

**CONFRONTING THE “SACRED AND UNCHANGEABLE”:  
THE OBLIGATION TO MODIFY CULTURAL PATTERNS  
UNDER THE WOMEN’S DISCRIMINATION TREATY**

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ABSTRACT

Article 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) provides that states parties shall take all appropriate measures “[t]o modify the social and cultural patterns of conduct of men and women.” Farther-reaching and broader than any other treaty provision, its vague language provides little guidance to states parties as to the role and function of the article. Filling a gap in the scholarship on CEDAW, the Author employs an empirical approach, drawing conclusions from a review of the entirety of the jurisprudence of the CEDAW Committee. The Author finds that the article has both interpretive and substantive roles to play, allowing the Committee to take a pragmatic view toward cultural change and demand ever more robust measures of countries that have achieved legal equality and reduced more observable discriminatory patterns and practices.

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Few commentators in liberal democracies would deny that certain cultural practices pose a significant obstacle to women's rights. Asked to provide examples, they likely would point to female genital mutilation, dowry killings, and forced marriage, all subjects of much international outcry. Rarely, however, would the more-difficult-to-discern patterns and stereotypes in Western nations be identified as cultural practices pernicious to women's rights that must be modified through legal and other reforms. Culture—embodied in social and cultural patterns that favor men or rely on traditional sex roles—is typically conceived of as a problem exclusive to other, less-democratic or less-developed countries.

Nonetheless, the primary impediment to women's substantive equality in Western states is culture. Western states have generally achieved legal equality, but instead of modifying "those social processes [that] remain responsive to the hegemony of the traditionally dominant participants," they have used "a formula that has been cannily described as 'add women and stir.'"<sup>1</sup> As legal barriers have been taken down, cultural barriers continue to impede women's advancement.<sup>2</sup>

In the most progressive of Western states, regardless of her legal opportunities, a woman faces significant cultural pressures from family, friends, media, and schools to act in a certain way, or not be recognized as female at all. A woman who pursues her career may be perceived as "selfish" and "a bad mother"; by contrast, a man who does so is seen as "self-sacrificing" and "a good breadwinner." Accordingly, in every field, given equal legal opportunities but subject to persistent negative stereotypes and cultural patterns, women remain unequal to men and fail to reach high-level positions in substantial numbers.<sup>3</sup> That continued inequality in turn provides fodder for the view that women are somehow inherently less capable than men, better-suited to the kids' room than the boardroom.<sup>4</sup>

Certainly, the United States is no exception. Although women have made great economic, political, and educational progress in the past decades, they continue to be underpaid and grossly

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<sup>1</sup> Brad R. Roth, *The CEDAW as a Collective Approach to Women's Rights*, 24 MICH. J. INT'L L. 187, 202 (2002); see also Comm. on the Elimination of Discrimination Against Women [CEDAW Comm.], *Consideration of Reports Submitted by State Parties Under Article 18 of CEDAW: Seventh Periodic Report of States Parties, Norway*, pt. II, 26 U.N. Doc. CEDAW/C/NOR/7 (Mar. 27, 2007) ("We have a tendency to perceive men and men's attitudes and behaviour as the norm for and benchmark of human activity, in both our own and other societies.").

<sup>2</sup> See AUGUSTO LOPEZ-CARLOS & SAADIA ZAHIDI, WORLD ECON. FORUM, WOMEN'S EMPOWERMENT: MEASURING THE GLOBAL GENDER GAP 2 (2005) (stating examples of present-day cultural barriers faced by women).

<sup>3</sup> Nonetheless, in order to limit the length of this discussion, this Article will focus largely on the employment and political achievements of women as compared to men rather than attempt to review all areas of public and private life.

<sup>4</sup> As Anna Garlin Spencer observed long ago, "[t]he failure of women to produce genius of the first rank in most of the supreme forms of human effort has been used to block the way of all women of talent and ambition for intellectual achievement in a manner that would be amusingly absurd were it not so monstrously unjust and socially harmful." ANNA GARLIN SPENCER, WOMAN'S SHARE IN SOCIAL CULTURE 50 (Arno Press 1972) (1912).

underrepresented in the most powerful and profitable occupations.<sup>5</sup> Women's ranks among elected and appointed officials have greatly increased since the 1970s, but the numbers remain low<sup>6</sup> and, more troublingly, have begun to level off.<sup>7</sup> Many U.S. women also face the particularly feminized problem of sexual and physical violence at the hands of a spouse or partner. Due to a perception that violence against them may be natural or deserved, abused women may "respond to violence by looking first to their own failings, blaming themselves, justifying their attackers, and hiding the marks of their shame, the tears and the bruises, from the outside world."<sup>8</sup>

The international community explicitly responded to the role of culture, rather than law alone, in maintaining gender discrimination with the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW").<sup>9</sup> CEDAW makes clear that discrimination must be done away with at all levels of human life and that only truly substantive equality will suffice. Article 5(a) of CEDAW most compellingly confronts the dilemma of cultural justification of inequality, providing:

States Parties shall take all appropriate measures:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination

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<sup>5</sup> See, e.g., RENÉ E. SPRAGGINS, U.S. CENSUS BUREAU, WOMEN AND MEN IN THE UNITED STATES: MARCH 2002 4 (2003) ("4.4 percent of women, compared with 2.8 percent of men, reported earnings of less than \$10,000. . . . only 5.5 percent of women reported earnings of \$75,000 or more in 2001, compared with 15.8 percent of men.").

<sup>6</sup> CTR. FOR AM. WOMEN AND POL., RUTGERS UNIV., WOMEN IN ELECTIVE OFFICE: 2008 1 (2008) (stating women hold sixteen of the one hundred seats in the Senate and seventy-one of the four hundred and thirty-five seats in the House of Representatives); *id.* at 2 (2008) (stating twenty-eight states had never had a female governor).

<sup>7</sup> Susan J. Carroll, *Women in State Government: Historical Overview and Current Trends*, in THE BOOK OF THE STATES (2004) reprinted by CTR. FOR AM. WOMEN AND POL., RUTGERS UNIV. 5-6, <http://www.cawp.rutgers.edu/Research/Reports/BookofStates.pdf> (stating that fewer women served in state legislatures in 2004 than 1999: "[a]t a minimum, the leveling off is evidence that increases over time are not inevitable; there is no invisible hand at work to insure that more women will seek and be elected to office with each subsequent election").

<sup>8</sup> UNICEF, THE STATE OF THE WORLD'S CHILDREN 26 (1995).

<sup>9</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L. M. 33 [hereinafter CEDAW].

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.<sup>10</sup>

This article, which is unlike any obligation contained in any other treaty, has surprising “breadth and aspiration.”<sup>11</sup> With it, CEDAW became “the only treaty which explicitly mandates the eradication of harmful cultural practices against women”<sup>12</sup>—hardly an inconsequential achievement. The vague language of article 5(a), however, provides little guidance to states parties and leaves many questions unresolved: What is the role and function of the article? What obligations does the article impose on states parties? And, most importantly, is it an effective foundation for cultural change?

This Article attempts to answer these questions. Because very few scholars writing on CEDAW have analyzed the meaning of article 5(a), generally mentioning 5(a) only in passing or in combination with other articles, if at all, it aspires to fill a void in the scholarship.<sup>13</sup> The Article employs an empirical approach, drawing its conclusions from a review of the entirety of the CEDAW Committee’s jurisprudence. Established to monitor application of the treaty by states parties, the Committee interprets the treaty through its two principal functions: (1) reviewing states’ reports as to the measures taken to implement the treaty and issuing comments thereafter with suggestions for future improvements; and (2) providing general recommendations to

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<sup>10</sup> *Id.* art. 5(a).

<sup>11</sup> HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 179 (2nd ed. 2000); see also Felipe Gómez Isa, *The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women’s Human Rights*, 20 ARIZ. J. INT’L & COMP. L. 291, 301 (2003) (describing article 5 as “[o]ne of the more radical provisions in CEDAW”).

<sup>12</sup> Elene G. Mountis, *Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context*, 15 DICK. J. INT’L L. 113, 117 (1996).

<sup>13</sup> This conclusion is based on extensive research in English language articles as well as searches for French, Italian and Spanish materials. One notable exception is the comprehensive review of article 5(a) written by Professor Rikki Holtmaat at the request of the Dutch government. RIKKI HOLTMAAT, *TOWARDS DIFFERENT LAW AND PUBLIC POLICY: THE SIGNIFICANCE OF ARTICLE 5A CEDAW FOR THE ELIMINATION OF STRUCTURAL GENDER DISCRIMINATION* (2004). She similarly notes the paucity of scholarship commenting on article 5. *Id.* at 64–65.

guide states in proper treaty interpretation.<sup>14</sup> The Committee's concluding comments and general recommendations provide compelling evidence of the meaning of article 5(a). Although this discussion draws on a wide array of concluding comments, the primary focus will be those relating to Western countries, both because they present the context with which the author is most familiar and because inequality in such societies primarily results from entrenched stereotypes and cultural patterns.

Section 1 begins by looking to the drafting history, or *travaux préparatoires*, of article 5(a) to determine whether states involved in the Convention's drafting expressed the purpose of the article or provided guidance as to the kind of obligations it imposes. As the *travaux* are inconclusive, Section 2 turns to the consideration of article 5(a)'s placement within the treaty and subsequent practice by the CEDAW Committee. It argues that, given the text of the treaty and the CEDAW Committee's interpretation, the article is best understood as acting both as an interpretive tool, against which compliance with substantive articles can be measured, and as a substance-provider, under which the Committee's jurisprudence can be expanded. Section 2.1 demonstrates that the placement of the article within the treaty framework as well as the subsequent practice support the view of 5(a) as an interpretive provision. The Committee and state practice, it shows, have ascribed meaning to negative cultural patterns and stereotypes over time and have linked them to other sector-specific provisions of CEDAW. Section 2.2, in turn, explains that 5(a) has independent substantive meaning as well and demonstrates that the Committee has explicitly used 5(a) to create wider substantive obligations under the Convention.

Section 3 argues that the obligations of states parties under 5(a) in the Committee's jurisprudence have evolved over time. It is submitted that the Committee takes a pragmatic view toward cultural change, demanding more robust measures of those countries that have achieved legal equality and reduced more observable negative practices. Thus, in recent years, it has called for higher standards and deeper scrutiny in Western states in an attempt to root out negative stereotypes or patterns underlying, or

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<sup>14</sup> CEDAW, *supra* note 9, art. 18. Under the Optional Protocol, the Committee now has additional responsibilities, which will be discussed in greater detail below. Optional Protocol to CEDAW, G.A. Res. 54/4, U.N. Doc. A/RES/54/4 (Oct. 15, 1999).

enforced by, seemingly neutral laws and policies. Finally, Section 4 argues that, in spite of the limits inherent in human rights treaties, the CEDAW Committee's evolutionary approach to interpretation will increasingly raise standards of what is acceptable under article 5 and will provide more substantial guidance to states.

#### 1. THE DRAFTING OF CEDAW ARTICLE 5(A)

Nearly thirty years ago, the United Nations General Assembly unanimously adopted CEDAW.<sup>15</sup> With CEDAW, states committed to the goal of eliminating inequality both in law and in fact and acknowledged, for the first time, that non-discrimination norms contained in other treaties had done little to improve women's status worldwide.<sup>16</sup> At long last, the fact that a woman's cultural and social setting constitutes the key determinant of her enjoyment of human rights and dignity found recognition.

Since CEDAW's adoption, much has been accomplished.<sup>17</sup> Virtually all states (185) are now parties to the Convention,<sup>18</sup> making it the second-most ratified human rights treaty, and many have made great progress toward gender equality.<sup>19</sup> Today in many countries, and virtually every developed country, women's equality is legally guaranteed, discrimination illegal and

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<sup>15</sup> CEDAW, *supra* note 9.

<sup>16</sup> For these reasons, CEDAW is one of the most comprehensive international charters of human rights. Dame Silvia Cartwright, Gov.-Gen. of N.Z., Address at CEDAW Twenty-Fifth Anniversary of Its Adoption by the General Assembly of the United Nations 1 (Oct. 13, 2004).

<sup>17</sup> CEDAW came into force within two years of its adoption, faster than any prior treaty. Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 643 (1990). Adopted after CEDAW, the Convention on the Rights of the Child came into force within an even shorter period of time. See Jonathan Todres, *Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and Its Early Case Law*, 30 COLUM. HUM. RTS. L. REV. 159, 166 (1998).

<sup>18</sup> Division for the Advancement of Women [DAW], Convention on the Elimination of all forms of Discrimination Against Women States Parties, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Nov. 23, 2008).

<sup>19</sup> "Since the Convention's adoption, there has been significant progress in the recognition and implementation of the human rights of women. The legal framework for equality has been strengthened in many countries, ensuring that *de jure* equality for women is now better established." CEDAW COMM., STATEMENT TO COMMEMORATE THE TWENTY-FIFTH ANNIVERSARY OF THE ADOPTION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 1 (Oct. 13, 2004).

harassment forbidden.<sup>20</sup> Still, none has realized substantive equality.<sup>21</sup>

The drafters of CEDAW were not blind to the fact that culture stands in the way of women's full equality. With the text of CEDAW, they made plain that states parties were under an obligation to address negative impacts of certain cultural practices on women's enjoyment of their rights.<sup>22</sup> Article 5(a) in particular imposed a specific obligation to "modify the social and cultural patterns of conduct of men and women." The question remains: what does this mean in practice? What patterns did the drafters intend to target through the language in article 5(a)?

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<sup>20</sup> But see Dorota Gierycz, *Human Rights of Women at the Fiftieth Anniversary of the United Nations*, in *THE HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES* 30, 33 (Wolfgang Benedek et al. eds., 2002) ("The *de jure* situation at the national level in some countries and the *de facto* situation in all countries has been and remains one of discrimination compared to men."). *De jure* equality, of course, does not exist in the United States (contrary to the public's general assumption that it does). The United States Congress has refused to pass the Equal Rights Amendment that would create equality for women under the law, and no further progress has been made to secure equal rights under the law. See generally Ann Elizabeth Mayer, *Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution be an Obstacle to Human Rights?*, 23 *HASTINGS CONST. L.Q.* 727 (1996) (providing examples of legal inequality in the United States and how the United States would be required to amend laws under CEDAW). Furthermore, the Supreme Court of the United States has refused to take gender discrimination as seriously as it does racial discrimination. See, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (establishing intermediate, rather than strict scrutiny standard for gender discrimination).

<sup>21</sup> The distinction between formal and substantive equality is important to recall:

Formal equality rests on the notion that likes "should be treated alike" and requires that men and women be treated the same to the extent that they are similarly situated. . . . In contrast, substantive equality considers the effects of state action upon women, recognizing that women are often differently situated from men for a number of reasons, including past discrimination or disadvantage, and that such differences may justify differential treatment.

Valorie K. Vojdik, *Conceptualizing Intimate Violence and Gender Equality: A Comparative Approach*, 31 *FORDHAM INT'L L.J.* 487, 500-01 (2008).

