/C/SAU/CO/3–4 (2018) paras 9–10.

religious leaders and scholars to overcome the resistance to the withdrawal of reservations based on religious grounds.<sup>364</sup>

## D. Conclusion

The CEDAW Committee has done a lot of work on Article 5 in recent years. As a consequence, the present chapter differs considerably from the one on Article 5 in the previous edition. What makes this such an important provision in the Convention, and indeed in international human rights law generally, is that it provides the pre-eminent legal basis for transformative gender equality. Addressing gender stereotypes is key in eliminating all forms of discrimination against women. The scope of this provision is correspondingly very broad: the Committee has clarified that it encompasses a wide range of ideas, beliefs, and social and cultural practices, as well as institutional arrangements. What is more, this provision can also provide much-needed tools to analyse new developments such as cyber-bullying or stereotypes embedded in AI and algorithms.

In the authors' view, there are a few topics which the Committee should develop further. One is intersectional stereotypes; another is gender stereotyping in relation to LGBTBIQ people; and a further topic is the way in which gender stereotyping causes and sustains indirect discrimination. State obligations in relation to Article 5 also remain complex as the Committee has not clarified how the respect/protect/fulfil framework applies. A general recommendation on Article 5 would be very welcome.

<sup>364</sup> See, eg CO Kuwait, CEDAW/C/KWT/CO/5 (2017) para 9; CO Oman, CEDAW/C/OMN/CO/2–3 (2017) para 10; CO Saudi Arabia, CEDAW/C/SAU/CO/3–4 (2018) para 10.