

# **GENERAL RECOMMENDATION ON GENDER STEREOTYPES**

## **CONCEPT NOTE**

### **I. INTRODUCTION**

1. The Committee on the Elimination of Discrimination against Women (CEDAW Committee or Committee) at its 81<sup>st</sup> session held in February 2022 agreed to start elaboration of a General Recommendation (GR) on the impact of gender stereotypes on the enjoyment of the rights enshrined in the Convention. The purpose of this Concept Note is to provide a comprehensive overview of the issues that merit consideration in the drafting process of this GR.

### **II. CONTEXTUALISATION OF THE FUTURE GENERAL RECOMMENDATION ON GENDER STEREOTYPES**

#### **A. Purpose of a General Recommendation on Gender Stereotypes**

2. Gender stereotypes are most often the root causes of discrimination<sup>1</sup> faced by women and girls, perpetuated by both State and non-State actors, such as the media, enterprises and emerging forms of technologies. They are based on ideas, attitudes, belief systems as well as patriarchal systems which prevail to some degree in all societies. As a result, gender stereotypes are pervasive across all cultures and sectors of society, proving stubbornly resilient over time. They are however not fixed and often change over time in keeping with other social, political, economic, religious or combination of developments within societies. Gender stereotypes are embedded in the core notion of women as inferior and unequal to men, and therefore not entitled to the same rights and opportunities to develop to their fullest potential. While there has been much change in many parts of the world due to international and domestic laws and awareness, they continue to manifest in most areas of life, impacting numerous rights, including the right to substantive gender equality, freedom from gender-based violence, full and equal participation in political and public life, access to justice, education, employment, health, and rights related to marriage and family relations.
3. Gender stereotypes are ingrained in direct, indirect and structural forms of discrimination that affect the enjoyment of women's and girls' rights under the Convention, thus permeating every aspect of their lives. The Committee has addressed gender stereotypes since the commencement of its work in its Concluding Observations, General Recommendations and in its jurisprudence under the Optional Protocol, recognizing their far-reaching consequences on women's full enjoyment of their human rights. Combating gender stereotypes remains a challenge in achieving the effective implementation of the Convention by State Parties.
4. Gender stereotypes impact the rights of women and girls under the Convention and may result in violations of their rights. A GR on gender stereotypes, the source of numerous human rights violations concerning women and girls is essential to prioritize gender stereotypes as a significant and grave human rights issue. Gender stereotyping is often not identified and understood as a root cause of human rights violations against women and girls; therefore, the GR must be grounded in the causes and consequences of gender stereotypes. This GR will

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<sup>1</sup> The CEDAW Committee has considered stereotyping as the "root cause and consequence" of discrimination. See, *R.K.B. v Turkey*, CEDAW Communication No 28/2010 (2012) CEDAW/C/51/D/28/2010 [8.8]; *S.T. v Russian Federation*, CEDAW Communication No 65/2014 (2019) CEDAW/C/72/D/65/2014 [9.4].

enhance the visibility of gender stereotypes and underscore their harmful impact as a cause of discrimination against women and girls.

5. The aim of the current GR under elaboration is to interpret the general and specific scope and nature of the State Parties' obligations in relation to Article 5 of the Convention, to ensure that the human rights of women and girls are respected, protected and fulfilled under international law. The purpose of this concept note is to open the discussion by providing preliminary information to interested parties and to offer an overview of both the legal context and the thematic areas, which will inform the Committee's elaboration of the proposed GR.

## **B. Scope of a General Recommendation on Gender Stereotypes**

6. While the term 'gender stereotypes' is not explicitly articulated in the text of the Convention, the preamble and various provisions address this topic, influenced by Article 3 of the Declaration on the Elimination of Discrimination against Women.<sup>2</sup>
7. The right to non-discrimination and equality under Article 2 of the Convention calls for explicit obligations of State Parties to address gender stereotypes regarding women and girls. Particularly, under Article 2(f), State Parties must "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." In other words, "where a law, policy, or practice makes a difference in treatment based on a gender stereotype in any sector that has the purpose or effect of impairing or nullifying women's equal rights and fundamental freedoms, it is a form of discrimination that State Parties are obligated to eliminate."<sup>3</sup>
8. On the other hand, while Article 5 of the Convention is a substantive provision that directly addresses the harm of gender stereotypes, it is also a crosscutting or transversal provision in conjunction with Articles 1-4 and 24,<sup>4</sup> implicating all articles of the Convention and, therefore, the full realization of women's and girls' human rights. Article 5 is a self-standing norm that also imposes overarching and crosscutting obligations<sup>5</sup> under Articles 6 through 16; thus, the GR will encompass obligations under the fields covered by those articles.<sup>6</sup>
9. Moreover, in close connection with Article 5, Article 10(c) of the Convention instructs State Parties to ensure "the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education [...]." This provision enshrines explicit obligations regarding gender stereotyping in the field of education. However, the obligations of State Parties concerning gender stereotyping are implicit in the other substantive articles of the Convention.
10. Furthermore, in GR No. 25 on temporary special measures, the Committee outlined three categories of State Parties' obligations to eliminate all forms of discrimination against women

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<sup>2</sup> "All appropriate measures shall be taken to educate public opinion and to direct national aspiration towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women."

<sup>3</sup> R Cook and S Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 72.

<sup>4</sup> GR25 (2004) on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures [6].

<sup>5</sup> *ibid.* See also the CEDAW Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, (21 September 2018) UN Doc CEDAW/C/OP.8/KGZ/1 [84]; Concluding comments on the combined initial and second periodic report of Guatemala, (24-26 January 1994) A/49/38 [78]; Concluding observations of South Africa, (5 April 2011) UN Doc CEDAW/C/ZAF/CO/4 [20]; Concluding observations on the fourth periodic report of Kyrgyzstan, (11 March 2015) UN Doc CEDAW/C/KGZ/CO/4 [15]; Concluding observations on the eight periodic report of Russia, (20 November 2015) UN Doc CEDAW/C/RUS/CO/8 [19].

<sup>6</sup> The CEDAW Committee has stated that Articles 6-16 should be "read with" Article 5. See, for instance, UN Doc CEDAW/C/OP.8/KGZ/1 [84].

and achieve substantive equality. The Committee noted that an obligation exists in relation to gender stereotypes, 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>7</sup> The Committee underscored that the full implementation of the Convention requires State Parties to not only undertake measures to eliminate direct and indirect discrimination and improve the de facto position of women but also to engage in the modification and transformation of gender stereotypes and the elimination of gender stereotyping, which is both a root cause and a consequence of discrimination against women.