<sup>22</sup> "Article 5 recognizes that, even if women's legal equality is guaranteed and special measures are taken to promote their *de facto* equality, another level of change is necessary for women's true equality. States should strive to remove the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the realization of women's full rights." Office of the U.N. High Comm'r for Human Rights [OHCHR], *Fact Sheet No. 22, Discrimination Against Women: The Convention and the Committee 5* (1993).

The Vienna Convention on the Law of Treaties ( “Vienna Convention”) sets forth the general rules of treaty interpretation that may aid in deciphering 5(a)’s meaning.<sup>23</sup> Articles 31 and 32, in particular, are considered the authoritative sources of treaty interpretation. Article 31(1) establishes the guiding principle that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>24</sup> The principles of treaty interpretation “have at their root the more general principle of effectiveness,” a presumption that states parties intend treaties to be effective.<sup>25</sup> Because CEDAW has as its object and purpose the substantive equality of women worldwide, any interpretation must therefore “give [the] treaty the fullest weight and effect consistent with its language and text.”<sup>26</sup>

Under the Vienna Convention, *travaux préparatoires* provide an additional source to inform the interpretation of treaty articles.<sup>27</sup> They can also clarify states parties’ understanding of the purpose and object of the treaty. This is essential as the foundation of international law is states’ consent to obligations.<sup>28</sup> The *travaux préparatoires*, accordingly, present a logical starting point from which to evaluate article 5(a)’s meaning because, if the drafters of CEDAW clearly expressed the intended role of 5(a) and obligations of states, our inquiry might end here. As we shall see, however, the *travaux* reveal little of what states intended article 5(a) to accomplish and will require us to turn to the treaty’s context and subsequent practice in the next Section.

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<sup>23</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

<sup>24</sup> *Id.* art. 31(1). Because it entered into force after CEDAW, the Vienna Convention does not apply as such to the interpretation of CEDAW, but articles 31 and 32 are generally considered to be customary international law binding on all states. See Andrew Byrnes, *The Convention on the Elimination of All Forms of Discrimination Against Women*, in HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES, *supra* note 20, at 119, 122.

<sup>25</sup> Cook, *supra* note 17, at 662.

<sup>26</sup> *Id.*

<sup>27</sup> Vienna Convention, *supra* note 23, art. 32.

<sup>28</sup> The preamble to the Vienna Convention notes, “that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized.” *Id.* pmb1.

Born of the Declaration on the Elimination of Discrimination against Women (DEDAW),<sup>29</sup> CEDAW took many years to draft and was hotly debated.<sup>30</sup> The drafting of article 5, specifically, spanned six years from 1974 to 1979.<sup>31</sup> Initial drafts of article 5(a) relied on the terms used in article 3 of DEDAW,<sup>32</sup> which stated that “[a]ll appropriate measures shall be taken to educate public opinion and to direct national aspirations 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>33</sup> They consequently limited obligations under the article to “the education of public opinion” and expressed the elimination of discriminatory practices in aspirational terms.<sup>34</sup> The Philippines’ draft text, for example, provided, in part:

States Parties undertake to adopt immediate, effective appropriate measures, particularly in the field of teaching, education, culture and information, with a view to educating public opinion and to directing national aspirations 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>35</sup>

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<sup>29</sup> Declaration on the Elimination of Discrimination Against Women [DEDAW], G.A. Res. 22/2263, U.N. GAOR, 22nd Sess., U.N. Doc. A/RES/22/2263 (Nov. 7, 1967) [hereinafter DEDAW].

<sup>30</sup> In contrast to the Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, which was adopted within two years of the declaration on racial discrimination, CEDAW was adopted thirteen years after DEDAW. Laura Reanda, *The Commission on the Status of Women*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 265, 286 (Philip Alston ed., 1992). The deliberations of the Working Group of the Whole over the draft text were “long and painful.” Roberta Jacobson, *The Committee on the Elimination of Discrimination Against Women*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL*, *supra*, at 444, 446.

<sup>31</sup> LARS ADAM REHOF, *GUIDE TO THE TRAVAUX PRÉPARATOIRES OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 77-78* (1993).

<sup>32</sup> DEDAW, *supra* note 29, art. 3.

<sup>33</sup> *Id.*

<sup>34</sup> CEDAW, *supra* note 9, art. 5(a).

<sup>35</sup> REHOF, *supra* note 31, at 78. The USSR similarly proposed a draft focusing on “public opinion.” The USSR draft stated: “States Parties shall adopt all necessary measures with a view to preparing public opinion for the complete eradication of prejudices, customs and all other practices based on the concept of inferiority of women and for recognition of motherhood as a social function.” *Id.* at 79.

Much less strongly worded than the text adopted, this version would have limited states' obligations to educational and media reform. In the second paragraph, it continued: "Any advocacy of hatred for the feminine sex that constitutes incitement to discrimination against women shall be prohibited by law."<sup>36</sup> In response to the Philippine proposal, states participating in drafting expressed no opinion as to the first paragraph. Rather, they objected to the second paragraph's potential to restrict freedom of expression and, therefore, focused their comments on it and ultimately chose not to adopt it.<sup>37</sup>

Upon rejection of the Philippines' text, Mexico's more strongly worded draft (which was essentially the version adopted) was opened for discussion. In spite of its strong language, debate, aside from further discussions of freedom of expression, was minimal. Only Sierra Leone commented that "customary practices would have to be carefully studied to ascertain whether in fact they were based on the idea of inferiority of women, and noted that some customary functions by women were not based on inferiority of one of the sexes."<sup>38</sup> The present text of article 5(a) was then adopted by consensus.

As Sierra Leone's comment and the text itself suggests, article 5(a) requires inquiry into customary practices and an obligation, not merely to "educate public opinion,"<sup>39</sup> as reflected in 5(b), but also to modify customs based on the inferiority of women.<sup>40</sup> This obligation to change culture, rather than just law, represents a departure from other human rights treaties, none of which have a similar provision.<sup>41</sup> In light of the sweeping nature of this

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<sup>36</sup> *Id.* at 78.

<sup>37</sup> *Id.* at 78-80.

<sup>38</sup> *Id.* at 80.

<sup>39</sup> DEDAW, *supra* note 29, art. 3.

<sup>40</sup> Article 5(b) requires that states take appropriate measures "[t]o 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." CEDAW, *supra* note 9, art. 5(b).

<sup>41</sup> STEINER & ALSTON, *supra* note 11, at 179 (noting that article 2 of the Racial Discrimination Convention "comes close"). Theodor Meron expresses concern that the provision might intrude on rights of ethnic or religious groups because it does not "limit[] state action to educational measures." THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS 67 (1986).

provision, the lack of debate over or objections to the provision is unexpected. In sharp contrast, article 16, which is like article 5 in that it requires that private, traditional practices be changed “to eliminate discrimination against women in all matters relating to marriage and family relations,” elicited extensive debate and vociferous objections.<sup>42</sup> The reservation history confirms that states ratifying the Convention overlooked 5(a)’s similar potential. Although approximately twenty states made reservations based on religious grounds, they reserved primarily under article 16; only four states entered reservations to article 5(a).<sup>43</sup>

Ultimately, the *travaux préparatoires* only demonstrate that the present text of 5(a) was adopted over less strongly worded drafts, which would have explicitly limited the article’s scope to media and education campaigns. They give very little indication of the drafters’ intent with regard to the article’s meaning.

Thus, we must turn to the language of the treaty, specifically the placement of article 5(a) in the treaty, and the practice of states parties and the CEDAW Committee in order to determine how 5(a) has been interpreted since its entry into force.

## 2. THE MEANING OF ARTICLE 5(A): INTERPRETIVE TOOL AND SUBSTANCE-GIVER

The placement of article 5(a)’s text within CEDAW’s framework together with the practice of states and the CEDAW Committee establish that article 5(a) serves both as an interpretive tool and as a substantive provision. Although the plain language of the article provides only minimal guidance, it must be read in light of the object and purpose of CEDAW, that is, to eliminate discrimination in all fields and ensure the substantive equality of women. The placement of the article and the subsequent practice of states and the Committee represent the “context” of the treaty, which the Vienna Convention mandates we examine.

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<sup>42</sup> REHOF, *supra* note 31, at 168–86.

<sup>43</sup> India, Niger, Malaysia, and the Cook Islands originally entered reservations. The Cook Islands have since withdrawn the reservation. See CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Cook Islands*, U.N. Doc. CEDAW/C/COK/CO/1, para.5 (Aug. 10, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/English/CONCLUDING\\_COMMENTS\\_ENGLISH/Cook%20Islands/Cook%20Islands%20-%20CO-1.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/English/CONCLUDING_COMMENTS_ENGLISH/Cook%20Islands/Cook%20Islands%20-%20CO-1.pdf).

The Committee's comments and general recommendations, as well as states parties' reports, operate as "subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."<sup>44</sup> Under article 18 of CEDAW, states are obligated to submit "a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions" of the convention within a year of CEDAW's entry into force in the state, and every four years thereafter.<sup>45</sup> Consideration of reports is a multi-step process: the Committee reads the report, submits written questions to the national delegation, receives their written responses, and then, at the next meeting of the Committee six months later, holds a hearing and asks further questions of the delegation.<sup>46</sup> The process of state reporting represents the rare opportunity to understand the legal, policy, and other measures taken in countries across the world. The documents generated in the course of reporting shed light on 5(a)'s role as states parties and the Committee comprehend it.

A review of these documents makes manifest that 5(a)'s first role is as an interpretive tool, that is, as a standard by which to measure compliance with the more substantive articles of CEDAW. Understood as the determining criterion of CEDAW compliance, article 5(a) requires states to look beyond legislative to cultural change and so, more than any other article, is the guarantor of substantive equality for women. This does not, it should be emphasized, sap it of substantive meaning.

Indeed, in its second role, the article imposes substantive obligations on states and prevents discrimination or inequality of women in "areas not explicitly covered by the other provisions."<sup>47</sup>

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<sup>44</sup> Vienna Convention, *supra* note 23, art. 31(3)(b).

<sup>45</sup> CEDAW, *supra* note 9, art. 18(1).

<sup>46</sup> For a detailed discussion of the process, see Sally Engle Merry, *Constructing a Global Law-Violence against Women and the Human Rights System*, 28 LAW & SOC. INQUIRY 941, 954-58 (2003).

<sup>47</sup> Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 BROOK. J. INT'L L. 679, 732 (1996). Article 5(a) can be compared to the best interests of the child standard in the Convention on the Rights of the Child ("CRC"), which, along with several other articles, is considered "the guiding spirit" and "determining criterion" of compliance with the treaty as a whole. Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOM. L. REV. 1, 19 (1993) (noting that the "best interests of the child" is "the standard with which to measure State Party compliance with all of the Convention's articles"); Beverly C. Edmonds, *The*

In this way, the article provides a window for the Committee to identify negative cultural patterns and stereotypes as their detrimental impact on CEDAW's more sector-specific articles becomes evident, and to develop state obligations to eradicate them.

In the following discussion, Section 2.1 submits that the context of the article in the treaty and subsequent practice in the form of the Committee's jurisprudence prove that 5(a) functions as a guiding framework for the entirety of the Convention. It also provides examples of negative cultural patterns and stereotypes that the Committee has linked to states' continued failure to attain equality in sector-specific areas. Section 2.2 then argues that 5(a) has another more recently developed role as a locus for the evolution of the treaty and the identification of ever more effective substantive obligations. This is apparent in the Committee's jurisprudence and state practice.

*2.1. Article 5(a) as an Interpretive Tool: Identifying Negative Patterns and Stereotypes Impeding Other Rights*

Both article 5's placement within the treaty, separated from the more specific articles of CEDAW, and the Committee's practice of issuing general recommendations and concluding comments, contribute to the understanding of 5(a) as an interpretive tool.

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*Convention on the Rights of the Child: A Point of Departure*, 56 SOCIAL EDUC. 205 (1992) (asserting that, combined with other articles, CRC Article 3 constitutes a guiding principle of the convention); Margaret M. Coady & C.A.J. Coady, *'There Ought to be A Law Against It': Reflections on Child Abuse, Morality and Law*, in CHILDREN, RIGHTS, AND THE LAW 126 (Philip Alston et al. eds., 1992) (discussing weaknesses in the CRC).

While identifying cultural patterns and stereotypes may admittedly be difficult at the edges, such difficulties do not make it impossible or make article 5 powerless; indeed, identifying such practices should be no more difficult than the determination of "best interests" of a child under the CRC. Lung-chu Chen, *The United Nations Convention on the Rights of the Child: A Policy-Oriented Overview*, 7 N.Y.L. SCH. J. HUM. RTS. 16, 18-19 (1989) (explaining some of the difficulties in determining application of "best interests" standard); Donna Gomien, *Whose Right (and Whose Duty) Is It? An Analysis of the Substance and Implementation of the Convention on the Rights of the Child*, 7 N.Y.L. SCH. J. HUM. RTS. 161, 165 (1989) (calling best interests a "nebulous standard"). See generally THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS (Philip Alston ed., 1994) (discussing the importance of cultural values in interpreting human rights norms).

2.1.1. *Article 5(a) in the Context of the Treaty Framework and CEDAW's Practice*

Most scholars divide CEDAW's articles into general principled articles from 1 to 5 and specific obligatory articles from 6 to 16.<sup>48</sup> Each of the articles from 6 to 16 focuses on identifiable and limited subject matter. They, therefore, "constitute a more detailed agenda for action towards equality of women which covers practically all aspects of human rights" than do articles 1 to 5.<sup>49</sup> They include, among others, articles targeting equality in representation in international institutions, education, employment, and healthcare.<sup>50</sup> Article 9, for instance, requires states to "ensure" that "neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband."<sup>51</sup> A specific international response to widespread then-extant gender discrimination in nationality laws, this article imposed a narrow, detailed, and comprehensible obligation upon states.

By contrast, articles 1 through 4 have broad and sweeping language, not defining the states parties' obligations with specificity, but establishing principles for the implementation of other articles. Article 1 defines discrimination against women as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose 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 human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>52</sup>

Under article 2, states parties are to "take all appropriate measures, including legislation, to modify or abolish" practices

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<sup>48</sup> Andrew Byrnes, for example, describes articles 1 through 5 (he includes 6 as well) as "contain[ing] definitions and set[ting] out obligations of a general nature to eliminate discrimination." Byrnes, *supra* note 24, at 120.

<sup>49</sup> Gierycz, *supra* note 20, at 34.

<sup>50</sup> CEDAW, *supra* note 9, arts. 8-12.

<sup>51</sup> *Id.* art. 9(1).

<sup>52</sup> *Id.* art. 1.

and customs that discriminate against women and to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”<sup>53</sup> Listing states’ obligations as to each article, article 2 in particular constitutes the standard against which all obligations under CEDAW shall be measured.<sup>54</sup> Under article 3, the states agree to “ensure the full development and advancement of women.”<sup>55</sup> Article 4 refers to temporary special measures, such as *inter alia* quotas, affirmative action, or incentive programs, to attain “de facto equality between men and women.”<sup>56</sup>

The first broadly phrased articles of CEDAW, which include article 5(a), constitute a guiding framework through which to judge a state’s compliance with the more detailed, focused provisions of the treaty. Rebecca Cook, for example, argues that articles 2(f) and 5(a) obligate states parties to work on traditional

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<sup>53</sup> *Id.* art. 2.

<sup>54</sup> Article 2 states:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

CEDAW, *supra* note 9, art. 2. Subsection (f) is considered most relevant to article 5.

<sup>55</sup> *Id.* art. 3.

<sup>56</sup> *Id.* art. 4(1).

practices that fall under other substantive areas, such as marriage or political representation.<sup>57</sup>

Significantly, the CEDAW Committee has explicitly taken the position that Article 5(a) functions as an interpretive tool. In its most recent General Recommendation, the Committee described Articles 1 to 5 and 24 as “the general interpretative framework for all of the Convention’s substantive articles.”<sup>58</sup> In order to comply with CEDAW, then, a state must endeavor to identify and eradicate negative cultural patterns and stereotyping in all the areas covered by more specific articles, from politics to the work force to rural society, to name a few.

Some might assume that, because these first provisions inform the more specific articles, they are devoid of substance. Based on her review of the Dutch literature, Holtmaat concludes that some “authors do not see Article 5a CEDAW as a provision that stands on its own; rather it has ‘supportive’ significance in the sense that it serves as a provision that helps to fill in the content of Article 11.”<sup>59</sup> The placement of Article 5 within the treaty framework however, it is submitted, demonstrates that it is somewhat of a hybrid, connecting the broad provisions with the more specific ones. It, like articles 1 through 4, has a role as a yardstick against which overall compliance can be measured. But, like articles 6 through 16, it also performs a significant substance-providing role. Both roles have a prominent place in the Committee’s jurisprudence. By emphasizing the centrality of culture to CEDAW as a whole, article 5(a) supplements rather than duplicates article 2.

2.1.2. *Interpreting the Failure to Achieve Compliance with CEDAW’s Other Articles Through the Lens of Article 5(a)*

With regard to Article 5(a)’s interpretive role, the Committee has connected specific social patterns and stereotypes under article 5(a) to inequality in sector areas covered by other articles. In her study, Holtmaat found that that “the Committee [does] not always

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<sup>57</sup> See generally Rebecca J. Cook, *State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 228, 239–40 (Rebecca J. Cook ed., 1994).

<sup>58</sup> CEDAW Comm., *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures*, ¶ 6 (2004).

<sup>59</sup> HOLTMAAT, *supra* note 13, at 59.

discuss[] Article 5a CEDAW as a free-standing obligation, but is increasingly making a connection between this provision and specific obligations under the Convention in relation to labour, health, political participation, and other relevant issues.”<sup>60</sup> The patterns identified by the Committee, while relevant to all countries, become particularly salient in Western countries where legal inequality can no longer explain patterns of unequal representation in government, lower wages, and ghettoization of women’s labor.

2.1.2.1. *Presumed to Be “Naturally” Less Ambitious and Drawn to Motherhood*

The CEDAW Committee often focuses on the linkage between employment discrimination and negative stereotypes and cultural patterns. The Committee has noted that stereotypical cultural attitudes are “reflected in the low proportion of women in top leadership positions in the public sector, including in academia,”<sup>61</sup> women’s lower pay and income, and a “lack of equality of opportunity for women in the labour market.”<sup>62</sup> Women’s average wages tend to be lower in part because those occupations traditionally considered male tend to pay more.<sup>63</sup> Ghettoization of women’s labor does not fully explain their wage disparity, however. Even when women have broken into high-paid positions, they continue to earn less than men in similar, or the same, positions. In the United States, for example, women earn approximately seventy-six cents to every dollar earned by their male counterparts.<sup>64</sup> Studies have traced this continued difference

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<sup>60</sup> *Id.* at 45.

<sup>61</sup> U.N. GAOR, 58th Sess., Supp. No. 38, ¶ 411 U.N. Doc. A/58/38 (Mar. 13, 2003) (providing a record of the 28th CEDAW Committee report that discussed the fifth and sixth periodic reports of Norway).

<sup>62</sup> U.N. GAOR, 55th Sess., Supp. No. 38, ¶ 408 U.N. Doc. A/55/38 (Feb. 4, 2000) (providing a record of the 446th and 447th CEDAW Committee meeting that discusses the third periodic report of Luxembourg).

<sup>63</sup> See generally Lopez-Claros & Zahidi, *supra* note 2, at 6–8 (evaluating and ranking states based on five factors: economic participation, economic opportunity, political empowerment, educational attainment, and health and well-being).

<sup>64</sup> U.N. DEV. FUND FOR WOMEN [UNIFEM], PROGRESS OF THE WORLD’S WOMEN 2000 92–93 (2000) (showing little difference for women’s percentage of men’s wages when contrasting income from industry and services jobs and income from manufacturing jobs, and also stating that women in the United States generally make 76.3% of men’s wages); see also Spraggins, *supra* note 5, at 4 (showing in the

in earnings to persistent gender discrimination.<sup>65</sup> For example, according to a U.S. General Accounting Office study, only two-thirds of the wage gap between men and women can be attributed to differences in human capital, industry and occupation, work experience, demographics, and other “characteristics.”<sup>66</sup> One could logically infer that, at minimum, the one-third remaining difference in wage gap is due to discrimination, particularly because, as the GAO admits, the model its study used failed to account for discriminatory barriers in the labor market.<sup>67</sup>

The Committee has also pressed Western states on the effect demands made on women at home have on their enjoyment of human rights. It has emphasized that the portrayal of men as heads of households and breadwinners and women as primarily mothers and caregivers represents stereotypes that are “reflected in women’s disadvantaged position in a number of areas, including in the labour market and in access to decision-making positions, and affect women’s choices in their studies and professions.”<sup>68</sup> With regard to Italy, for example, the Committee called attention to patriarchal attitudes about the roles and responsibilities of women in society and the family and identified them as “a root cause of women’s disadvantaged position in a number of areas, including in the labour market and in political and public life.”<sup>69</sup> As CEDAW recognizes, the work world relies on men going to work and women assuming the primary role in the household, often to the detriment of women’s careers, family lives, or both.<sup>70</sup> For example,

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United States that women are more likely to be poor, and men are more likely to be wealthy).

<sup>65</sup> See generally Lopez-Claros & Zahidi, *supra* note 2, at 11 (giving United States the low rank of 46 for economic opportunity, which “appears to corroborate the much discussed ‘glass ceiling’”).

<sup>66</sup> U.S. GEN. ACCOUNTING OFFICE, WOMEN’S EARNINGS: WORK PATTERNS PARTIALLY EXPLAIN DIFFERENCE BETWEEN MEN AND WOMEN’S PAY 29, 44–45 (2003).

<sup>67</sup> *Id.* at 45.

<sup>68</sup> See, e.g., CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Liechtenstein*, ¶ 21, U.N. Doc. CEDAW/C/LIE/CO/3 (Aug. 10, 2007) (discussing the second and third periodic reports of Liechtenstein).

<sup>69</sup> CEDAW Comm., *Concluding Comments: Italy*, ¶ 25, U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (discussing Italy’s fourth and fifth periodic reports).

<sup>70</sup> See, e.g., CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Austria*, ¶ 21, U.N. Doc. CEDAW/C/AUT/CO/6 (Feb. 2, 2007) (“[T]he Committee remains concerned about the challenges of women continue to face in reconciling family and

even when employed fulltime, American women spend many more hours doing housework and caring for children than do men.<sup>71</sup>

The Committee's comments reflect awareness that, even today, women's underrepresentation in highly competitive and prominent professional careers is often touted as "innate" or "natural," based on women's supposed lower capacity for "abstract" thought or preference for motherhood.<sup>72</sup> Western cultural and religious traditions assume that, for men, natural and normal behavior involves "tenacity, aggression, curiosity, ambition, responsibility and competition," and that, for women, normal behavior is "passive," "affectionate, emotional, obedient

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professional life and responsibilities."); CEDAW Comm., *Sixth Periodic Report of States Parties: Hungary*, art.5(b), U.N. Doc CEDAW/C/HUN/6 (June 15, 2006) ("Sharing of work within the family is very conservative both in actual terms and that of attitudes. According to research on time balance most of the housework is performed by women even in families where both wife and husband have a job.").

<sup>71</sup> Kata Kertesz, *Working Women Do the Chores, Too*, CBS NEWS, Sept. 15, 2004, available at <http://www.cbsnews.com/stories/2004/09/15/national/main643734.shtml> (noting that a U.S. Department of Labor study shows that working women spend more time on housework and childcare than do working men).

<sup>72</sup> See, e.g., Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 626 (1991) (discussing traditional social psychology's perspective on the "natural" and "normal" behavior differences in men and women). With regards to female scientists, the President of Harvard University, Lawrence Summers infamously said, "in the special case of science and engineering, there are issues of intrinsic aptitude, and particularly of the variability of aptitude, and that those considerations are reinforced by what are in fact lesser factors involving socialization and continuing discrimination." Lawrence H. Summers, Pres., Harv. U., Address at NBER Conference on Diversifying the Science & Engineering Workforce, (January 14, 2005), available at <http://www.president.harvard.edu/speeches/2005/nber.html>. As conference attendees noted, the lack of women in the sciences is *not* universal, even in the Western world and, hence, likely represents a social construct rather than biological fact. *Id.* (recording one attendee who questioned whether the United States is "keeping up" with the rest of the world and giving the example of France where there are "very high powered women in science in top positions" who presumably have the "same nature, same hormones, same ambitions" as American women). Another example of taking social patterns as biological destiny is Charles Murray, who states that "the most obvious reason why men and women differ at the highest levels of accomplishment: men take more risks, are more competitive, and more aggressive than women." Charles Murray, *The Inequality Taboo*, COMMENTARY, Sept. 2005 at 4, available at [http://www.aei.org/publications/pubID.23075,filter.social/pub\\_detail.asp](http://www.aei.org/publications/pubID.23075,filter.social/pub_detail.asp). He further argues that women are less capable of "abstract" thought and, for that reason, not found among top philosophers or mathematicians. *Id.*

and responsive to approval.”<sup>73</sup> Within CEDAW’s framework, “[p]rejudices’ and ‘stereotyped roles’ work to ‘naturalize’ the subordination and exclusion of women in two distinct ways: by unwarrantedly attributing to women disqualifying traits, and by unwarrantedly characterizing stereotypically male traits as qualifications.”<sup>74</sup> As a result, certain careers (fireman, policeman, etc.) remain virtually closed to women largely because the characteristics associated with success in those careers are considered “manly” and women ipso facto are assumed to be less able. Even in professions that have experienced an influx of women in recent decades, women are prevented from advancing to top positions.<sup>75</sup> In the law, for example, having created and maintained a system that favors white men, men expect women to advance to higher ranks once granted access to lower level jobs—despite the fact that the qualities required to be an effective lawyer, such as litigiousness, strength, and stubbornness, are qualities that our culture demeans in women.<sup>76</sup> Accordingly, the Committee has

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<sup>73</sup> Charlesworth et al., *supra* note 72, at 626–27; *see also*, Hilary Charlesworth, *What are “Women’s International Human Rights”?*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 58, 67 (Rebecca J. Cook ed., 1994) (“[M]any of the relationships of subordination sanctioned by the law are so deeply engrained that they appear quite natural. It involves looking ‘for that which we have been trained not to see . . . [identifying] the invisible.’” (citation omitted)).

<sup>74</sup> Roth, *supra* note 1, at 215. *See also* Rebecca J. Cook & Susannah Howard, *Accommodating Women’s Differences under the Women’s Anti-Discrimination Convention*, 56 EMORY L.J. 1039, 1043–44 (2007) (defining discriminatory stereotypes and stating “[a] state’s decision to deny benefits to or impose burdens on women in reliance on gender stereotypes amounts to gender discrimination.”).

<sup>75</sup> The numbers show that even once women attain managerial positions, they continue to earn less than men: “An IWPR study (1995b) shows that women managers are unlikely to be among top earners in managerial positions. If women had equal access to top-earning jobs, 10 percent of women managers would be among the top 10 percent of earners for all managers; however, only 1 percent of women managers have earnings in the top 10 percent. In fact, only 6 percent of women managers have earnings in the top 20 percent (for all managers). Similarly, a Catalyst study (2002) showed that only 5.2 percent (just 118) of the highest-earning high-level executives in Fortune 500 companies were women in 2002.” AMY CAIAZZA ET AL., INST. FOR WOMEN’S POLICY RESEARCH [IWPR], *THE STATUS OF WOMEN IN THE STATES—WOMEN’S ECONOMIC STATUS IN THE STATES: WIDE DISPARITIES BY RACE, ETHNICITY, AND REGION* 14 (2004).

<sup>76</sup> Some feminists critique law more generally. *See, e.g.*, Charlesworth, *supra* note 73, at 65 (“The language and imagery of the law underscore its maleness: it lays claim to rationality, objectivity, and abstraction, characteristics traditionally associated with men, and is defined in contrast to emotion, subjectivity, and contextualized thinking, the province of women.”).

said, "a policy of gender equality in compliance with the Convention will require the reconceptualization of the role of women in society from that of mother and wife, exclusively responsible for children and the family, to that of individual person and actor in society."<sup>77</sup>

2.1.2.2. *Perceived to Be Unfit for Politics or Other Male-Dominated Fields*

The CEDAW Committee has also observed a direct connection between stereotypes and women's low rate of representation in decisionmaking bodies. In its words, "factors impeding women's participation in these areas include stereotypical attitudes, women's disproportionate share of household and family responsibilities, as well as structural and cultural barriers . . . [that] reinforce the idea that politics is a male sphere."<sup>78</sup> In the United States where strength and authority are associated with traditionally male characteristics, one in ten voters say they would never vote for a woman for president.<sup>79</sup> Widely held negative stereotypes about the proper roles and capabilities of women also are at least partially to blame for women's dismal underrepresentation in public life.

Media reporting on female candidates explicitly reinforces these gender stereotypes and biases to the disadvantage of such candidates.<sup>80</sup> Studies have found that the press pays considerably more attention to appearance and personality traits than issues

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<sup>77</sup> U.N. GAOR, 57th Sess., Supp. No. 38, ¶ 148, U.N. Doc. A/57/38 (May 2, 2002) (providing a record of the 26th CEDAW Committee meeting that discusses the second and third periodic reports of Trinidad and Tobago); *id.*, ¶ 48 (providing a record of the 27th CEDAW Committee meeting that discusses first and second periodic reports of Suriname and using almost identical phrasing as the Trinidad and Tobago report).

<sup>78</sup> U.N. GAOR, 57th Sess., *supra* note 77, at 27, para. 148 (discussing Trinidad and Tobago).

<sup>79</sup> Timothy Egan, *No Country for Old Men (or Women)*, N.Y. TIMES, Feb. 27, 2008, available at <http://egan.blogs.nytimes.com/2008/02/27/good-country-for-old-men-and-women/>.