11. The Committee, through GR No. 28, focused on the core obligations of State Parties under Article 2. It established that “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 represents a form of discrimination against women.”<sup>8</sup> Therefore, the State Parties’ obligations extend beyond the rights explicitly mentioned in the Convention, and the failure to recognize or address these rights may be considered a form of discrimination against women. Moreover, the Convention is considered a “dynamic instrument,”<sup>9</sup> subject to ongoing and evolving interpretation, and thus to new and contemporary manifestations of gender stereotypes. Scholars have recognized that “the nature and scope of State Parties’ obligations will evolve over time as our understanding of the wrongful nature of gender stereotypes grows.”<sup>10</sup>
12. The proposed GR will address the obligations of State Parties, especially under Article 5, in conjunction with those under Article 2(f). But they also relate to other articles of the Convention. Through this GR, the Committee, building on its previous work and expanding its understanding of this provision over the past few decades,<sup>11</sup> intends to provide specific guidance to State Parties on legislative, policy, and other appropriate measures to address gender stereotypes and eliminate gender stereotyping.
13. The GR will further highlight the impact of gender stereotypes in specific contexts, including access to justice, media and advertising, information technology, artificial intelligence, algorithm and robotics. It will also address the vulnerability to gender stereotypes experienced by women and girls with intersectional identities, such as ethnicity, disability, migration status, socio-economic status, LGBTI status, national origin, class, caste, age, color, language, religion or belief, political opinion, marital status, urban/rural location, health status, illiteracy, trafficking of women, armed conflict, refugee or migrant status, internal displacement, statelessness, widowhood and women human rights defenders. Moreover, it will explore the intricate relationship between disinformation and gender stereotypes.
14. This GR will raise awareness of the issue of gender stereotypes, highlighting both the explicit and unrecognized ways this practice undermines the recognition, exercise, and enjoyment of the human rights of women. Additionally, the GR will hold State Parties accountable for violations of women’s human rights resulting from gender stereotyping. It will also recommend legislation, policies, and programmes aimed at facilitating the modification or transformation of gender stereotypes and the elimination of gender stereotyping, to respect, protect, and fulfil human rights obligations under CEDAW.

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<sup>7</sup> GR25 (n 4) [7].

<sup>8</sup> GR28 (2010) on the core obligations of State parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures [7].

<sup>9</sup> GR25 (n 4) [3].

<sup>10</sup> Cook and Cusack (n 3) 76.

<sup>11</sup> P Schulz and others, *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol* (2nd Edition) (OUP 2022).

## C. TERMINOLOGY: UNDERSTANDING GENDER STEREOTYPES

### a. Definition of Gender Stereotypes

15. The CEDAW Committee, to date, has not defined gender stereotypes.<sup>12</sup> According to renowned scholars<sup>13</sup> and the Office of the UN High Commissioner for Human Rights,<sup>14</sup> the term ***gender stereotypes*** refers to a generalized view, belief, or preconception of attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.<sup>15</sup>
16. Because men and women are presumed or expected to possess certain attributes, and characteristics, or to perform specific roles, an individual, whether a man or a woman, is believed to conform to the generalized view or preconception simply by virtue of perceived membership in that social group. Consequently, all the dimensions of their personality that make them unique are filtered through the lens of stereotypical beliefs about their sex or gender.
17. Gender stereotypes are also considered as “an opinion or a general prejudice on the attributes or characteristics that women and men have or should have on the social functions that either perform or should perform.”<sup>16</sup> This means that gender stereotypes are also linked to the ‘social functions’ assigned to men and women or expected from them, which vary according to societal and cultural norms and contexts.
18. Gender stereotypes can be *descriptive*, and/or *normative* or *prescriptive* or *structural*. Often, the line between these types of gender stereotypes is very thin.<sup>17</sup> Some gender stereotypes are *descriptive* in nature; they are beliefs about the attributes, behaviors, characteristics, and roles that are perceived to typically characterize women and men. Gender stereotypes are *prescriptive* or *normative*; they seek to script identities or dictate attributes, roles, and behaviors to which men and women are expected to conform (e.g., women should be caregivers, men should be breadwinners). Gender stereotypes tend to be expressions of, and reinforce, dominant social and cultural norms regarding sex and gender. At other times, gender stereotypes are attributes, characteristics, or roles ascribed to members of a particular social group (e.g., rural women are illiterate) as a means of defining difference and labeling individual members of that group as being other than the ‘norm’.
19. The term ***gender stereotyping*** encompasses the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles solely by reason of her or his membership in the social group of women or men. It involves the application of gender stereotypic knowledge in forming an impression of an individual man or woman or “the practice of applying that stereotypical belief to a person.”<sup>18</sup>

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<sup>12</sup> *ibid.*

<sup>13</sup> Cook and Cusack (n 3) 9. Cook and Cusack have defined gender stereotypes as “a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular groups.”

<sup>14</sup> Office of the High Commissioner for Human Rights (OHCHR), ‘Gender stereotypes and Stereotyping and women’s rights’ (September 2014) <[https://www.ohchr.org/sites/default/files/Gender\\_stereotyping.pdf](https://www.ohchr.org/sites/default/files/Gender_stereotyping.pdf)> accessed 1 November 2023.

<sup>15</sup> *ibid.*

<sup>16</sup> Organization of American States, ‘Inter-American Model Law on the Prevention, Punishment and Eradication of Violence against Women in Political Life, article 4’ (2017) <<https://www.oas.org/en/mesecvi/docs/LeyModeloViolenciaPolitica-EN.pdf>> accessed 1 November 2023.

<sup>17</sup> P Schulz and others (n 11).

<sup>18</sup> OHCHR (n 14).

20. The Committee is particularly concerned with *wrongful gender stereotyping*, referring to manifestations of gender stereotyping that violate the rights to non-discrimination, equality, and other human rights and fundamental freedoms, or gender stereotyping that results in a human rights violation or multiple violations.<sup>19</sup> Wrongful stereotyping can be embodied in laws and policies that result in violations of Article 2 of the Convention. For example, the existence of a marital rape exception in criminal law is an instance of the application of the stereotype that women are the property of their husbands, resulting in a failure to protect them from gender-based violence, in violation of the Convention.
21. Another example of *wrongful gender stereotyping* is when a woman is not believed to be a credible witness in a sexual violence case because of her previous sexual history, resulting in a miscarriage of justice and, therefore, violating her right to access justice. Similarly, a woman might be denied a job because it is assumed that she cannot commit the requisite time due to family responsibilities (based on stereotyped gender roles), affecting her right to employment.
22. In this line, the CEDAW Committee has highlighted in its jurisprudence that “full implementation of the Convention requires State 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.”<sup>20</sup> This reflects the complexity of the relationship between stereotypes and discrimination, which some commentators have characterized as an invidious self-reinforcing cycle.
23. In addition to using the term ‘root cause,’ the Committee employs various formulations to articulate how gender stereotypes can lead to discrimination against women.<sup>21</sup> For instance, it mentions that stereotypes “constitute barriers”<sup>22</sup> and represent “the most serious obstacles” to achieving equality.<sup>23</sup> The Committee has consistently incorporated a section titled ‘Discriminatory Gender Stereotypes,’ underscoring its view that gender stereotypes can inherently be discriminatory.<sup>24</sup>
24. The CEDAW Committee has also focused on *harmful gender stereotyping*. A stereotype is considered harmful when it constrains the capacity of a person to cultivate their personal abilities, pursue professional careers, and make choices regarding their lives and life plans. For instance, the stereotype that women are more nurturing contributes to the disproportionate assignment of child-rearing responsibilities to them.<sup>25</sup>
25. Harmful gender stereotypes can be hostile or negative (e.g., women are irrational), explicitly outlining negative features of women based on stereotypes or gendered assumptions. Additionally, harmful gender stereotypes can be seemingly benign and positive (e.g., women are nurturing), prima facie highlighting positive characteristics of women, often associated with motherhood or women’s ‘nurturing capacities.’ In reality, these stereotyped features serve to perpetuate and reinforce patriarchy and erode women’s productive capacities, upholding beliefs

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<sup>19</sup> *ibid.*

<sup>20</sup> (n 1).

<sup>21</sup> The Committee also mentions various other causes, such as ‘adverse cultural norms’ in the Concluding observations of Madagascar, (7 November 2008) UN Doc CEDAW/C/MDG/CO/5 [16]; ‘patriarchal attitudes’ in the Concluding observations on the sixth periodic report of the Czech Republic, (14 March 2016) UN Doc CEDAW/C/CZE/CO/6 [23]; and ‘patriarchal norms’ in the Concluding observations on the seventh periodic report of Angola, (14 March 2019) UN Doc CEDAW/C/AGO/CO/7 [23].