<sup>80</sup> The 2004 presidential election was an example of how the language of politics works to marginalize women and was replete with references to physical, brute strength, and "manly" metaphors. For a discussion of the 2000 primary and the media's treatment of candidate Elizabeth Dole, see Caroline Heldman, Susan J. Caroll, and Stephanie Olson, Rutgers Univ., Paper Delivered at Annual Meeting of the American Political Science Association, Gender Differences in Print Media Coverage of Presidential Candidates: Elizabeth Dole's Bid for the Republican Nomination (Aug. 31-Sept. 3, 2000).

when covering female candidates for office as compared to male candidates.<sup>81</sup> Recently, the media's depictions of Hillary Clinton in the United States Democratic Party's primary for the presidential nomination sparked a national debate on the manner in which gender roles and stereotypes hinder female candidates for office. Moreover, in coverage of female heads of state, the media tend to use gendered news frames, such as "first woman," creating the impression among the public that female politicians are anomalies rather than an "integral part of government."<sup>82</sup> Thus, as we shall see below, even running media campaigns, the minimum required by CEDAW Article 5(a), can be valuable to change popular images of women.

### 2.1.2.3. *State Practice in Connecting Stereotypes to Women's Inequality*

In their interactions with the Committee, states have accepted their obligation to consider links between sector-specific articles and gender roles and stereotypes. As the Committee stated in one report, Belgium acknowledged to the Committee that "prejudices and stereotypes . . . tend to cast men and women in distinct roles and . . . frequently place a higher value on the roles and characteristics attributed to men, to the detriment of those attributed to women."<sup>83</sup> In hearings before the Committee, Liechtenstein similarly perceived the "strong connections linking" traditional gender roles with women's inability to reconcile family obligations and employment and their persistent underrepresentation in political and economic decisionmaking.<sup>84</sup>

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<sup>81</sup> Kim Kahn & Edie N. Goldenberg, *Women Candidates in the News: An Examination of Gender Differences in U.S. Senate Campaign Coverage*, 55 PUBLIC OPINION Q. 180, 191-95 (1991); see also KIM KAHN, *THE POLITICAL CONSEQUENCES OF BEING A WOMAN*, ch. 4, 6-8 (1996).

<sup>82</sup> See generally Pippa Norris, *Women Leaders Worldwide: A Splash of Color in the Photo Op*, in *WOMEN, MEDIA, AND POLITICS* (Pippa Norris ed., 1997); MARIA BRADEN, *WOMEN POLITICIANS AND THE MEDIA* (1996).

<sup>83</sup> CEDAW Comm., *Third and Fourth Periodic Report of States Parties: Belgium*, at 27-28, U.N. Doc CEDAW/C/BEL/3-4 (Sept. 29, 1998), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw27/bel3-4.pdf>.

<sup>84</sup> Press Release, U.N. General Assembly, Liechtenstein, in *Presentation to Women's Anti-Discrimination Committee, Reports Need for Further Action Towards Achieving De Facto Equality*, U.N. Doc WOM/1642 (July 26, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1642.doc.htm>.

## 2.2. Article 5(a) as a Substance-Giver: Evolving Norms and State Obligations

While clearly indicating Article 5(a) as an interpretive yardstick, the Committee's practice also proves that 5(a) operates as a substantive provision in its own right. In its concluding comments, the Committee continually gives content to what constitute "stereotyped roles" and "inferiority" under 5(a), which customs and practices perpetuate these problems, and what methods States should use to combat those patterns and stereotypes.<sup>85</sup> The Committee regularly criticizes states for "the prevalence of entrenched adverse customs and traditions."<sup>86</sup> These are not limited to egregious examples such as "early and forced marriage, polygamy, widowhood practices, and levirate,"<sup>87</sup> but also encompass the persistence of negative stereotypes about gender roles that persist in every Western country.<sup>88</sup>

Article 5(a) gives the Committee the flexibility to interpret CEDAW in an evolutionary way, identifying negative patterns and stereotypes as they emerge.<sup>89</sup> The Committee has pinpointed negative stereotypes such as: "traditional roles," depictions of women as subordinate to men, portrayals of women as only suited to the role of wife or mother,<sup>90</sup> stereotyping women as relegated to the home or other historically female employment areas, "the idea of an exclusively male head of household,"<sup>91</sup> "role of [the] man as

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<sup>85</sup> Mona Rishmawi, *The Developing Approaches of the International Commission of Jurists to Women's Human Rights*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 340, 342 (Rebecca J. Cook ed., 1994); see also Donna J. Sullivan, *Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution*, 24 N.Y.U. J. INT'L L. & POL. 795, 815 (1992) (stating that article 5 "requires modification of traditional practices and attitudes which are based on inferiority of women or the notion of stereotyped roles for the . . . two sexes" (emphasis added)).

<sup>86</sup> CEDAW Comm., *Concluding Comments: Gabon*, 32d Sess., para. 30, U.N. Doc. CEDAW/C/GAB/CC/2-5 (Feb. 15, 2005) (discussing several periodic reports of Gabon).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 4-5, paras. 22-23.

<sup>89</sup> Cartwright, *supra* note 16, at 2 ("[A]s knowledge about the advancement of human rights has evolved, the monitoring committee has developed principles and practices relevant to current issues for women, using the solid base of the Convention.").

<sup>90</sup> CEDAW/C/ITA/CC/4-5, *supra* note 69, para. 26 (condemning "the perception of women as . . . primarily responsible for child-rearing").

<sup>91</sup> See, e.g., U.N. GAOR, 56th Sess., Supp. No. 38, part II, para. 79, U.N. Doc. A/56/38 (2001) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N01>

the breadwinner,"<sup>92</sup> and depictions of women as sexual objects rather than individuals.<sup>93</sup>

It has also utilized article 5(a) to generate state obligations not included in CEDAW but nonetheless essential to women's realization of rights. In the context of violence against women, 5(a)'s dual roles are manifest; the Committee both created a substantive obligation under 5(a) and linked the negative cultural pattern of violence against women to the realization of other rights under the Convention.<sup>94</sup> In General Recommendation 19, the Committee employed article 5(a) and 2(f) to identify violence against women as a negative cultural pattern that inhibits women's ability to achieve substantive equality.<sup>95</sup> Using language lifted from article 5(a), the Committee reasoned:

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/534/56/PDF/N0153456.pdf [hereinafter U.N. GAOR, 56th Sess., Supp. No. 38] (discussing Singapore and noting that "[the Committee] expressed concern that the concept of Asian values 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>92</sup> U.N. GAOR, 54th Sess., Supp. No. 38, pt. I, para. 120, U.N. Doc. A/54/38/Rev.1 (Aug. 20, 1999), available at <http://www2.ohchr.org/English/bodies/cedaw/docs/A.54.38.Rev.1.pdf> [hereinafter U.N. GAOR, 54th Sess., Supp. No. 38] (discussing the Committee's concern over the prevalence of patriarchal culture and continuing emphasis roles of traditional gender roles in Kyrgyzstan).

<sup>93</sup> See CEDAW/C/ITA/CC/4-5, *supra* note 69, para. 25 ("The Committee is also deeply concerned about the portrayal of women in the media and in advertising as sex objects and in stereotypical roles."); see also U.N. GAOR, 56th Sess., Supp. No. 38, *supra* note 91, pt. I, para. 304 (discussing Finland and encouraging "a positive change of atmosphere regarding sex phone lines as they run counter to the efforts being made to portray women positively, and not as 'sex objects', in the media").

<sup>94</sup> CEDAW Comm., General recommendations made by the Committee on the Elimination of Discrimination against Women—General Recommendation No. 19, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (last visited Nov. 14, 2008) [hereinafter General Recommendation No. 19] ("[T]he underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.").

<sup>95</sup> In both General Recommendations 12 (on States' including information on violence against women in their reports) and 19 (on violence against women), the Committee used article 5 to give substance to States Parties' other obligations. CEDAW Comm., *General Recommendation No. 12*, U.N. GAOR, 44th Sess., Supp. No. 38, para. 392, U.N. Doc. A/44/38 (Feb. 13, 1990); General Recommendation No. 19, *supra* note 94.

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.<sup>96</sup>

It also referenced other practices that fall under 5(a), reasoning that “[t]hese attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”<sup>97</sup> With this General Recommendation, the Committee made clear that CEDAW requires all states to counter violence against women. Thus, with article 5(a), the Committee set forth a new obligation, essential to women’s ability to enjoy their human rights.

Because article 5(a) affords a locus for the Committee’s development of substantive norms and obligations, as with violence against women, Dutch scholar Liesbeth Lijnzaad calls it a “hat peg provision.”<sup>98</sup> As such, although CEDAW contains no specific provision obliging a State not to discriminate with regard to women’s freedom of expression or freedom from arbitrary detention (to name two examples), article 5(a), together with the more general provisions of CEDAW, may “in effect impose that obligation.”<sup>99</sup> For example, by using the prohibition of discrimination of all kinds under article 2 and interpreting article

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<sup>96</sup> General Recommendation 19, *supra* note 94, para. 11; *see also id.* paras. 22–23 (discussing violence against women in terms of Article 16 (and article 5)).

<sup>97</sup> *Id.* para. 12. The Committee continues to link violence to stereotypes under 5(a). CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Serbia*, para. 19, U.N. Doc. CEDAW/C/SCG/CO/1 (June 11, 2007) [hereinafter *Concluding Comments: Serbia*] (“The Committee is concerned about the persistence of deep-rooted, traditional patriarchal stereotypes regarding the role and responsibilities of women and men in the family and in the wider community, which are major causal factors for violence against women.”).

<sup>98</sup> *See* HOLTMAAT, *supra* note 13, at 63 (quoting Lijnzaad); *see also* Byrnes, *supra* note 24, at 125 (“[S]ome violations of women’s human rights are not covered by a specific article of the Convention, but are nevertheless covered by the Convention as a whole.”).

<sup>99</sup> Byrnes, *supra* note 24, at 125.

5(a) to disallow practices based on women's supposed inability to express reasoned opinions, the Committee could articulate a specific obligation with respect to women's freedom of expression.

Through its focus on negative social patterns such as violence against women, article 5(a) responds to the need to eradicate inequality and maltreatment in both the public and private spheres for the undeniable reason that, as a group, women have always faced discrimination, not only in the public sphere but also in their homes.<sup>100</sup> In reference to article 5(a), the CEDAW Committee made explicit that "discrimination under the Convention is not restricted to action by or on behalf of Governments,"<sup>101</sup> because treating public and private spheres differently impedes women's realization of their rights and violates article 5.<sup>102</sup> As one former member of the CEDAW committee has stated, "[W]ith improving understanding of acts or omissions that have a discriminatory impact on women, there has been an increasing realisation that

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<sup>100</sup> The very terms of the treaty require States parties "[t]o take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." CEDAW, *supra* note 9, art. 2. The public-private distinction has been criticized in theory as well as practice as essentially "privatizing" and leaving unregulated all traditionally female spheres of activity while making "public" and creating rights in areas traditionally occupied by men. See Cook, *supra* note 17, at 668-69 ("More significant to the contrast between the Race Convention and the Women's Convention is that the latter obliges states parties to act to affect the private or civil field of conduct." (citation omitted)). See generally Frances E. Olsen, *International Law: Feminist Critiques of the Public/Private Distinction*, 25 *STUD. IN TRANSNAT'L LEGAL POL'Y* 157 (1993); Sullivan, *supra* note 85, at 838.

As the Committee has commented, "Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior. As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them." CEDAW Comm., *General Recommendation No. 21*, U.N. GAOR, 49th Sess., Supp. No. 38, paras. 11-12, U.N. Doc. A/49/38 (Apr. 12, 1994), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> [hereinafter *General Recommendation No. 21*]

<sup>101</sup> *General Recommendation 19*, *supra* note 94, para. 9. It has also repeatedly recognized that "concept of privacy of family life and the reproductive role of women could be utilized to hide violence against women and reinforce sex-role stereotypes." U.N. GAOR, 52nd Sess., Supp. No. 38, pt. I, para. 109, U.N. Doc. A/52/38/Rev.1 (Aug. 12, 1997) [hereinafter U.N. GAOR, 52nd Sess., Supp. No. 38] (discussing Slovenian government's need to be aware of potential violence hidden by traditional private family life and reproductive roles).

<sup>102</sup> *General Recommendation No. 21*, *supra* note 100, para. 12.

private violations of rights such as domestic violence can and should be punished and prevented by States.”<sup>103</sup> Various United Nations resolutions and international conferences demonstrate a growing consensus among states that culture, the subject-matter of article 5(a), should not limit obligations to respect women’s rights in private and public life.<sup>104</sup>

Another sign that 5(a) has a substantive rather than purely interpretive function lies in the fact that 5(a) has been found to be justiciable.<sup>105</sup> Under its recent Optional Protocol, the CEDAW Committee has already heard several cases brought under article 5 (as well as a number of other articles) and has found one to constitute a violation of 5(a).<sup>106</sup> The justiciability of violations of article 5(a) provides forceful evidence that it is not only interpretive but substantive as well.

In its jurisprudence, the CEDAW Committee’s use of 5(a) both to construe other provisions and to generate substance properly its own has clarified the obligations of states. The next section, Part 3, will examine the evolving obligations of states to counter those patterns and stereotypes determined to have a negative impact on women’s lives.

### 3. OBLIGATIONS OF STATES PARTIES UNDER ARTICLE 5(A)

In its development of the substance of parties’ obligations under article 5(a), the CEDAW Committee has adopted an evolutionary and pragmatic approach—making more stringent

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<sup>103</sup> Cartwright, *supra* note 16, at 3.

<sup>104</sup> Most explicitly, article 4 of the Declaration of the Elimination of Violence against Women obliges states not to invoke custom, religion, or culture to limit their obligations. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, art. 4, U.N. Doc. A/Res/48/104 (Dec. 20, 1993). The Beijing Declaration and Platform for Action similarly requires states to eliminate any harmful aspect of traditional and customary practices. Radhika Coomaraswamy and Lisa M. Kois, *Violence Against Women*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 177, 190 (Kelly D. Askin & Dorean M. Koenig eds., 1999).

<sup>105</sup> The import of the Optional Protocol for article 5(a) will be discussed in further depth in Section 4.

<sup>106</sup> *A.T. v. Hungary*, CEDAW Comm., Comm. No. 2/2003, para. 9.6, U.N. Doc. A/60/38 (Jan. 26, 2005); *see also Yildirim v. Austria*, CEDAW Comm., Comm. No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (Oct. 1, 2007); *Goekce v. Austria*, CEDAW Comm., Comm. No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (Aug. 6, 2007) (both alleging violations of article 5 based on the state’s failure to protect the woman from domestic violence). For a discussion of the Optional Protocol and its lengthy drafting history, *see generally* Isa, *supra* note 11.

demands as it becomes clear that measures taken have not succeeded in creating substantive equality. While its jurisprudence on article 5 is relatively recent, the Committee has expressed a great deal of interest in the article. According to one scholar,

If there is an overarching theme to the Committee's questioning it is probably article 5's obligation to take steps to discourage stereotyped attitudes about the roles of men and women. . . . It has been extremely critical of general policy statements or particular social arrangements which give primacy to motherhood, to the neglect of women's other roles and of men's responsibilities as fathers.<sup>107</sup>

Most importantly, the Committee's questions and concluding comments reflect a realistic idea of what states can do. The Committee does not, for example, require that states where women are legally prohibited from working prioritize changing stereotypes that depict women as housewives. Nor does it insist on deep inspection and eradication of gender stereotypes in states that have yet to make progress toward addressing negative stereotypes in education and the media.

However, regarding states parties that already have implemented good educational and media campaigns, it has suggested that something more than awareness raising is required. Most recently and largely with regard to Western countries, the Committee has begun to demand an even higher level of commitment to eradicating cultural practices and patterns based on negative stereotypes. Gradually, the Committee has expanded article 5(a) to provide states with guidance and has also requested states to help it detect links between inequality and negative patterns of conduct.

### *3.1. Media and Education Initiatives*

In its early years, when faced with this broad and potentially far-reaching article, the Committee gave article 5(a) the narrowest possible meaning. The Committee consequently focused on media and education—"the education of public opinion" contained in DEDAW and earlier proposed drafts of article 5 that had limited

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<sup>107</sup> Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 *YALE J. INT'L L.* 1, 31 (1989) (internal citation omitted).

the function of 5(a).<sup>108</sup> For example, in one of its first general recommendations, the Committee interpreted 5(a) to mandate the adoption of public information and education campaigns.<sup>109</sup> It also urged the implementation of voluntary guidelines for advertisers, promotion of positive images of women in the media, and revision of textbooks to remove gender stereotypes.

The Committee has instructed a broad array of states to encourage the media to portray girls and women in non-stereotyped ways; to implement regulations to address advertisements that capitalize on gender stereotypes; and to adopt media campaigns promoting positive images of women.<sup>110</sup> Through the media, states are to "undertake comprehensive and systematic public awareness and information campaigns to change stereotypical attitudes."<sup>111</sup> For educational systems, the Committee

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<sup>108</sup> DEDAW, *supra* note 29, art. 3. It is possible, of course, that the Committee simply needs more time to develop its jurisprudence as it only began issuing interpretations of CEDAW in 1989.

<sup>109</sup> CEDAW Comm., *General Recommendation No. 3*, U.N. GAOR, 42nd Sess., Supp. No. 38, para. 578, U.N. Doc. A/42/38 (May 15, 1987), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom3>.

<sup>110</sup> See U.N. GAOR, 57th Sess., Supp. No. 38, pt. I, para. 330, U.N. Doc. A/57/38 (2002) [hereinafter U.N. GAOR, 57th Sess., Supp. No. 38] (discussing Portugal and asking it "to encourage the media to contribute to the societal efforts at overcoming" stereotypical attitudes); U.N. GAOR, 55th Sess., Supp. No. 38, pt. II, para. 303, U.N. Doc. A/55/38 (Aug. 17, 2000) [hereinafter U.N. GAOR, 55th Sess., Supp. No. 38] (calling on Romania "to encourage the media to contribute to the societal effort at overcoming such attitudes, to create opportunities for a positive, nontraditional portrayal of women and encourage and facilitate the use of self-regulatory mechanisms in the media to reduce discriminatory and stereotypical portrayals of women").

<sup>111</sup> See U.N. GAOR, 53rd Sess., Supp. No. 38, pt. I, para. 334, U.N. Doc. A/53/38/Rev.1 (May 14, 1998), available at [http://66.36.242.93/general/a\\_53\\_38\\_rev.1\\_1998.pdf](http://66.36.242.93/general/a_53_38_rev.1_1998.pdf) [hereinafter U.N. GAOR, 53rd Sess., Supp. No. 38] (discussing the Dominican Republic); U.N. GAOR, 52nd Sess., Supp. No. 38, *supra* note 101, pt. I, para. 197 (discussing Turkey and concluding that "[t]he media should be mobilized in support of advancing the status and the rights of women, including through non-sexist and non-stereotypical portrayal of women in the media"); see also U.N. GAOR, 57th Sess., Supp. No. 38, *supra* note 110, pt. III, para. 104 (discussing the Czech Republic and recommending that States develop plans "to design and implement comprehensive programmes in the educational system and to encourage the mass media to promote cultural changes with regard to the roles and responsibilities attributed to women and men, as required by article 5 of the Convention"); *id.* part III, para. 493 (discussing Peru and concluding that "[t]he Committee requests the State party to design and implement comprehensive educational programmes and to urge the communications media to help modify cultural patterns of conduct in the publicizing and planning of entertainment in relation to women's and men's roles and responsibilities, in

continues to advise curricula and textbook revision “to create an enabling environment for women’s presence in high-level and well-paid positions.”<sup>112</sup> These measures remain a baseline of compliance with article 5(a).

Under this interpretation of article 5(a), to counter women’s underrepresentation in politics a state might develop awareness-raising and textbook revision “to redress cultural stereotypes, increase men’s sharing of domestic work and encourage mentoring, networking and support systems to facilitate women’s entry into public life.”<sup>113</sup> Such seemingly small changes can be effective in countries where public media and textbooks actively work to entrench women’s subordinate status. There are many countries in which textbooks continue to depict women and girls in a narrow range of occupations (predominantly as teachers or nurses) and activities (household chores and care giving), suggesting that “the woman is a ‘weak creature that needs to be protected’” and underscoring “the traditional perceptions of female qualities (responsibility, charity).”<sup>114</sup> Changing this alone can foster some change in attitudes.

A survey of the Committee’s concluding comments confirms that media and education initiatives are the very minimum required of all states, irrespective of their stage of development or

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accordance with article 5 of the Convention”); CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Norway*, para. 18, U.N. Doc. CEDAW/C/NOR/CO/7 (Aug. 10, 2007) (“Considering the important role of the media in regard to cultural change, the Committee recommends again that the State party encourage the media to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres.”).

<sup>112</sup> U.N. GAOR, 57th Sess., Supp. No. 38, *supra* note 110, pt. I, para. 152 (2002) (urging Trinidad and Tobago to alter its education policy to address gender inequality in income).

<sup>113</sup> U.N. GAOR, 54th Sess., Supp. No. 38, *supra* note 92, pt. II, para. 190 (urging Ireland to apply special measures to increase women’s political participation); Press Release, CEDAW Comm., Women’s Anti-Discrimination Committee Praises Republic of Korea’s Progress, While Noting Persistence of Entrenched Paternalistic Male Values, U.N. Doc. WOM/1646 (July 31, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1646.doc.htm> [hereinafter Press Release: Korea’s Progress] (reporting state delegate’s account of revisions of textbooks to remove stereotypical portrayals of women and men but continued set views on gender roles on the part of older teachers).

<sup>114</sup> CEDAW Comm., *Initial Report of States Parties: Serbia*, paras. 94–96, U.N. Doc. CEDAW/C/SCG/1 (Oct. 17, 2006), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw38/reports/serbiaE.pdf>. [hereinafter *Initial Report of Serbia*].

degree of institutionalized, legal inequality.<sup>115</sup> For this reason, the Committee has required these measures even of countries that have not taken significant legal or other steps toward women's equality.<sup>116</sup> Such measures are not without effect and may provide a helpful step toward reducing negative gender stereotypes.<sup>117</sup> Nevertheless, they are the very minimum required under the most conservative reading of article 5(a).

### 3.2. *Toward Greater State Obligations*

The Committee has expressed dissatisfaction with the exclusive use of media campaigns and curricular changes, especially in more developed, Western states. While still targeting media depiction of women and employment opportunities through education, the Committee has suggested more stringent educational and media efforts.

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<sup>115</sup> Other commentators have limited their discussion of article 5(a) to media and education. For example, the American Bar Association's Central and East European Law Initiative has prepared a CEDAW assessment tool, providing States with a list of questions to assess de facto and de jure compliance with CEDAW. American Bar Association Central and East European Law Initiative (CEELI), *The CEDAW Assessment Tool: An Assessment Tool Based on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)* (Jan. 2002), available at [http://www.abanet.org/rol/publications/assessment\\_tool\\_cedaw\\_tool\\_2002.pdf](http://www.abanet.org/rol/publications/assessment_tool_cedaw_tool_2002.pdf). CEELI's questions focus exclusively on media and educational measures and how the national machinery has worked with the media or has funded educational programs eliminating gender stereotypes. *Id.* at 85.

<sup>116</sup> In an attempt to encourage the United States to adopt CEDAW, some advocates suggest that media and educational measures suffice to fulfill obligations under article 5 and act as a ceiling rather than a floor. Working Group on Ratification of U.N. Convention on the Elimination of All Forms of Discrimination Against Women, *Human Rights for All: The Convention on the Elimination of All Forms of Discrimination Against Women Working for Women Around the World And At Home*, 39 (Leila Rassekh Milani ed., 2001), available at <http://endabuse.org/programs/international/cedaw.pdf> (CEDAW "simply urges State Parties 'to adopt education and public information programs, which will eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women'"). It is unclear where the group found the phrase quoted, as it clearly is *not* the text of article 5.

<sup>117</sup> See LOPEZ-CLAROS & ZAHIDI, *supra* note 2, at 5 (concluding that "if the content of the educational curriculum and the attitudes of teachers serve merely to reinforce prevalent stereotypes and injustices, then the mere fact of literacy and education does not, in and of itself, close the gender gap; schooling as a catalyst for change in gender relations will be more effective only if appropriate attention is also given to curriculum content and the retraining of [teachers]").

As regards media portrayal of women specifically, the Committee proposes measures to supplement simple public awareness-raising campaigns. These include the establishment of monitoring bodies on the representation of women in the media<sup>118</sup> and the regulation of the media to combat negative gender roles and stereotypes.<sup>119</sup> The Committee further advises states to implement codes of advertising ethics, covering “not only the prohibition of the promotion of discrimination against women and men, or of the alleged superiority of one sex over the other, but also of the more subtle utilization of and support for traditional role stereotypes in the family, in employment and in society.”<sup>120</sup>

To make educational measures more robust, the Committee recommends that states adopt educational counseling and quota, affirmative action, or incentive programs for predominantly male fields of study or professions. It further urges “temporary special measures with numerical goals and timetables.”<sup>121</sup> According to

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<sup>118</sup> See U.N. GAOR, 56th Sess., Supp. No. 38, *supra* note 91, pt. I, para. 335 (urging the Egyptian government to support the role of media in promoting gender equality).

<sup>119</sup> See, e.g., CEDAW Comm., *Third Periodic Report of States Parties: Australia*, art. 5, U.N. Doc. CEDAW/C/AUL/3 (Sept. 27, 1995), available at <http://www.un.org/esa/documents/ga/cedaw/17/country/Australia/cedawc-aust3en.htm> (“The Australian Broadcasting Corporation (ABC) has introduced a Code of Practice, in accordance with mandatory obligations set out in the Australian Broadcasting Corporation Act 1983, which requires the ABC to avoid the presentation or portrayal of people in a way which is likely to encourage denigration of or discrimination against them, on the basis of nationality, sex, age, occupational status and so on.”); CEDAW Comm., *Fifth Periodic Report of States Parties: Germany*, 19, U.N. Doc. CEDAW/C/DEU/5 (Feb. 5, 2003), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N03/250/50/PDF/N0325050.pdf> [hereinafter *Fifth Periodic Report of Germany*] (“The German Advertising Council has formed at the initiative of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and of the German Women’s Council a complaints body with the aim in mind of reducing the number of adverts that are discriminatory towards women, and to introduce women’s policy points of view into the evaluation of advertising.”); CEDAW Comm., *Fifth Periodic Report of States Parties: Spain*, 48–49, U.N. Doc. CEDAW/C/ESP/5 (Apr. 15, 2003), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N03/330/27/IMG/N0333027.pdf?OpenElement> (“With a view to ensuring that the mass media portray women properly, without sexist stereotypes, the Institute signed a cooperation agreement with the State corporation, Radiotelevisión Española.”).

<sup>120</sup> 2000 U.N. GAOR, 55th Sess., *supra* note 61, pt. II, para. 139, available at [http://66.36.242.93/general/a\\_55\\_38\\_2000.pdf](http://66.36.242.93/general/a_55_38_2000.pdf) (discussing areas of concern and recommendations for Lithuania with respect to traditional gender stereotypes).

<sup>121</sup> 2003 U.N. GAOR, 58th Sess., *supra* note 62, pt. I, para. 372. See also *id.*, paras. 128–29 (discussing Switzerland and concluding that “gender inequality prevails in the stereotyped choices both sexes make regarding vocational training

the Committee, such an agenda is necessary “to ensure that women students are encouraged to enter diverse disciplines so as to overcome the clustering of female students in certain disciplines.”<sup>122</sup> It has also called for review and revision of educational laws and structures to “develop positive measures to counteract hidden stereotypical educational messages and practices.”<sup>123</sup>

States parties’ reports reflect their acceptance that obligations under 5(a) go beyond awareness-raising and textbook revision. With respect to the media, states responded to the Committee’s comments by creating regulatory bodies aimed at avoiding “language and images which convey discriminatory assumptions about the social roles of women.”<sup>124</sup> Others instituted studies to “analyze the presence of women in the media, discuss the way violence against women is treated and train professionals to improve the portrayal of women in news and other programmes.”<sup>125</sup> Still others established “a complaints body with the aim in mind of reducing the number of adverts that are discriminatory towards women, and to introduce women’s policy points of view into the evaluation of advertising.”<sup>126</sup>

Trainings represent another method commonly adopted in order to change hiring practices and improve depictions of women. Luxembourg, for example, has reported conducting media and teacher trainings that emphasized the equal value of women’s

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and higher education, particularly technical education” and recommending diversification of educational choices and counseling).

<sup>122</sup> 1997 U.N. GAOR, 52nd Sess., *supra* note 101, pt. IV, para. 113 (discussing recommendations made to the Government of Slovenia emphasizing the need to encourage female students to enter diverse academic disciplines at schools and universities); *see also* 2001 U.N. GAOR, 56th Sess., *supra* note 91, pt. II, para. 343 (discussing Sweden and concluding that “[g]iven the clear correlation between the choice of field of study and placement in the labour market, . . . efforts towards ending gender segregation in students’ choice of field of education and encourage both women and men to choose non-traditional fields of education”).

<sup>123</sup> U.N. GAOR, 52nd Sess., Supp. No.38, para.113, U.N. Doc. A/52/38 Dev. 1 (discussing methods through which Slovenia can counteract damaging stereotypical educational practices).

<sup>124</sup> 1995 CEDAW Comm. Report, *Third Periodic Report of States Parties: Australia*, *supra* note 119.

<sup>125</sup> 2003 CEDAW Comm. Report, *Fifth Periodic Report of States Parties: Spain*, *supra* note 119, 48–49.

<sup>126</sup> 2003 CEDAW Comm. Report, *Fifth Periodic Report of States Parties: Germany*, *supra* note 119, at 19.

unpaid work.<sup>127</sup> Under article 5(a), it also introduced training in equality for ministries responsible for employment, employers, workers' federations, and trade unions. These trainings specifically targeted those responsible for human resources in hope of improving hiring practices.<sup>128</sup> Additionally, from the time that CEDAW issued General Recommendation 19 on domestic violence, many states parties have reported measures taken to combat domestic violence under 5(a).<sup>129</sup> These efforts have ranged from legislation and prosecution to provision of social services and advocacy campaigns.<sup>130</sup>

### 3.3. Legislative Review and Revision

Aware that, within the Western world, widespread gender stereotypes and cultural patterns, rather than glaring and legally-sanctioned discrimination, hinder women's equality, the Committee has begun to demand higher levels of commitment to eradicating negative cultural patterns based on stereotypes.