<sup>22</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women of Cook Islands, (10 August 2007) UN Doc CEDAW/C/COK/CO/1 [28].

<sup>23</sup> Concluding observations of Cyprus, (9 May 1996) UN Doc A/51/38(SUPP) [45].

<sup>24</sup> Concluding observations on the second periodic report of Qatar, (30 July 2019) UN Doc CEDAW/C/QAT/CO/2 [21].

<sup>25</sup> OHCHR (n 14).

subtly, “where men perform the leading roles and women the supportive ones.”<sup>26</sup> These stereotypes are often at the heart of practices that place a disproportionate burden of family and caring responsibilities on women and girls. Similarly, the stereotypes that men are heads of households and have traits associated with leadership place them in decision-making positions in the home, in public, and work life. These stereotypes contribute to undervaluation and non-monetisation of women’s work, leading to unequal professional careers and exclusion of women’s work in society, leading to women’s impoverishment in retirement and often resulting in perpetuating cycles of poverty.

26. In the case of *Rosanna Flamer-Caldera v Sri Lanka*,<sup>27</sup> in which the Committee found the violation of Articles 2(a) and (c)-(g), 5(a), 7(c), 15, and 16 of the Convention, the Committee underscored the State’s failure to eliminate the stereotypes to which the claimant was exposed. It noted that “in addition to the stereotypes she has had to face as a woman, the authorities have subjected her to harmful stereotyping and accusations on account of her being lesbian [...] decriminalization of consensual same-sex relations is essential to prevent and protect against violence, discrimination and harmful gender stereotypes.”<sup>28</sup> The Committee has also addressed harmful gender stereotypes and wrongful gender stereotyping in relation to gender-based violence in other individual communications.<sup>29</sup>
27. Regarding the relationship between stereotypes and harmful practices, both the CEDAW Committee and the Committee on the Rights of the Child (CRC) have emphasized the deeply rooted nature of harmful practices, attributing their existence to prevailing social attitudes that view women and girls as inferior to men and boys based on stereotyped roles.<sup>30</sup> The multidimensional causes of these harmful practices encompass stereotyped sex- and gender-based roles, and perceived superiority or inferiority of both sexes, among other reasons. Both committees assert that addressing these systemic and structural causes is crucial to transforming traditional, re-emerging, and emerging harmful practices.<sup>31</sup> In essence, both committees highlight that harmful practices are multidimensional and include stereotyped sex- and gender-based roles.
28. The Committee has stated that it is imperative that State Parties modify or transform “harmful gender stereotypes”<sup>32</sup> and “eliminate wrongful gender stereotyping.”<sup>33</sup> These stereotypes stand in the way of women’s equality and dignity and lead to discrimination, harmful practices, and violence against them.
29. Many other UN and regional human rights instruments have addressed State obligations to address harmful gender stereotypes in law and in practice, including other UN treaty bodies, such as the Human Rights Committee<sup>34</sup> the Committee on the Rights of Persons with

<sup>26</sup> P Schulz and others (n 11).

<sup>27</sup> *Rosanna Flamer-Caldera v Sri Lanka*, CEDAW Communication No 134/2018 (2022) CEDAW/C/81/D/134/2018.

<sup>28</sup> *ibid* [9.4].

<sup>29</sup> *Isatou Jallow v Bulgaria*, CEDAW Communication No 32/2011 (2012) CEDAW/C/52/D/32/2011; *V.K. v Bulgaria*, CEDAW Communication No 20/2008 (2011) CEDAW/C/49/D/20/2008; *Karen Tayag Vertido v The Philippines*, CEDAW Communication No 18/2008 (2010) CEDAW/C/46/D/18/2008; *Fatima Yildirim v Austria*, CEDAW Communication No. 6/2005 (2007) CEDAW/C/39/D/2005; *Şahide Goekce v Austria*, CEDAW Communication No. 5/2005 (2007) CEDAW/C/39/D/5/2005; *A.T. v Hungary*, CEDAW Communication No. 2/2003 (2005) CEDAW/C/32/D/2003; CEDAW Inquiry concerning Mexico under article 8 of the Optional Protocol to the Convention, (27 January 2005) UN Doc CEDAW/C/2005/OP.8/MEXICO.

<sup>30</sup> GR31 (2019) on harmful practices [6].

<sup>31</sup> *ibid* [17].

<sup>32</sup> S Cusack, ‘Gender Stereotyping as a Human Rights Violation: Research Report’ (OHCHR 2013); *V.P.P. v Bulgaria*, CEDAW Communication No 31/2011 (2012) CEDAW/C/53/D/31/2011 [9.6].

<sup>33</sup> S Cusack (n 32); *RKB v Turkey* (n 1) [8.8].

<sup>34</sup> *Mellet v Ireland*, Human Rights Committee Communication No 2324/2013 (2013) CCPR/C/116/D/2324/2013 [3.9], [7.11]; Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 art 8; Committee on the Rights of Persons with Disabilities (CRPD), ‘General Comment 3’ (2016) UN Doc CRPD/C/GC/3.

Disabilities, the Committee on Economic, Social and Cultural Rights,<sup>35</sup> and the Committee on the Rights of the Child. UN Special Procedures, including the UN Special Rapporteurs on the right to the highest attainable standard of health,<sup>36</sup> violence against women,<sup>37</sup> torture,<sup>38</sup> persons with disabilities,<sup>39</sup> contemporary forms of slavery,<sup>40</sup> the right to food,<sup>41</sup> education,<sup>42</sup> human rights defenders,<sup>43</sup> and in the field of cultural rights,<sup>44</sup> on extreme poverty,<sup>45</sup> on adequate housing,<sup>46</sup> on the independence of judges and lawyers,<sup>47</sup> and the Working Group on discrimination against women.<sup>48</sup> Regional human rights bodies including the African Commission on Human and Peoples' Rights,<sup>49</sup> the European Court of Human Rights<sup>50</sup> and particularly the Inter-American Court of Human Rights<sup>51</sup> have articulated either directly or indirectly, State obligations to address harmful gender stereotypes and eliminate wrongful gender stereotyping.

30. Gender stereotypes, whether descriptive and/or prescriptive and deemed harmful or wrongful, can be intertwined with other elements of a person's identity, creating stereotypes that are distinct to certain subgroups. Scholars have adopted the term *intersectional gender stereotypes*, following its usage by the CEDAW Committee through its Concluding Observations, GRs, jurisprudence, and Inquiry Procedures. For example, the Committee has recognized specific challenges faced by certain women due to intersectional stereotyping, including but not limited to Aboriginal women, older women, disabled women, women of specific ethnic backgrounds, LGBTI women, and rural women. In the case of *Vertido v The Philippines*, the Committee exposed stereotypes rooted in a combination of age and gender.<sup>52</sup>

## D. STATE OBLIGATIONS UNDER TOPICS COVERED BY THE COMMITTEE

### a. Article 1: Discrimination against Women

31. Article 1 of the CEDAW Convention outlines the objective of the Convention to eliminate direct and indirect discrimination of women and girls and achieve substantive equality. Gender stereotypes facilitate the existence of discrimination, and gender stereotyping constitutes

<sup>35</sup> See, for example, Committee on Economic, Social and Cultural Rights, 'General Comment 16' (2005) UN Doc E/C.12/2005/4 [11].