Faced with these countries that have essentially attained legal equality and have already instituted media and educational campaigns under article 5, the Committee shows increasing

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<sup>127</sup> U.N. Gen. Assembly, CEDAW Comm., *Report of the Committee on the Elimination of Discrimination Against Women on its Twenty-Second Session*, para. 408, U.N. Doc. A/55/38 (Aug. 17, 2000) (discussing methods adopted in Luxembourg for the improvement of hiring practices and general depictions of women).

<sup>128</sup> See CEDAW Comm., *Third Periodic Reports of States Parties: Luxembourg*, 22, U.N. Doc. CEDAW/C/LUX/3 (Mar. 30, 1998), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw22/lux.pdf> (discussing trainings that focus on equality between men and women in the workplace); 2003 *Fifth Periodic Report of States Parties: Spain*, *supra* note 119, at 49 (describing the implementation of trainings in gender equality).

<sup>129</sup> Some states report measures taken to combat domestic violence under article 6, which provides, "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." CEDAW, *supra* note 9, art. 6.

<sup>130</sup> CEDAW Comm., *Concluding Comments of the CEDAW Comm.: Denmark*, CEDAW/C/DEN/CO/6, para. 21 (Aug. 25, 2006), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/denmark/0647822.E.pdf> (urging the state "to allocate sufficient financial resources, including for sufficient numbers of shelters for women victims of violence, to undertake research on all forms of violence against women and to implement policies . . . to prevent such violence, provide protection, support and services to the victims and punish and rehabilitate offenders"); see also 2006 CEDAW Comm. Report, *Initial Report of State Parties: Serbia*, *supra* note 14, 24-28 (reporting various legislative changes and trainings, but admitting that no legal mechanisms had been devised for the protection of the victim when dealing with a family tyrant).

attention to identifying negative stereotypes and patterns and rooting them out. So doing, it firmly resists the notion that culture is a problem of post-colonial countries alone.<sup>131</sup> As Frances Raday, a former member of the CEDAW Committee, asserts, “[t]he most globally pervasive of the harmful cultural practices . . . is the stereotyping of women exclusively as mothers and housewives in a way that limits their opportunity to participate in public life, whether political or economic.”<sup>132</sup> Another Committee member “found it striking that in all the countries they had considered, including the apparently most progressive Scandinavian countries, gender stereotypes had proved extremely resistant to change.”<sup>133</sup>

The Committee therefore recommends that states systematically study the impact of facially gender-neutral legislation to determine if negative stereotypical attitudes inform the legislation or contribute to the perpetuation of women’s inequality. A number of times, in its concluding comments, it has called upon a state to “monitor the implementation of provisions in other legislation that guarantee women de jure equality with men in order to ensure that they result in substantive (de facto) equality for women.”<sup>134</sup> More often, it asks that legislation be enacted and policies adopted to cover not only the prohibition of discrimination against women but also of the more subtle utilization of and

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<sup>131</sup> The United States takes this position. Although arguments against CEDAW’s ratification recalled traditional gender roles and cultural relativist positions, the United States regularly indicates its outrage at other countries’ use of culture to justify women’s continued inequality and unequal access to human rights. Mayer, *supra* note 20, at 812.

<sup>132</sup> Frances Raday, *Culture, Religion, and Gender*, 1 INT’L J. CONST. L. 663, 671 (2003).

<sup>133</sup> Merry, *supra* note 46, at 952.

<sup>134</sup> See, e.g., CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Serbia*, *supra* note 97, para. 16 (detailing recommendations for Serbia with regards to attaining gender equality); see also 2002 U.N. GAOR 57th Sess., *supra* note 77, pt. II, para. 334 (discussing areas of concern and recommendations for gender equality in Denmark); see also 1999 U.N. GAOR 54th Sess., *supra* note 92, para. 308 (discussing the United Kingdom and concluding that “[g]overnment assess the impact of cultural stereotypes and women’s reproductive responsibilities on the continuing pay gap. In this regard, it invites the Government to pursue its efforts towards providing men more opportunities to take on roles traditionally assumed by women, to continue to review and rationalize maternal and parental leave and benefits.”).

support for traditional sex role stereotypes in the family, in employment, in politics and in society.<sup>135</sup>

Under this interpretation of 5(a) in the Committee's recent practice, having enacted facially neutral laws but faced with persistent inequality, a state must examine and evaluate the possible discriminatory impact of seemingly neutral policies. The Committee's concluding comments to Ireland and Germany, in particular, illuminate these more substantive obligations entailed by 5(a).<sup>136</sup>

The Committee's comments on Ireland's 2005 Report present a comprehensive view of article 5(a).<sup>137</sup> In the Committee's view,

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<sup>135</sup> 2002 U.N. GAOR 57th Sess., *supra* note 77, pt. I, para. 96 (urging Estonia to raise awareness among public officials, government agencies and other public actors and the media); *see also* 2000 U.N. GAOR, 55th Sess., *supra* note 62, pt. II, para. 139 (discussing Lithuania and referring to "more subtle utilization of and support for traditional role stereotypes in the family, in employment and in society").

<sup>136</sup> There are other examples of the Committee's practice that mirror its comments to Ireland and Germany. *See, e.g.*, 1999 U.N. GAOR, 54th Sess., *supra* note 92, pt. II, para. 258 (discussing Spain and requesting that the state "increase its collaboration with civil society organizations, the media and the private sector so as to achieve greater balance in the roles and responsibilities of women and men, particularly in the sharing of family responsibilities"); *see also* 2001 U.N. GAOR 56th Sess., *supra* note 91, pt. I, para. 298 (discussing Finland and concluding that "[e]fforts to eliminate stereotypes in women's education as well as biased perceptions in job evaluations and pay relating to traditional areas of employment for women. In particular, it recommends efforts to encourage cross-vocational training in typical female and male-dominated areas, and to address the issue of the negative impact on women of policies of time-fixed contracts.").

The Committee has indicated that parental leave may be required, expressing "concern[] that fathers are not taking childcare leave and that this reinforces negative stereotypes regarding working matters" and has requested the introduction of "individualized paid paternal leave for childcare." 2002 U.N. GAOR 57th Sess., *supra* note 77, pt. III, paras. 285-86 (discussing the issue of paternal leave in Greece); *see also id.* pt. III, para. 320 (urging Hungary to implement methods to positively change stereotypical views of parenting responsibilities); *see also* 2003 U.N. GAOR, 58th Sess., *supra* note 61, pt. I, para. 412 (asking the state of Norway to "conduct research into the stereotypical cultural attitudes prevailing in Norway"); *see also* 2000 U.N. GAOR, 55th Sess., *supra* note 62, pt. II, para. 270 (discussing France and recommending "that the State party intensify its efforts, including legislative measures to prevent the portrayal of negative and discriminatory images of women in the media, to change stereotypical images and discriminatory attitudes and perceptions about . . . roles and responsibilities").

<sup>137</sup> CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Ireland*, para. 24, U.N. Doc. CEDAW/C/IRL/CO/4-5 (July 22, 2005), *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw33/conclude/ireland/0545060E.pdf>

women's educational choices, employment patterns, and low participation in political life evoked "the persistence of traditional stereotypical views."<sup>138</sup> To counter these views, the Committee concluded that all educational actors should be trained and sensitized and that the media should raise awareness of the problem.<sup>139</sup>

Educational and media efforts, however, would not suffice to meet Ireland's obligations. The Committee insisted upon "changes in laws and administrative regulations to recognize the concept of shared economic contribution and household responsibilities."<sup>140</sup> It also requested legislation to introduce "further measures to reduce the pay gap in women's earnings, taking into account developments that have refined the concepts of equal pay for work of comparable value."<sup>141</sup> To get at the root of the continuing pay gap, Ireland was instructed to systematically study "the impact of cultural stereotypes and women's reproductive responsibilities on the continuing pay gap."<sup>142</sup> The Committee further suggested that during the Irish Constitution's planned amendment, Ireland change the male-oriented language and add "a provision . . . underlin[ing] the obligation of the State to *actively* pursue the achievement of substantive equality between women and men."<sup>143</sup>

Similarly, Germany's 2000 Report made manifest troubling social patterns and stereotypes contributing to women's persistent inequality. Negative patterns identified by the Committee included women's "predominance in part-time work" and job segregation.<sup>144</sup> The expectation that women assume the "main responsibility for family and caring work" also negatively affected

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[hereinafter 2005 *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Ireland*].

<sup>138</sup> *Id.* para. 24.

<sup>139</sup> *Id.* para. 25.

<sup>140</sup> *Id.* para. 55.

<sup>141</sup> 1999 U.N. GAOR 54th Sess., *supra* note 92, pt. II, para. 182 (urging Ireland to implement legislation and policies that will enhance women's participation in the labor force).

<sup>142</sup> *Id.*

<sup>143</sup> 2005 CEDAW Comm. Report, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Ireland*, *supra* note 137, para. 25 (italics added).

<sup>144</sup> 2000 U.N. GAOR, 55th Sess., *supra* note 62, pt. I, para. 313 (discussing the Committee's concerns with continued stereotypical attitudes regarding gender roles in public and private life in Germany).

women's enjoyment of rights.<sup>145</sup> The Committee worried that "measures aimed at the reconciliation of family and work entrench stereotypical expectations for women and men" and expressed particular concern at "men's extremely low participation in parental leave, at 1.5 percent of those taking parental leave."<sup>146</sup>

Germany was therefore urged to "to study the impact of measures aimed at reconciliation of work and family responsibilities so as to create a firm basis for policies and programmes that will accelerate change and eradicate stereotypical attitudes" and to "consider the introduction of non-transferable parental leave for fathers to increase the number of men that share responsibility for childcare and child-rearing."<sup>147</sup> Also, because Germany had failed to meet the need for "kindergarten places and all day childcare"—responsibilities that consequently fall predominantly to women—the Committee recommended Germany "improve the availability of care places for school-age children to facilitate women's re-entry into the labour market."<sup>148</sup>

These concluding comments denote the importance of a state's obligation to study and revise laws and policies to address the specific issue of women's bearing the overwhelming preponderance of household responsibilities while working. They also further elucidate the substance of cultural patterns and policies to be rectified under article 5 and suggest means by which a state might do so.

The Committee's comments set forth a two-step process whereby states parties are required to conduct studies and then fashion policies aimed at correcting underlying problems of inequality. In its concluding comments to Greece, the Committee recommended that the state complete empirical research on "the institutional rules that reinforce gender-role stereotyping, the specific manifestations of stereotypical ideology in the State Party, the costs of placing the burden of homemaking solely on women

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* para. 314.

<sup>148</sup> *Id.* The reports of states parties, responses of the Committee, and legislative responses of governments also confirm the article's role in aiding in the evolution of the more detailed articles of the treaty. The measures requested of Germany speak to its obligations under articles 11 and 13(a) but are seen through the lens of article 5 instead (these articles deal with employment and family benefits respectively). See CEDAW, *supra* note 9, art. 11 & 13(a) (describing requirements for states in promoting gender equality).

and the monetary value of women's unpaid labour."<sup>149</sup> Upon completion of these studies, Greece was urged to "use the insights gained as a basis for taking enhanced measures to address these stereotypes."<sup>150</sup>

Most importantly, states have enacted concrete responses to CEDAW's comments. As Professor Holtmaat found, Western governments are generally aware of their "duty to actively combat gender stereotypes (among others in education and in the media) and to ban systemic or structural discrimination in law and public policy."<sup>151</sup> Germany adopted a number of legislative measures to address the negative cultural patterns identified.<sup>152</sup> In response to the Committee's proposal that Germany enact nontransferable child-raising leave for fathers, Germany enacted a new Child-Raising Benefit Act that promotes greater participation of fathers; Parliament deliberately chose to make leave transferable in order to make the leave as flexible as possible, while commissioning a study of the new parental leave plan to evaluate whether it improved fathers' participation in parental leave programs.<sup>153</sup> In response to the Committee's urging it to adopt policies and measures to accelerate the elimination of pay discrimination, Norway also took concrete steps, creating an Equal Pay Commission to study the underlying causes and develop a new labor market policy.<sup>154</sup> Belgium similarly took on more substantial

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<sup>149</sup> CEDAW Comm., *Concluding Comments of the CEDAW Comm.: Greece*, para. 14, U.N. Doc. CEDAW/C/GRC/CO/6 (Feb. 2, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/Greece/Greece%20-%20CO-6.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/Greece/Greece%20-%20CO-6.pdf).

<sup>150</sup> *Id.*

<sup>151</sup> HOLTMAAT, *supra* note 13, at 79.

<sup>152</sup> 2003 CEDAW Comm. Report, *Fifth Periodic Report of States Parties*, *supra* note 121, at 14.

<sup>153</sup> *Id.*

<sup>154</sup> See Nor. Ministry of Children and Equality, *Responses to the List of Issues and Questions with Regard to the Consideration of the Seventh Periodic Report*, 14, delivered to the CEDAW Comm., U.N. Doc. CEDAW/C/NOR/Q/7/Add. 1 (May 21, 2007), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/351/94/PDF/N0735194.pdf> (describing the Norwegian government platform and the tasks for the Equal Pay Commission, while also reporting how Norway addressed the question of violence against women based on the Committee's reports); see also Press Release, CEDAW Comm., Top Official Spells Out Innovative Steps to Put More Women in High Positions, as Anti-Discrimination Committee Considers Norway's Seventh Report, U.N. Doc. WOM/1648 (Aug. 1, 2007), available at <http://www.un.org/News/Press/docs>

obligations, amending its laws and policies to create a better distribution of work and household tasks essential to women's achieving equality in the workplace. As was recommended for Germany, Belgium pursued a dual-prong strategy of: (1) labor market policy including allowances for leave and part-time work; and (2) social infrastructure including "day care for children, assistance to families, and the elderly,"<sup>155</sup> for which it was commended by the Committee.<sup>156</sup>

To fulfill their obligation to modify cultural patterns, states have put some innovative policies into practice. For example, because "cultural and structural barriers persist and in practice influence both sexes in their choice of occupation," Liechtenstein introduced a "career guidance year," one part of which aimed to assist girls in the choice of an occupation and the other part of which was meant to support women who wished to return to work after having left for family reasons.<sup>157</sup> One portion of the initiative involved a four-day program in which high-school-age boys and girls "engaged in a consistent exchange of roles" where "[t]he girls did craftsmen's work and technical tasks, while the boys worked in social and domestic areas."<sup>158</sup> These were accompanied by "public-awareness-building measures," newspaper articles featuring women in non-traditional careers, and an interregional project on girls' career choices.<sup>159</sup> To aid women reentering the workforce, the state provided a series of programs and computer training, commissioned a study on rejoining the workforce, and plans to give incentives to companies hiring women returning to the job market.<sup>160</sup>

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/2007/wom1648.doc.htm (explaining Norway's measures toward reducing inequality and curbing violence and discrimination based on gender).

<sup>155</sup> 1998 CEDAW Comm. Report, *Third and Fourth Periodic Reports of States Parties*, *supra* note 83, at 27-29.

<sup>156</sup> See 2002 CEDAW Comm. Report, *Second and Third Periodic Report of the States Parties: Serbia*, *supra* note 77, para. 137 (commending Belgium "for its measures to eliminate traditional and stereotypical attitudes regarding the role of men and women in the family, in employment and in society").

<sup>157</sup> CEDAW Comm., *Second Periodic Report of States Parties: Liechtenstein*, 11-12, U.N. Doc. CEDAW/C/LIE/2 (Jun. 29, 2001), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N03/449/36/PDF/N0344936.pdf?OpenElement>.

<sup>158</sup> *Id.* at 11.

<sup>159</sup> *Id.* at 11-12.

<sup>160</sup> *Id.* at 12.

Countries also have undertaken interregional studies. The Nordic countries, for instance, engaged in a joint research study to increase knowledge on the impact of sexualization of public space, specifically pornography, on the attitudes of boys and girls toward their own sex and gender equality issues.<sup>161</sup> The findings were mixed, but concluded that “[i]deals regarding physical attractiveness imposed by pornography frequently colour their ideas of how people’s bodies ought to look—not the least their own.”<sup>162</sup> The effect of the media and advertising on children’s images of their bodies and eating disorders has also been studied on a cross-regional basis, and programs have been instituted to educate children about the advertising industry and build their confidence.<sup>163</sup>

Ultimately, the Committee requires more searching inquiry from states that have complied with the minimum of media and educational campaigns and have provided women with equality under the law. Emphasizing the importance of empirical studies, the Committee aids states in ensuring that their laws and policies do not further entrench gender inequality and that future modifications of policy, administrative procedures, and laws are supported by statistical findings, rather than implicit gender stereotypes.

#### 4. IS SUCH A TREATY OBLIGATION TOO BROAD TO HAVE ANY EFFECT?

Given the subtle but noteworthy effect of culture on women’s achievements and their equality, the question arises of what the obligations imposed by article 5(a) can do to eradicate such widespread and ingrained cultural stereotypes and practices. Accepting that, as interpreted by the Committee, article 5(a) imposes broad obligations upon states and addresses stereotypes and cultural patterns that negatively affect the specific substantive articles of the treaty, what impact can we expect of this sweeping

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<sup>161</sup> CEDAW Comm., *Seventh Periodic Report of States Parties: Norway*, 26, U.N. Doc. CEDAW/C/NOR/7 (Mar. 26, 2007), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/286/16/PDF/N0728616.pdf>; CEDAW Comm. *Sixth Periodic Report of States Parties: Denmark*, 19, U.N. Doc. CEDAW/C/DNK/6 (Oct. 4, 2004), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/545/83/PDF/N0454583.pdf?OpenElement>.

<sup>162</sup> 2007 CEDAW Comm. Report, *Seventh Periodic Report*, *supra* note 154, at 13.

<sup>163</sup> *Id.* at 18.

obligation? More to the point, can a treaty really change deeply entrenched stereotypes and cultural patterns?

4.1. *Can Law Ever Change Something as Fundamental as Culture?*

An initial objection to the CEDAW Committee's interpreting article 5(a) broadly to impose substantial obligations to change culture and stereotypes is that law is inherently unsuitable for such a task. While, of course, a state may change its laws and policies to ensure legal equality, a state cannot legislate cultural change. As the argument would go, change in culture takes time and must be organic in nature. Only when cultural mores change "will legal remedies, whether on a domestic or international level, have any significant effect."<sup>164</sup>

The law, of course, is not a cure-all. While it can work real, substantial change, it is not inevitable that it do so.<sup>165</sup> The CEDAW Committee itself has acknowledged the difficulty of cultural change, noting that insufficient political will represents an impediment to progress.<sup>166</sup> When states are not committed to the goal of gender equality and merely sign international treaties as a

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<sup>164</sup> See Mountis, *supra* note 12, at 143-44 (stating that "in the absence of an effective enforcement mechanism, the international community would be better served by recognizing that legislating may not be the answer to the 'problems' of culture. Culture cannot be legislated away"); see generally Anne F. Bayefsky, *General Approaches to the Domestic Application of Women's International Human Rights Law*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 351 (Rebecca J. Cook ed., 1994) (providing a general critique of women's international human rights law on this ground).

<sup>165</sup> M. Christina Luera, *No More Waiting for Revolution: Japan Should Take Positive Action to Implement the Convention on the Elimination of All Forms of Discrimination Against Women*, 13 *PAC. RIM L. & POL'Y J.* 611, 641 (2004) ("[L]aw is always an uncertain means of achieving social change because human beings are self-determining agents with deep psychological commitments to custom.").

<sup>166</sup> See CEDAW Comm., *supra* note 19, at 2 (noting that "[i]nsufficient political will to bring about gender equality, the extensive under-representation of women in decision-making positions, and a lack of resources to support mechanisms entrusted with gender equality work are further impediments to progress"); see also Feride Acar, Chairperson of the CEDAW Comm., 2003-2004, Statement at the Occasion of the 25th Anniversary of the Adoption of the Convention on the Elimination of All Forms of Discrimination against Women 4 (Oct. 13, 2004), available at [www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-FA.pdf](http://www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-FA.pdf) ("Political will to implement all of the provisions of the Convention is the sine qua non of success.").

way to avoid criticism, one cannot expect significant change—legal, cultural, or other.<sup>167</sup>

Nonetheless, history shows that law can change patterns of conduct and practice. As we have seen in the Western world, laws enshrining equality in law and making discrimination and harassment illegal have enormously expanded women's opportunities. In the United States, for example, legislation banning gender discrimination and sexual harassment in the workplace has vastly improved women's experience of the hiring process and working environment.<sup>168</sup> Yet, gender equality was hardly a product of majority will; in fact, gender was only inserted into legislation prohibiting workplace discrimination in an effort to ensure it would be defeated.<sup>169</sup> Similarly, even though it could not eradicate racism, the U.S. Supreme Court radically altered our cultural patterns and practices by imposing desegregation on Southern states. In the United States, other changes achieved against the will of the majority include the legalization of contraceptives and abortion.<sup>170</sup> These legal changes revolutionized sex and enabled women to control reproduction, freeing them to choose to work full-time, have fewer children, or bear no children at all.

In other contexts as well, cultural changes have occurred due to promulgation and enforcement of laws.<sup>171</sup> For example, to

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<sup>167</sup> See Cartwright, *supra* note 16, at 2 (“Sometimes, however, it is obvious that States ratify the Convention simply because they want international approval. Support of its fundamental principles is limited.”).

<sup>168</sup> See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67 (1986) (holding that a hostile work environment is a violation of Title VII, and that the protection of Title VII extends beyond economic harm); see also CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979) (discussing women's work environment prior to the enactment of sexual harassment laws).

<sup>169</sup> See Mayer, *supra* note 20, at 773–75 (discussing the history of the Civil Rights Act's enactment).

<sup>170</sup> See, e.g., *Roe v. Wade*, 410 U.S. 113, 163 (1973) (finding Texas law prohibiting all abortions unconstitutional); *Griswold v. Connecticut*, 381 U.S. 479, 524 (1965) (holding Connecticut ban on contraceptives violated the privacy of individuals).

<sup>171</sup> See Gerry Mackie, *Ending Footbinding and Infibulation: A Convention Account*, 61 AM. SOC. REV. 999, 999 (1996) (showing how footbinding in China, once prevalent, disappeared in a single generation and can provide a pattern of change concerning other practices such as FGM); see also Frances A. Althaus, *Female Circumcision: Rite of Passage or Violation of Rights?*, 23 INT'L FAMILY PLANNING PERSP. 130, 132 (1997) (discussing the need to understand social and economic context of FGM in the efforts to stop the practice).

counteract the underrepresentation of women on boards of directors in the public and private sector, Norway adopted legislation demanding gender balance. When the legislation was enacted, women held only 6.4 percent of all seats on boards of directors.<sup>172</sup> Corporations complained that it would be “impossible to find competent and ‘willing’ women to fill them.”<sup>173</sup> Yet, in a remarkably short time, 100 percent of state-owned and 60 percent of private companies had attained the goal that a minimum of 40 percent of board directors be women.<sup>174</sup> The companies discovered that they had no trouble finding competent women and came to recognize that “diversity was good for innovation and company culture.”<sup>175</sup> In implementing parental leave policies, Norway had a similar experience of initial resistance followed by success, finding that implementing parental leave policies for fathers and targeting them to men’s needs was “easiest to bring about, because it has gradually become clearer to men what they have missed.”<sup>176</sup> As a result of this policy, ninety percent of all fathers take leave and many are demanding more.<sup>177</sup>

A particular value of CEDAW’s framework is that it requires an attack on multiple fronts and is not restricted to legislative change; it encompasses regulations, policies, outreach plans, incentives, and temporary special measures (such as quota or other affirmative action programs). Although the Convention is a legal document, it is to be implemented using all available strategies.

Many measures used to implement article 5 are not strictly legal in nature. Korea, for example, offers tax incentives to companies to change wage structures for men and women and runs public media campaigns praising those companies that reach those goals.<sup>178</sup> Quotas can also modify patterns of conduct. By

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<sup>172</sup> 2007 CEDAW Comm. Report, *Seventh Periodic Report*, *supra* note 154, at 1.

<sup>173</sup> Press Release, Comm. on Elimination of Discrimination against Women, Top Official Spells Out Innovative Steps to Put More Women in High Positions, as Anti-Discrimination Committee Considers Norway’s Seventh Report, U.N. Doc. WOM/1648 (Aug. 1, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1648.doc.htm>

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> 2007 CEDAW Comm. Report, *Seventh Periodic Report* (Norway), *supra* note 161, at 28.

<sup>177</sup> *Id.*

<sup>178</sup> Press Release, CEDAW Comm., Women’s Anti-Discrimination Committee Praises Republic of Korea’s Progress, While Noting Persistence of Entrenched

demanding that political parties submit election lists with at least 30-percent female candidates, Serbia increased the percentage of women deputies in the National Assembly from 12.8 to 20.4 percent with one election.<sup>179</sup> Training members of the judiciary, lawyers, prosecutors, and police and making women's access to the legal system easier also prove to be effective administrative means to enable women to protect themselves from violence.<sup>180</sup>

The CEDAW Committee's work under 5(a) permits states to recognize the insidious effect of certain cultural practices and pinpoint strategies that work best. A better understanding of culture and its complicated interaction with law can only help to identify and work to eliminate practices and stereotypes that result in women's inequality. The argument that law cannot change culture assumes that law is merely neutral to culture, not reinforcing of it. Yet, it is clear that the law can prevent cultural change and buttress existing distributions of power and wealth.<sup>181</sup> One need only think of laws that prevent women from inheriting land, representing their own interests in court, and applying for divorce. Many such laws appear more neutral but have surprisingly discriminatory effects. For instance, New Zealand's policies imposing interest on student loans for higher education were found to have "the potential to have a significantly greater impact on women because they remained out of the workforce

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Paternalistic Male Values, U.N. Doc. WOM/1646 (July 3, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1646.doc.htm>.

<sup>179</sup> CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Serbia*, para. 11, U.N. Doc. CEDAW/C/SCG/CO/1 (Jun. 11, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/Serbia/Serbia%20CO-1.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/Serbia/Serbia%20CO-1.pdf).

<sup>180</sup> See CEDAW Comm., *Concluding Comments on the Elimination of Discrimination against Women: New Zealand*, paras. 22-23, U.N. Doc. CEDAW/C/NZL/CO/6 (Aug. 10, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf) (recommending that states parties conduct gender-sensitivity training to remedy the problem of barriers to women's access to the legal system).

<sup>181</sup> See generally Christine M. Venter, *Community Culture and Tradition: Maintaining Male Dominance in Conservative Institutions*, 12 J. L. & RELIGION 61 (1995) (discussing the effects of socialization on women's role in society); L. Elizabeth Chamblee, Note, *Rhetoric or Rights?: When Culture and Religion Bar Girls' Right to Education*, 44 VA. J. INT'L L. 1073 (2004) (discussing the international response to religious or cultural barriers to women's education); Luera, *supra* note 164 (advocating that Japanese lawmakers take initiative to change the law as a catalyst for cultural change and not the other way around).

longer and earned less than men.”<sup>182</sup> Judicial interpretations of the law may also rely on and fortify gender stereotypes or rigidify social patterns.<sup>183</sup> If we accept that law can be a reactionary force within a culture, why can it not also facilitate cultural change?

Culture, it is submitted, is a social construct, rather than a sacred, immutable fact. The very term “culture” suggests that it must be cultivated. Stereotypes and beliefs relating to gender can fluctuate and stagnate over a relatively short time. For example, Hungary observed “a conservative turn in the views taken of the gender roles” following the fall of Communism.<sup>184</sup> A survey conducted in New Zealand in 2002 showed that the public’s beliefs about the roles of women and men were changing, and more than fifty percent of people believed men should assume a larger share of childcare and housework.<sup>185</sup> However, a widespread perception that gender problems have been resolved subsequently deterred further progress in attitudes. In 2007, the Committee voiced its concern that “apparently, there has been a climate change and ‘backlash’ against the recognition and promotion of women’s human rights” in New Zealand.<sup>186</sup>

Claims that culture is impervious to change neglect to acknowledge the fundamental role that culture plays in denying

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<sup>182</sup> Press Release, CEDAW Comm., Anti-Discrimination Committee Praises New Zealand’s Political Will, as Minister Pledges Commitment to Face Remaining Challenges to Gender Equality, U.N. Doc. WOM/1650 (Aug. 2, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1650.doc.htm>. Prompted by the Committee’s concerns, New Zealand abolished the interest altogether. CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women*, para. 9, U.N. Doc. CEDAW/C/NZL/CO/6 (Aug. 10, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf).

<sup>183</sup> See generally Mayer, *supra* note 20, at 778–89 (discussing cases from the United States and Canada that use and reinforce gender stereotypes).

<sup>184</sup> CEDAW Comm., *Sixth Periodic Report of States Parties: Hungary*, pt. I, at 15, U.N. Doc. CEDAW/C/HUN/6 (June 15, 2006), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/402/22/PDF/N0640222.pdf>.

<sup>185</sup> CEDAW Comm., *Sixth Periodic Report of States Parties: New Zealand*, para. 59, U.N. Doc. CEDAW/C/NZL/6 (May 8, 2006), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/342/12/PDF/N0634212.pdf>.

<sup>186</sup> CEDAW Comm., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: New Zealand*, para. 22, U.N. Doc. CEDAW/C/NZL/CO/6 (Aug. 10, 2007), available at [http://www.un.org/womenwatch/daw/cedaw/cdrom\\_cedaw/EN/files/cedaw25years/content/english/CONCLUDING\\_COMMENTS\\_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf](http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/New%20Zealand/New%20Zealand%20-%20C-6.pdf).

gender equality and thereby deprive women of any possibility of true equality. The argument amounts to limiting obligations of states to implementation of gender-neutral laws; once a state achieves legal equality, women should just wait for the culture to catch up. Under CEDAW, this is insufficient.<sup>187</sup> As African women's advocate Florence Butegwa encourages us to ask, "why [is it] only when women want to bring about change for their own benefit do culture and custom become sacred and unchangeable"?<sup>188</sup> The experience of Western states has confirmed that combating discrimination without attempting to confront its underlying cause is meaningless. Indeed, it is precisely because "[n]o social group has suffered greater violation of its human rights in the name of culture than women"<sup>189</sup> that cultural change must be at the heart of any treaty whose goal is to ensure women's equality. To omit cultural change would be to ignore inequality's fundamental roots.