<sup>36</sup> HRC 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2011) UN Doc A/66/254; 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2016) UN Doc A/HRC/32/32 [60].

<sup>37</sup> HRC 'Report of the Special Rapporteur on violence against women, its causes and consequences' (2012) UN Doc A/67/227.

<sup>38</sup> HRC 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' (2016) UN Doc A/HRC/31/57 [III].

<sup>39</sup> HRC 'Report of the Special Rapporteur on the rights of persons with disabilities (Sexual reproductive health and rights of girls and young women with disabilities)' (2017) UN Doc A/72/133.

<sup>40</sup> HRC 'Report of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences' (2010) UN Doc A/HRC/15/20 [43].

<sup>41</sup> HRC 'Report of the Special Rapporteur on the right to food' (2012) UN Doc A/HRC/22/50 [42].

<sup>42</sup> HRC 'Report of the Special Rapporteur on the right to education' (2010) UN Doc A/65/162.

<sup>43</sup> HRC 'Report of the Special Rapporteur on the situation of human rights defenders' (2010) UN Doc A/HRC/16/44.

<sup>44</sup> HRC 'Report of the Special Rapporteur in the field of cultural rights' (2012) UN Doc A/67/287.

<sup>45</sup> HRC 'Report of the Special Rapporteur on extreme poverty and human rights' (2012) UN Doc A/HRC/21/39.

<sup>46</sup> HRC 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2011) UN Doc A/HRC/19/53.

<sup>47</sup> HRC 'Report of the Special Rapporteur on the independence of judges and lawyers' (2011) UN Doc A/66/289.

<sup>48</sup> HRC 'Report of the UN Working Group on the issue of discrimination against women in law and in practice' (2016) UN Doc A/HRC/32/44.

<sup>49</sup> African Commission on Human and Peoples' Rights, 'General Comment 2 on Article 14.1(a), (b), (c) and (f) and Article 14.2(a) and (c) to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2014) [44], [60].

<sup>50</sup> E Duban and I Radačić, 'Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice' (2017) Council of Europe <<https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>> accessed 1 November 2023; Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210 arts 12(1) and 14(1).

<sup>51</sup> See, for instance, *Atala Rizzo v Chile* IACtHR Series C No 239 (24 February 2012); *Gonzalez et al. (Cotton Field) v Mexico* IACtHR Series C No 214 (16 November 2009); *IV v Bolivia* IACtHR Series C No 329 (30 November 2016).

<sup>52</sup> P Schulz and others (n 11).

discrimination, in violation of the Convention, when a distinction, exclusion or restriction is made on the basis of a gender stereotype, which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of their human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

32. A *distinction, exclusion, or restriction* is deemed to be made on the basis of a gender stereotype when, through the relevant act or failure to act, the State Party applies, enforces, or perpetuates a gender stereotype. For example, this occurs when a judge penalizes a woman in divorce and maintenance proceedings for her failure to conform to gender stereotypes, rather than basing their decision regarding allocation of maintenance on the relevant law and actual contributions of the parties to the marriage.
33. *Purpose or effect.* ‘Purpose’ or direct discrimination occurs when a woman is treated unfavourably due to a law, policy, programme, or practice that expressly applies or reinforces a gender stereotype. For instance, this can occur through a constitutional provision that reinforces stereotypes of women as caregivers and homemakers, a judicial ruling not grounded in law or fact but rather on sexual stereotypes related to rape, or school textbooks that expressly reinforce sex-role stereotypes concerning ‘appropriate’ occupations for men and women.
34. ‘Effect’ or indirect discrimination occurs when a law, policy, programme, or practice appears to be neutral on the surface but has a discriminatory effect on women, perpetuating gender stereotypes when implemented. For instance, gender-neutral employment laws may contribute to the segregation of women into part-time and lower-paid positions by perpetuating stereotypes of men as primary breadwinners and women as caregivers. In certain cases, such as in the field of education, gender stereotyping can result in both direct and indirect discrimination simultaneously.
35. *Impairing or nullifying the recognition, enjoyment, or exercise by women.* A State Party *impairs* a woman’s human rights and fundamental freedoms when it fails to fully recognize the rights and freedoms guaranteed by the Convention or prevents a woman from enjoying or exercising those rights and freedoms to their fullest extent. A State Party *nullifies* a woman’s human rights and fundamental freedoms when it either fails to recognize the rights and freedoms guaranteed by the Convention or, if it does recognize them, prevents her from enjoying or exercising them in practice.
36. *Of their human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.* The obligation of State Parties to eliminate all forms of discrimination against women includes discrimination based on gender stereotyping. This obligation encompasses all fields, including those recognized explicitly in the Convention and those recognized under other treaties and customary international law.<sup>53</sup> The Committee holds the view that discriminatory treatment, including on the basis of gender stereotypes, does not necessarily need to be linked to a recognized human right or fundamental freedom. The Convention embodies a freestanding right to non-discrimination, derived from Articles 1 to 3 and 24 of the Convention, as well as the intent and spirit of the treaty. In its Concluding Observations as of 2009, the Committee frequently includes a section titled ‘Discriminatory gender stereotypes,’ reflecting its consideration that gender stereotypes can be inherently discriminatory.<sup>54</sup>

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<sup>53</sup> See CEDAW Convention, Articles 2, 3, and 24. GR28 (n 8) [7-8].

<sup>54</sup> Concluding observations on the second periodic report of Qatar, (30 July 2019) UN Doc CEDAW/C/QAT/CO/2 [21].



37. State Parties often attempt to justify discrimination, referring to the need to preserve culture or the perceived need of women for special protection due to their roles as mothers or caregivers. However, gender stereotypes cannot serve as a justification or rationalization for direct or indirect discrimination against women. Furthermore, even when the treatment of a woman based on a gender stereotype does not inherently constitute discrimination, it may still qualify as a violation of the freedom from wrongful stereotyping outline in Article 5(a) and/or other human rights guaranteed by the Convention.

**a. Article 2: State Parties' General Obligations**

38. Article 2 of the CEDAW Convention identifies the specific core obligations of State Parties to ensure substantive equality between women and men in all areas of life. It calls for the implementation of legislative, policy-based, and other measures to achieve this goal. The interpretation of the obligations under this article is detailed in General Recommendation 28, which focuses on the core obligations of State Parties under Article 2. This recommendation specifies the measures that State Parties must take to protect, respect, and fulfil all the rights outlined in the Convention.
39. The implementation of Article 2 establishes the conditions to prevent and combat gender stereotyping. This includes, for instance, revising legislations that constitute discrimination against women on the basis of gender stereotyping (Article 2(f)). The obligation outlined in Article 2(f) extends to laws, regulations, customs, and practices that discriminate against women on the basis of gender stereotypes, but also beyond gender stereotypes/gender stereotyping.<sup>55</sup>
40. Additionally, differences in treatment of women based on gender stereotypes may constitute discrimination against women, violating Article 2(f) of the Convention and/or Article 5(a) read in conjunction with Article 1, unless an objective and reasonable justification exists.
41. In accordance with Articles 2(f) and 5, as well as Articles 2(a)-2(c) and 2(e), the obligation to protect requires State Parties to take positive steps to ensure the establishment and proper administration of appropriate laws, policies, and action plans addressing wrongful gender stereotyping by private actors. State Parties should also implement education and training programmes aimed at educating the public about wrongful and harmful gender stereotyping.
42. Moreover, State Parties are required to establish legal structures to ensure that complaints of wrongful gender stereotyping by private actors are investigated promptly, impartially, and independently. Additionally, courts and other relevant decision-making bodies are under an obligation to hold private actors legally accountable for wrongful gender stereotyping and provide effective remedies to those who have been harmed by gender stereotyping.
43. Lastly, Article 2(f) serves as a link between Article 1 and 5 of the Convention, as Article 5 does not refer to discrimination, and the definition of discrimination in Article 1 does not mention explicitly gender stereotypes or fixed parental roles. In that regard, Article 2 establishes the link since, in order to eliminate discrimination, State Parties are required to abolish “existing laws, regulations, customs and practices” which discriminate against women.

**a. Access to Justice**

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<sup>55</sup> S Cusack (n 32) 22.

44. Eradicating gender stereotypes and gender stereotyping is necessary to ensure women's access to justice. Gender stereotyping reflected in practices and discriminatory laws, procedural and evidentiary requirements, has an impact on women's ability to access justice, constituting violations of women's human rights.<sup>56</sup> This impact extends to all areas of law, including family and marriage, health, and in the context of gender-based violence, for example. Stereotyping compromises the impartiality and integrity of the justice system, permeating both the investigation and trial phases, ultimately shaping judgments and leading to miscarriages of justice.<sup>57</sup> Prosecutors, law enforcement officials, and other actors allow stereotypes to influence investigations and trials, undermining the claims of the victim/survivor and simultaneously supporting the defences advanced by the alleged perpetrator.
45. The structures and institutions comprising the justice system must ensure the legal protection of the rights of women on an equal basis with men. Therefore, they should be impartial, efficient, adequately resourced, and free from gender bias and negative stereotypes in the administration of justice.
46. GR No. 33 on women's access to justice has a section on "Education and raising awareness of the impact of stereotypes." The Committee affirmed that "discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men."<sup>58</sup> The Committee recommended that States implement mechanisms to ensure impartiality and that judicial procedures are not influenced by gender stereotypes or prejudice.<sup>59</sup>
47. For example, in *Isatou Jallow v. Bulgaria* the Committee determined *inter alia* that the stereotype of men as heads of households and the related assumption of male superiority had influenced the decision of the State Party to investigate allegations of domestic violence made by Jallow's partner, but not to investigate the allegations of violence made by Jallow herself. According to the Committee, the authorities based their actions "on a stereotyped notion that the husband was superior and that his opinions should be taken seriously."<sup>60</sup> Harmful stereotypes can impact judicial decisions in all areas of law, including often in cases related to marriage, divorce and custody of children
48. The Committee has recommended that State Parties implement mechanisms to ensure that evidentiary rules, investigations, and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice.<sup>61</sup> In the context of the latter, measures must be adopted, with due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes.<sup>62</sup>
49. The Committee has also recommended awareness-raising and capacity-building measures for all actors in justice systems, including border police, immigration officials, and law students. These measures aim to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system, particularly concerning women asylum seekers and refugees. The Committee has called for raising awareness on the negative impact of stereotyping and gender bias and has encouraged advocacy related to stereotyping and gender bias in justice

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<sup>56</sup> GR33 (2015) on women's access to justice [26-29].

<sup>57</sup> *ibid.*

<sup>58</sup> *ibid* [8].

<sup>59</sup> *ibid* [18(e)].

<sup>60</sup> *Isatou Jallow v Bulgaria* (n 29).

<sup>61</sup> GR33 (n 56) [18(e)].

<sup>62</sup> *ibid* [18(e)], [26].

systems.<sup>63</sup> For example, it is critically important that judges can identify, name, and explain the stereotyping underlying a law or a lower court's decision, and have the capacity to challenge wrongful gender stereotyping.<sup>64</sup>

50. In *R.P.B. v. The Philippines*, a case concerning the rape of a 17-year-old girl who was deaf and mute, the trial court engaged in stereotyping, ignoring evidence that demonstrated her behavior, including her disability and physical strength. The Committee outlined the obligations of State Parties in this respect, stating that “there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct.” The Committee noted that “stereotyping affects women’s right to a fair and just trial and ... the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim.”<sup>65</sup>

### **a. Article 3: Development and Advancement of Women**

51. Article 3 of the Convention on the advancement of women and equality of rights in economic, social, political, and cultural relations, states that “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”
52. Gender stereotypes come in varied and overlapping forms, manifesting in many areas of life, including social, political, and cultural relations. Moreover, gender stereotypes are embedded in society’s social and cultural practices, as well as in its social, economic, and legal structures. Article 3 requires questioning which gender stereotypes and gender stereotyping practices hinder the advancement of women in the mentioned spheres.
53. Regarding culture, the Committee sometimes explicitly recognizes the rich culture and traditions of a State Party and their importance to daily life. It has acknowledged, for instance, 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>66</sup> On the other hand, in many instances worldwide, particular religious or cultural beliefs and practices contribute to establishing damaging gender stereotypes or fixed parental gender roles. These stereotypes and gender roles obstruct women’s equality and dignity and lead to discrimination, harmful practices, and violence against women and girls.
54. In terms of economic and social relations, harmful stereotypes around men being heads of households and breadwinners, and women being poor decision-makers, impact women’s financial independence. These stereotypes support practices around discrimination in the inheritance of property and women’s lack of legal capacity to manage and own property. Furthermore, these stereotypes lead to discriminatory laws on pension distribution, social security, loans and financial credits, as well as laws regarding acquiring and transferring nationality.

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<sup>63</sup> *ibid* [26], [29(a)], [29(e)]; GR32 (n 61) [44]; *Zhen Zhen Zheng v The Netherlands* CEDAW Communication No 15/2007 (2008) CEDAW/C/42/D/15/2007 [9.1(a)].

<sup>64</sup> GR33 (n 56) [35(a)], [35(b)].

<sup>65</sup> *R.P.B. v The Philippines*, CEDAW Communication No 34/2011 (2014) CEDAW/C/57/D/34/2011 [8.8].

<sup>66</sup> Concluding observations on the second and third periodic reports of Antigua and Barbuda, (16 July 1997) UN Doc A/52/38 [270]; Concluding observations on the initial report of Guyana, (20 January 1994) UN Doc A/49/38 [101].

55. The Committee has raised these concerns in General Recommendations, Concluding Observations, and under the Optional Protocol. For example, General Recommendation 29 notes that State Parties should guarantee equality between women and men in their constitutions. It also suggests eliminating any constitutional exemptions that would serve to protect or preserve discriminatory laws and practices regarding family relations. This includes cases where personal status laws (relating to marriage, divorce, distribution of marital property, inheritance, guardianship, adoption and other such matters) are exempt from constitutional provisions prohibiting discrimination or are reserved for ethnic and religious communities within the State Party to determine.<sup>67</sup> This General Recommendation calls for the reform of such laws and practices grounded in stereotypes concerning grounds for divorce, financial consequences of divorce, property rights after death of a spouse, intestate succession, among other issues.<sup>68</sup>

#### **a. Article 4: Temporary Special Measures**

56. To achieve de facto gender equality, it is appropriate for State Parties to adopt temporary special measures to advance the status of women in society. In GR No. 25, the Committee explained 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>69</sup> Therefore, temporary special measures ought to be used as a mechanism to eradicate stereotypical attitudes that lead to discrimination against women or place them in a disadvantaged position.

#### **f. Gender Based Violence against Women and Girls**

57. Gender stereotypes are one of the root causes of gender based violence against women and girls, contributing to the normalization and perpetuation of such violence. These stereotypes perpetuate unequal power dynamics, gender inequality and gender roles, leading to the normalization of harmful attitudes and behaviors against women and girls.