#### 4.2. *Lack of Effective Enforcement of International Human Rights Law*

Accepting that culture must change, other critics express concern that the limitations of the human rights system make it an unlikely vehicle for the modification of cultural patterns and stereotypes. Human rights treaty bodies, like other international law enforcement mechanisms, "are subject to fundamental limitations in the influence they can exert on developments at the national level" –irrespective of the quality of their substantive jurisprudence or practice.<sup>190</sup> Like other human rights treaty bodies,

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<sup>187</sup> See Gila Stopler, *The Free Exercise of Discrimination: Religious Liberty, Civic Community and Women's Equality*, 10 WM. & MARY J. WOMEN & L. 459, 463 (2004) ("While the Convention has been largely unsuccessful in combating religious and cultural practices that discriminate against women, mainly due to its weak enforcement mechanisms and the extensive use of reservations by States Parties, the obligations it places on States Parties are, [sic] the only possible means of creating the conditions necessary for the achievement of equality for women.").

<sup>188</sup> SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 14 (2006) (quoting Florence Butegwa, *Mediating Culture and Human Rights in Favour of Land Rights for Women in Africa: A Framework for Community-level Action*, in CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICA 108–25 (Abdullahi A. An-Na'im ed., 2002)).

<sup>189</sup> Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 167, 169 (Julie Peters & Andrea Wolper eds., 1995).

<sup>190</sup> Andrew Byrnes, *Toward More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights Law and Procedures*, in HUMAN

the CEDAW Committee only has supervisory functions and “cannot impose any sanctions, even when there is an outright breach of the Convention’s provisions.”<sup>191</sup> The impact of human rights treaties, therefore, depends mostly on “the commitment by State parties to give effect to the obligations they have undertaken in their domestic laws and policies.”<sup>192</sup>

Because CEDAW suffers from limitations inherent to the international human rights system and must, therefore, rely to some extent on domestic political will, should we abandon hope that CEDAW, through article 5, might bring about change in cultural patterns and stereotypes? Does the fact that Sweden, Finland, and other states considered models of gender equality have not yet achieved truly substantive equality after thirty years of well-intentioned efforts render the project of eradicating *de facto* inequality a failure?

The answer to these questions must be no. The reality that article 5 has not revolutionized cultural patterns does not mean that the Committee’s evolving jurisprudence under the article will be without effect. It only indicates that CEDAW’s interpretation is in the early stages and reflects the reality that change in deeply held beliefs and long-justified social and cultural patterns will not occur overnight.

It is important, first, to remember that the Committee has only just begun to explore the meaning of article 5(a) and to reveal its role in the treaty. The practice of the CEDAW Committee’s adopting concluding comments began slowly as the Committee took several years to settle on the form of the comments and the

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RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 5, at 189, 193.

<sup>191</sup> HOLTMAAT, *supra* note 13, at 78.

<sup>192</sup> Elizabeth Evatt, *Finding a Voice for Women’s Rights: The Early Days of CEDAW*, 34 GEO. WASH. INT’L L. REV. 515, 519 (2002); *see also* Acar, *supra* note 166, at 4 (“[T]he lack of vigour in a State’s implementation of each and every one of the Convention’s provisions, particularly article 5, often impedes their ability to combat discrimination of women effectively.”).

The Committee has recently made it more difficult for states to achieve international approval through mere ratification, or ratification with extensive reservations, without any intention of implementing the treaty. As a former CEDAW Committee member observes, “[s]uch hollow ratifications are met increasingly with fierce criticism from the Committee and may eventually be unsustainable as the focus of attention turns more sharply on the practice.” Cartwright, *supra* note 16, at 2.

procedures used to draft them.<sup>193</sup> The formulation of general recommendations also took time; those adopted during the Committee's first ten years were short and modest, addressing such issues as the content of reports, reservations to the Convention, and resources.<sup>194</sup> The work of the Committee was fettered for many years by article 20(1) of the treaty, which restricted the working time of the Committee to "not more than two weeks annually."<sup>195</sup>

By employing 5(a) as an interpretive framework and substantive provision, over time the Committee has established CEDAW as a highly dynamic document, able to respond to changing conditions and target negative patterns and practices as they emerge or become more pressing. Moreover, the Committee has shown restraint and has not made overly ambitious demands of states. As a former Committee member admits, "[t]here would be no benefit in adopting a rigid interpretation of an instrument intended to apply for the benefit of women in all regions of the world, in States at different stages of development and with many different cultures and legal systems."<sup>196</sup> The Committee's progressive approach to the interpretation of states parties' obligations is exemplified by its jurisprudence under article 5. As we have seen, in states where women suffer from dire inequality and discrimination, the Committee has prioritized the steps a state must take, focusing first on legislation and egregious cultural patterns such as child marriage or dowry killings. With regard to states that do not suffer from obvious, entrenched gender discrimination, the Committee has widened the scope of state obligations, aware that embodying equality in law and engaging in

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<sup>193</sup> Byrnes, *supra* note 24, at 136-37; *see also* Evatt, *supra* note 190, at 534 ("[The] long delay in developing a procedure for concluding observations was partly due to the tension that exists in treaty bodies between the individual perspective of individual members on State parties reports and the need for the Committee to speak with one voice on major issues.").

<sup>194</sup> Byrnes, *supra* note 190, at 218 ("In the case of . . . CEDAW, the formulation of general comments and general recommendations of a detailed sort is still in its early stages."). As of March 2008, CEDAW had adopted 25 general recommendations.  
<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>.

<sup>195</sup> Hanna Beate Schöpp-Schilling, *Treaty Body Reform: The Case of the Committee on the Elimination of Discrimination against Women*, 7 HUMAN RIGHTS L. REV. 201, 216 (2007).

<sup>196</sup> Evatt, *supra* note 192, at 536.

media and educational campaigns do not suffice to guarantee substantive equality.

Concerning its ability to demand compliance, CEDAW now has an Optional Protocol which renders the treaty provisions (including article 5(a)) justiciable and gives the Committee a more effective method through which to enforce treaty compliance.<sup>197</sup> Under the Optional Protocol's communications procedure, individuals and groups of women may file complaints of human rights violations with the Committee.<sup>198</sup> The Committee also has the power to conduct inquiries into grave or systematic abuses committed by a state party to the Optional Protocol.<sup>199</sup> Although not all states parties to CEDAW have signed onto the Optional Protocol, ninety-two states had ratified it as of October 2008.<sup>200</sup> The Committee has already heard several communications, notably finding a violation of 5(a) in one.<sup>201</sup> Under the Optional Protocol, the CEDAW Committee also conducted an investigation into the systemic violence against women in Ciudad Juárez, Mexico. Referring to article 5, it concluded that Mexico had not fulfilled its duties, saying "even the campaigns aimed at preventing violence in Ciudad Juárez have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women's dignity, but on making potential victims responsible for their own protection by maintaining traditional cultural stereotypes."<sup>202</sup>

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<sup>197</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Oct. 6, 1999, 2131 U.N.T.S. 97 (entered into force Dec. 22, 2000) (discussing the manner in which CEDAW will receive and handle communications regarding a State's possible violation of the treaty).

<sup>198</sup> What is an Optional Protocol?, U.N. Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm> (last visited Nov. 23, 2008). See also Amnesty Int'l, *Claiming Women's Rights: The Optional Protocol to the UN Women's Convention* (July 2002) (discussing the Optional Protocol and its individual complaints procedure and inquiry procedure).

<sup>199</sup> U.N. Division for the Advancement of Women, *supra* note 198.

<sup>200</sup> Signatures to and Ratifications of the Optional Protocol, United Nations Division for the Advancement of Women, <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>.

<sup>201</sup> *A.T. v. Hungary*, CEDAW Comm., Comm. No. 2/2003, para. 9.6, U.N. Doc. A/60/38 (Jan. 26, 2005).

<sup>202</sup> CEDAW Comm., *Report on Mexico produced by the Committee on Elimination of Discrimination Against Women under article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico*, para. 57, U.N. Doc. CEDAW/C/2005/OP.8/MEXICO (Jan. 27, 2005).

What is more, the CEDAW Committee seems to manage to affect state behavior. There is evidence that states have made progress under the guidance of the CEDAW Committee and have responded to criticisms by modifying laws and practice. Although the Committee's powers under the state reporting system are largely limited to "naming and shaming," that is praising and criticizing states parties' implementation of the Convention, the evaluation of reports has some effect. First, the evaluation of reports creates the opportunity for human rights groups to exert pressure on their governments. The Committee's concluding comments (and states' responses to the Committee) also provide domestic human rights groups with tools for use in the long term.<sup>203</sup> Second, as Andrew Byrnes notes,

Many governments care whether the supervisory committees make positive or adverse comments on their human rights performance. A positive appraisal in an international forum of a country's commitment and efforts can give impetus to further progress. An adverse assessment can embarrass a government at home and abroad, ideally providing it with some incentive to do more in the future.<sup>204</sup>

Consequently, the process of evaluation and discussion of states parties' reports can contribute to change in both well-intentioned and recalcitrant states.

The conversations between the CEDAW Committee and states through the reporting procedure add value to national-level policies. States are forced to examine statistical consequences of policies in a gender-disaggregated way. The drafting of a report can expose and highlight negative cultural patterns that a state had not previously considered and can reveal possible solutions. Hanna Beate Schöpp-Schilling, member of the CEDAW Committee, estimates that:

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<sup>203</sup> HOLTMAAT, *supra* note 13, at 78 ("The effect of this process can be that State parties begin to change their behaviour, in the sense that they make a start to the process of actively combating the discrimination of women, including those forms of discrimination embedded in national law and policy, and in culture and customs.").

<sup>204</sup> Byrnes, *supra* note 107, at 6.

The work of the Committee, through its constructive dialogue with States Parties, its concluding comments and its close cooperation with international and national NGOs and UN specialised agencies, programmes and funds . . . has had a tangible impact on the improvement of women's exercise of their human rights in many countries. This has been effected both through legal reform and programmes aimed at creating the material conditions for the full enjoyment of rights, as well as contributing to cultural change with respect to traditional cultural and religious beliefs, attitudes and behavior.<sup>205</sup>

The discussions and process of reporting give states parties' insight into concrete potential domestic strategies. States often (if not always) implement new policies, laws, and other measures in response to the CEDAW Committee's comments and general recommendations. To meet relevant recommendations of the Committee, Greece, for example, introduced laws targeting discrimination and sexual harassment, filling "a significant gap in [the] Greek legal order."<sup>206</sup> Review of states parties' reports and the Committee's concluding comments offers a comparative perspective as well. By studying CEDAW's jurisprudence, states can learn from one another; indeed, Norway voiced its intention to emulate Denmark, which had improved high school advising after it found that high school advisors tended to be old-fashioned and give girls advice to enter traditional careers.<sup>207</sup> Although each state has different legal, social, and political systems so that measures may not be transplantable in their entirety, the fact that certain measures have been effective rebuts the argument that combating negative stereotypes and patterns of conduct is a nice ideal but a practical impossibility.

Anthropological studies of the Committee's interactions with states demonstrate that the treaty does have real effect at the national level. In her examination of the CEDAW process, Sally

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<sup>205</sup> Schöpp-Schilling, *supra* note 195, at 217.

<sup>206</sup> CEDAW Comm., *Responses to the List of Issues and Questions with Regard to the Consideration of the Sixth Periodic Report, Greece*, at 14, para. 15, U.N. Doc. CEDAW/C/GRC/Q/6/Add. 1 (Oct. 10, 2006).

<sup>207</sup> Press Release, General Assembly, Top Official Spells Out Innovative Steps to Put More Women in High Positions, as Anti-Discrimination Committee Considers Norway's Seventh Report, U.N. Doc. WOM/1648 (Aug. 1, 2007).

Engle Merry found that the Committee “does important cultural work by articulating principles in a formal and public setting and demonstrating how they apply to countries under scrutiny.”<sup>208</sup> She drew on sociolegal research that suggests that compliance with national law is determined by “the extent to which legal concepts and norms are embedded in consciousness and cultural practice,”<sup>209</sup> such that even in national legal systems “[o]nly a small fraction of conflicts actually become cases in court.”<sup>210</sup> And, therefore, ultimately, she concluded that, “despite the lack of enforceability of this convention and its operation within the framework of state sovereignty, it is similar to state law.”<sup>211</sup>

5. CONCLUSION: THE EVOLUTION OF ARTICLE 5(A) AS HOPE FOR THE FUTURE

The first thirty years of CEDAW have not been sufficient to guarantee a reversal of invidious cultural practices and deeply-held beliefs about gender. Nonetheless, the past thirty years have brought about changes in women’s representation in the workforce, academic institutions, and public life, especially in Western countries. The impact CEDAW has had and the significant progress made should not be disregarded. Less than a century ago, women were prohibited from voting in virtually every country. Divorce was difficult and reproductive choice was an oxymoron. The idea of a female head of government would have been laughable in most nations. By contrast, today, in Western countries, women enjoy legal equality. They represent an important voting constituency and constitute advocates for their rights. They lead many countries worldwide. Despite the persistence of gendered stereotypes and roles, women have opportunities their foremothers only dreamed of.

The eradication of negative patterns and stereotypes that impede women’s full enjoyment of their rights has not and will not be realized overnight. But this does not mean we should eviscerate article 5, a central provision and guiding principle of CEDAW. Rather, we should recognize that the CEDAW Committee can and is providing meaning over time, expanding states’ obligations and

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<sup>208</sup> Merry, *supra* note 46, at 943.

<sup>209</sup> *Id.* at 973.

<sup>210</sup> *Id.* at 943.

<sup>211</sup> *Id.* at 941 (italics omitted).

setting higher standards as necessary.<sup>212</sup> As state party Belgium observed in a recent CEDAW Comm. Report, “[c]hanging mentalities about the respective roles of men and women will . . . demand a great deal of time and patience, and will require constant effort.”<sup>213</sup>

The great value of the CEDAW Committee’s jurisprudence is that it seeks to set standards higher, introduce new benchmarks of what is acceptable, and ultimately produce an international (or at least regional) consensus on what patterns are satisfactory. As the Committee’s general recommendation on violence against women demonstrates, article 5 represents a place to grow, an article whose true substance has not yet been determined, and whose day has yet to come.

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<sup>212</sup> See Jacobson, *supra* note 30, at 471 (suggesting that the Committee “begin the systematic adoption of General Comments dealing with the interpretation of each of the articles contained in the Convention”).

<sup>213</sup> CEDAW Comm., *Third and fourth periodic reports of States Parties: Belgium*, at 28, U.N. Doc. CEDAW/C/BEL/3-4 (Sept. 29, 1998), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw27/bel3-4.pdf> (“Overcoming these stereotypes entails bringing about a profound change of mentality. This can only be achieved over the long term . . .”).