58. The Committee 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>70</sup> The Committee has addressed harmful and wrongful gender stereotyping in relation to gender based violence in its Concluding Observations, under the Optional Protocol<sup>71</sup> and in General Recommendations, particularly in General Recommendations 19 and 35.

59. The CEDAW Committee has also emphasized that gender stereotypes permeate the justice system, defining “stereotypical notions of what constitutes gender-based violence against women, what women’s responses to such violence should be.”<sup>72</sup> The Committee has further recognized that gender stereotypes influence how survivors are treated when they report

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<sup>67</sup> GR29 (2013) on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, Economic consequences of marriage, family relations and their dissolution [2], [10-11].

<sup>68</sup> *ibid.*

<sup>69</sup> GR25 (n 4) [38].

<sup>70</sup> GR35 (2017) on gender-based violence against women, updating general recommendation No. 19 [10].

<sup>71</sup> *Isatou Jallow v Bulgaria*, CEDAW Communication No 32/2011 (2012) CEDAW/C/52/D/32/2011; *V.K. v Bulgaria*, CEDAW Communication No 20/2008 (2011) CEDAW/C/49/D/20/2008; *Karen Tayag Vertido v The Philippines*, CEDAW Communication No 18/2008 (2010) CEDAW/C/46/D/18/2008; *Fatima Yildirim v Austria*, CEDAW Communication No. 6/2005 (2007) CEDAW/C/39/D/2005; *Şahide Goekce v Austria*, CEDAW Communication No. 5/2005 (2007) CEDAW/C/39/D/5/2005; *A.T. v Hungary*, CEDAW Communication No. 2/2003 (2005) CEDAW/C/32/D/2003; CEDAW Inquiry concerning Mexico under article 8 of the Optional Protocol to the Convention, (27 January 2005) UN Doc CEDAW/C/2005/OP.8/MEXICO.

<sup>72</sup> GR35 (n 70) [26(c)].

violence and whether or not they can access justice for the violence they experienced.<sup>73</sup> Moreover, individuals who fail to conform to gender stereotypes may also face punishment through gender based violence in its different forms, including domestic violence, so-called “crimes of honor,” and femicide.

60. Certain groups of women may be targeted for violence based on intersecting factors such as their migrant status, disability, sexual orientation, or gender identity, and on stereotyped assumptions or beliefs around these groups or categories. For instance, the practice of ‘corrective rape’ due to a woman’s perceived sexual orientation or gender identity is a form of violence against women which is intended to turn the person to conform to heterosexual norms, based on gender stereotypes.

#### **g. Article 6: Trafficking and Exploitation of Prostitution**

61. Article 6 of the CEDAW Convention provides that States must “take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”
62. In its GR No. 38 on trafficking of women and girls in the context of global migration, the Committee stated that “persistent norms and stereotypes regarding male domination and the need to assert male control or power, enforce patriarchal gender roles and male sexual entitlement, coercion and control, which drive the demand for the sexual exploitation of women and girls.”<sup>74</sup> Moreover, the Committee recommended State Parties to “counter stereotypical attitudes and discrimination towards women and girls who are victims of trafficking and sexual exploitation [...]” In that sense, gender stereotypes reinforce traditional gender roles that contribute to the demand for the sexual exploitation of women and girls, and State Parties must counteract stereotypical attitudes towards women and girls.

#### **h. Articles 7 and 8: Political Participation**

63. Articles 7 and 8 of the CEDAW Convention state that women should have equality in political and public life at all levels, from the local to the national and international. Women’s active participation and leadership in policy and decision-making processes are necessary to ensure the design and implementation of national strategies to prevent and combat harmful, wrongful, and intersectional gender stereotypes and stereotyping. Entrenched gender stereotypes exclude women from many aspects of decision-making and confine their political participation to traditional female roles.
64. The participation of women in bilateral, regional, and multilateral diplomacy, including expert meetings where global goals and priorities are established, is particularly relevant in ensuring that cooperation efforts to manage a cross-border phenomenon such as gender stereotypes and gender stereotyping benefit from a gendered perspective.
65. Additionally, the CEDAW Committee has stressed that women are active agents, playing crucial roles as political leaders, members of governments and opposition groups, human rights defenders and activists, lawyers and judges, among others. The Committee has consistently recommended that States ensure the participation of women and women’s civil society organizations in the development, implementation, and monitoring of laws, policies, and

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<sup>73</sup> *Karen Tayag Vertido v The Philippines*, CEDAW Communication No 18/2008 (2010) CEDAW/C/46/D/18/2008 [8.9(b)]; *R.P.B. v The Philippines*, CEDAW Communication No 34/2011 (2014) CEDAW/C/57/D/34/2011 [8.3]; GR33 (2015) on women’s access to justice [18(e)], [26], [29].

<sup>74</sup> GR38 (2020) on trafficking in women and girls in the context of global migration [30].

programmes. Traditional and customary leadership roles are often reserved for men, thereby often excluding women from decision-making positions.

66. Especially during times of political and/or economic turmoil and within intensely polarized discussions surrounding national identity and nationalism, gender stereotypes tend to be amplified, impeding advancements in eradicating discrimination against women. These stereotypes confine women to the private sphere and undermine their active participation in public life.<sup>75</sup>
67. The Committee, in GR No. 23 on political and public life, has recognized that “stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution.”<sup>76</sup> Moreover, the Committee recommended the following: “State Parties should explain the reason for and effect of, any reservations to articles 7 or 8 and indicate where the reservations reflect traditional, customary or stereotyped attitudes towards women’s roles in society, as well as the steps being taken by the State Parties to change those attitudes.”<sup>77</sup>
68. Furthermore, CEDAW’s GR No. 30 on women in conflict prevention, conflict, and post-conflict situations has referred to the role of gender stereotypes in the political participation of women. For instance, it mentioned that “even when women and girls are included in disarmament, demobilization and reintegration processes, the support is inadequate, gender stereotyped and limits their economic empowerment by providing skills development only in traditionally female fields.”<sup>78</sup> It also stated that “the full participation and involvement of women in formal peacemaking and post-conflict reconstruction and socioeconomic development are often not realized on account of deeply entrenched stereotypes, reflected in the traditionally male leadership of State and non-State groups, which exclude women from all aspects of decision-making [...]”<sup>79</sup>

### **i. Article 9: Nationality**

69. The protection of nationality is enshrined in Article 9 of CEDAW. Equality in the acquisition, change, retention, and transfer of nationality is essential to the enjoyment of the full range of human rights by women. Both stateless women and girls, as well as those at risk of statelessness, specifically those who do not have birth or nationality certificates or whose documentation has been lost or confiscated, are often marginalized on account of being unable to prove their identity. They may be denied access to various rights and benefits flowing from status as a national, including rights to education, health care, decent work, property ownership, access to public benefits, choice of residence and freedom of movement.<sup>80</sup> Discrimination towards stateless women and girls is often compounded with other intersectional factors such as race, class, disability, and sexual orientation, which are reinforced by gender stereotypes and, therefore, perpetuate discrimination against women and girls.
70. Concerning the intersection between asylum and gender stereotypes, in CEDAW’s GR No. 32 on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, the Committee noted that “[...] women’s claims to asylum are regularly classified

<sup>75</sup> HRC ‘Report of the Working Group on the issue of discrimination against women in law and in practice’ (2013) UN Doc A/HRC/23/50 [72].

<sup>76</sup> GR23 (1997) on political and public life [12].

<sup>77</sup> *ibid* [44].

<sup>78</sup> GR30 (2013) on women in conflict prevention, conflict and post-conflict situations [68].

<sup>79</sup> *ibid* [43].

<sup>80</sup> HRC ‘Report of the Secretary-General on Trafficking in women and girls’ (2018) UN Doc A/73/263 [29].

under the “social group” ground in the definition of a refugee, which may reinforce the stereotyped notions of women as dependent victims.”<sup>81</sup> The Committee examined Article 5 in the context of asylum and indicated that “Article 5 of the Convention requires State Parties to assess women’s claims to asylum without prejudices and stereotyped notions of women that are based on the inferiority or superiority of either sex.”<sup>82</sup>

#### **j. Article 10: Education**

71. Article 10 of the CEDAW Convention concerns the elimination of discrimination and equality in education. This encompasses both women’s access to education and the level and quality of education, as well as the content and quality of educational materials and resources. Gender-based disparities arise in situations where specific educational and career paths are deemed suitable exclusively for either women or men – for instance, in nursing and teaching, positions centered around care where women are considered more suitable, and politics, where women are often considered too emotional or lacking the adequate stamina to participate.
72. These gender-based disparities contribute to harmful gender stereotypes, such as portraying women as primary caregivers and men as breadwinners, which are also reflected in the content of educational curricula. Intersectional gender stereotypes further persist in educational materials, reinforcing biases against certain groups and identities. Educational institutions play a crucial role as social institutions where entrenched discriminatory gender norms and practices should be challenged.<sup>83</sup>
73. CEDAW explored more in-depth the relationship between the right to education and gender stereotypes in its GR No. 36 on the rights of girls and women to education. CEDAW specified that gender stereotyping in curricula is one of the factors that disproportionately prevent girls and women from enjoying their right to education.<sup>84</sup> The Committee also commented that “instead of challenging entrenched discriminatory 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>85</sup>
74. The CEDAW Committee recommended, in line with Articles 5 and 10(c) of the Convention, “that State Parties strengthen and take proactive measures to eliminate gender stereotyping in education that perpetuates direct and indirect discrimination against girls and women [...]”<sup>86</sup> through various measures.
75. GRs No. 35 and 36 have recognized gender stereotyping in curricula, textbooks, and teaching processes. They have called for the revision of curricula at all levels of education in both public and private schools, targeting stereotyped roles and promoting values of gender equality and non-discrimination, including non-violent masculinities.<sup>87</sup> In this respect, the Committee has also called for ensuring age-appropriate, evidence-based, and scientifically accurate comprehensive sexuality education that promotes gender equality and debunks stereotypes, including around sexual orientation.<sup>88</sup> The Committee has further urged States, in collaboration

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<sup>81</sup> GR32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women [31].

<sup>82</sup> *ibid.*

<sup>83</sup> GR36 (2017) on the right of girls and women to education [17].

<sup>84</sup> *ibid* [4].

<sup>85</sup> *ibid* [16].

<sup>86</sup> *ibid* [27].

<sup>87</sup> *ibid* [4]; GR35 (n 70) [16].

<sup>88</sup> GR35 (n 70) [35(a)].

with women's organizations and those representing marginalized groups of women and girls, to take measures to address and eradicate stereotypes as outlined in Article 5. This includes integrating gender equality in school curricula and working with the media while ensuring capacity building.<sup>89</sup>

#### **k. Article 11: Employment**

76. Article 11 of the Convention pursues to eliminate discrimination against women in the field of employment. Employment is impacted by harmful gender stereotypes and wrongful stereotyping, often mirroring stereotypes perpetuated in education. For instance, women's employment is restricted to traditionally female fields, and there is a perception that working certain times of the day is more appropriate for women, or that women should be at home caring for children and their husbands. In addition, women's income is often seen as supplementary to that of their husband's, influencing tax and pension schemes, as well as retirement age, often pushing women into part-time jobs.
77. These systemic issues perpetuate poverty and have a negative impact on the increasing number of women-headed households. In some countries, women are excluded from certain forms of work based on stereotypical assumptions about the characteristics and roles of women, deeming them unsuitable for jobs requiring physical strength or involving arms, or jobs considered harmful to their reproductive capacity.
78. While the CEDAW Committee does not explicitly refer to gender stereotypes in GR No. 26 on women migrant workers, it observed that "to understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration."<sup>90</sup>
79. The Committee's decision in *R.K.B. v. Turkey*, concerning unlawful termination of employment, further articulates the obligation of State Parties to address gender stereotyping in employment.<sup>91</sup> The Committee found that the State Party violated CEDAW when its courts failed to hold the employer accountable for unequal treatment. The Committee concluded *inter alia* that the Court's decisions were based on gender stereotypes that condoned extramarital affairs by men but not women, in violation of Article 5(a) of the Convention. It explained that the Labour Court had allowed its reasoning to be influenced by stereotypes when it failed to challenge and reject the discriminatory evidence submitted by the employer, and scrutinized the moral integrity of R.K.B. and not that of her male colleagues. The Committee further explained that the Court of Cassation perpetuated gender stereotypes when it failed to address the gender-related aspects of R.K.B.'s complaint. In finding the State Party in violation of Article 5(a), the Committee affirmed that CEDAW requires State Parties to "modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination."<sup>92</sup> Importantly, it recommended that the State Party "[p]rovide [...] appropriate and regular training on the Convention, its Optional Protocol and its general recommendations for judges, lawyers and law enforcement personnel in a gender-sensitive manner, so as to ensure that stereotypical prejudices and values do not affect decision-making."<sup>93</sup>

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<sup>89</sup> *ibid.*

<sup>90</sup> GR26 (2008) on women migrant workers [5].

<sup>91</sup> *RKB v Turkey* (n 1).

<sup>92</sup> *ibid* [8.8].

<sup>93</sup> *ibid* [8.10(b)(ii)]; S Cusack (n 32) [28].



## I. Article 12: Health

80. Article 12 of the CEDAW Convention specifically calls on State Parties to guarantee equality between women and men in the provision of health care services, including reproductive and sexual health.<sup>94</sup> However, GR No. 24 on women and health does not include gender stereotypes or gender stereotyping.
81. Concerning the right to health, gender stereotypes affect women's access to health services, and the negative impact of these stereotypes on health has been addressed by CEDAW and other UN mechanisms. The Committee has emphasized that State Parties are obligated by CEDAW to refrain from stereotyping women seeking health care services and to adopt positive measures to expose and modify harmful gender stereotypes within the health sector. Stereotypes in the context of health care are often linked to strong beliefs surrounding sexuality, pregnancy, and motherhood.<sup>95</sup> Although stereotypes occur in other health areas as well, women particularly face these challenges in the context of sexual and reproductive health care.
82. The Committee, in its jurisprudence, has long called for the elimination of harmful stereotypes and wrongful stereotyping in the context of health care. It has advocated for ensuring that comprehensive information and education on sexual and reproductive health be provided to help erode stereotypes. The Committee has further recommended the decriminalization of abortion, guarantees of informed consent to medical treatment, and the training of health care providers on stereotypes, among other measures, to address underlying gender stereotypes leading to violations of the Convention.
83. The stereotype that women are vulnerable and incapable of making rational decisions about their reproductive capacity, coupled with the stereotype that women should be chaste, operates to deny women and adolescent girls the information needed to make informed decisions about their reproductive health. This leads to the substitution of others' decisions for their own through medical paternalism and/or third-party authorization requirements, as well as coercive practices, including but not limited to female genital mutilation.<sup>96</sup>
84. These stereotypes are compounded by other characteristics such as age, HIV status, gender identity, ethnicity, and disability, making women particularly vulnerable to abuses in this context. For example, these stereotypes are fundamental causes of abuse and non-consensual medical treatment of women during childbirth, as well as restrictions on artificial reproductive technologies for lesbian and bisexual women. Additionally, harmful stereotypes of persons with disabilities, particularly girls and young women with disabilities, as either asexual or hypersexual,<sup>97</sup> or the belief that women with disabilities are incapable of understanding the responsibilities of being a parent, can lead to disempowerment, infantilization, and practices such as coercive sterilization.<sup>98</sup> Similarly, demeaning stereotypes, such as considering unmarried women seeking contraception as promiscuous, lead to discriminatory practices like mandating parental consent for contraceptives.

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<sup>94</sup> GR24 (1999) Article 12 of the Convention (women and health).

<sup>95</sup> Cook and Cusack (n 3) 34.

<sup>96</sup> HRC (n 48) [63]. The Working Group on discrimination against women has recognized that "[p]atriarchal negation of women's autonomy in decision-making leads to violation of women's right to health, privacy, reproductive and sexual self-determination, physical integrity and even to life."

<sup>97</sup> HRC (n 39).

<sup>98</sup> CRPD (n 34) [44]; HRC (n 39); *Alyne da Silva Pimentel v Brazil*, CEDAW Communication No 17/2008 (2011) CEDAW/C/49/D/17/2008. While CEDAW did not explicitly discuss gender stereotypes in analyzing the rights violations in this decision, it noted Brazil's failure to address Alyne's "status as a woman of African descent and her socio-economic background," suggesting that harmful compounded stereotypes about gender, race and socioeconomic background contributed to the denial of quality care that Alyne experienced.

85. In the case of *L.C. v. Peru*, concerning the denial of emergency spinal services to a young girl due to her pregnancy status, the Committee affirmed that the stereotype “understands the exercise of a woman’s reproductive capacity as a duty rather than a right”.<sup>99</sup> The Committee noted that this stereotype suggests that the protection of a fetus is paramount to a woman’s and girl’s interests and needs, relegating her to a mere reproductive instrument. Furthermore, it leads to the subordination of women and girls, viewing them solely as reproductive instruments rather than as full human beings and members of society.<sup>100</sup>

### **m. Article 13: Economic Empowerment, Sports and Cultural Life**

86. Gender stereotypes act as a barrier for women to avail themselves of their economic and social rights, including rights to financial family benefits and the same rights as men to participate in business and economic life by obtaining loans and other forms of financial benefits, financial literacy, and training in microenterprise development. Gender stereotypes limit women in achieving economic empowerment, as their financial opportunities are often restricted compared to men’s due to expectations and roles based on gender stereotypes. Social protection floors and/or the development of universal basic income serve as effective preventive measures against the perpetration of gender stereotypes.

### **n. Article 14: Rural Women**

87. Article 14 of the CEDAW Convention focuses on women in rural and remote areas, mandating the elimination of discrimination towards them. State Parties must address the exacerbated inequality faced by rural women, as well as the gender stereotypes that contribute to the perpetuation of discrimination against them.
88. In GR 34 on the rights of rural women, the CEDAW Committee noted that rural women “[...] carry most of the unpaid work burden owing to stereotyped gender roles [...]”.<sup>101</sup> Moreover, the Committee recommended that States “eliminate discriminatory stereotypes, including those that compromise the equal rights of rural women to land, water and other natural resources.”<sup>102</sup> The Committee also highlighted that State Parties should ensure that “systematic training is provided for teaching personnel at all levels of the education system on the rights of rural girls and women and on the need to combat discriminatory sex-based and gender-based, ethnic and other stereotypes that limit the educational opportunities of rural women and girls. Curricula should be reviewed to eliminate discriminatory stereotypes [...]”.<sup>103</sup>

### **o. Article 15: Equality Before the Law**

89. Article 15 of the CEDAW Convention guarantees women’s equality before the law and embodies the principle of equality before the law, which is to be interpreted broadly. This principle entails equal access to courts and tribunals, non-discriminatory administration of justice, and equal protection of the law. It encompasses “all decision-making bodies, executive or judicial, including civil, criminal and administrative courts and tribunals.”<sup>104</sup> Under this article, the Convention seeks to protect women’s status before the law regarding equality and administration of criminal justice, legal capacity, contracts, property transactions, and other

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<sup>99</sup> *L.C. v Peru*, CEDAW Communication No 22/2009 (2011) CEDAW/C/50/D/22/2009.

<sup>100</sup> L Oja, A Yamin, “‘Woman’ in the European Human Rights System: How is the Reproductive Rights Jurisprudence of the European Court of Human Rights Constructing Narratives of Women’s Citizenship?” (2016) 32(1) *Columbia Journal of Gender and Law*, 74.

<sup>101</sup> GR34 (2016) on the rights of rural women [5].

<sup>102</sup> *ibid* [23].

<sup>103</sup> *ibid* [43(b)].

<sup>104</sup> Freeman M, Chinkin C, Rudolf B (eds) *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (OUP 2012) 392.

private matters. Article 15 bears fundamental importance to the realization of other social and economic rights under the Convention, such as employment (Article 11), health (Article 12), as well as in the area of family relations (Article 16). Institutionalized gender stereotypes and gender stereotyping ought to be eliminated in all spheres to ensure the effective application of Article 15.

#### **p. Article 16: Marriage and Family Relations**

90. Article 16 of the CEDAW Convention defines the principle of equal rights in marriage and family relations. In addition, CEDAW's GR No. 29, on the economic consequences of marriage, family relations and their dissolution, mentioned that "in respect of the economic dimensions of family relations, a substantive equality approach must address matters such as discrimination in education and employment, the compatibility of work requirements and family needs, and the impact of gender stereotypes and gender roles on women's economic capacity."<sup>105</sup>
91. Harmful gender stereotypes in connection with family relations are common, particularly as they relate to ideas concerning marriage, divorce, distribution of marital property, housing and land, inheritance, guardianship, custody, adoption, nationality, and other such matters.
92. Harmful gender stereotypes that prevail include the belief that women are predestined to be wives and mothers, and that their sexuality needs to be controlled, with sex serving only a procreative function. These stereotypes underlie discriminatory laws and practices such as child, early, and forced marriage, as well as forced virginity testing. Additionally, stereotypes asserting that women need to be controlled and protected for their financial and physical security, and that they are incapable of making decisions for themselves, perpetuate practices like child and forced marriage, limitations on inheritance, mandating name changes, and imposing restrictions on divorcing and remarrying, among others.
93. The stereotype that women are primarily destined to be wives and mothers leads to the punishment of sexual activity by women outside marriage or without the purpose of procreation, such as same-sex conduct, adultery, or sex work. Once women have entered into marriage, stereotypes about their sexual roles within this institution operate to deny them the ability to decide when they wish to engage in sex, sanctioning marital rape and contributing to the criminalization of adultery.<sup>106</sup>
94. Harmful stereotypes around men being heads of households and/or women [economically dependent therefore deserving lower pay, would be the related stereotype] being poor decision-makers also impact women's financial independence and support practices related to discrimination in property inheritance of property and women's lack of legal capacity to manage and own property, as well as discriminatory laws regarding pension distribution, social security, loans, financial credits, and the acquisition and transfer of nationality.

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<sup>105</sup> GR29 (n 67) [8].

<sup>106</sup> Cook and Cusack (n 3) 27.

