

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Articles

Faculty Works

2023

Addressing the Evolving Concept of Gender and Intersectional Stereotypes in International Norm Creation: Directions for a New CEDAW General Recommendation

Rangita de Silva de Alwis

University of Pennsylvania Carey Law School, rdesilva@law.upenn.edu

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_articles

Repository Citation

de Silva de Alwis, Rangita, "Addressing the Evolving Concept of Gender and Intersectional Stereotypes in International Norm Creation: Directions for a New CEDAW General Recommendation" (2023). *Articles*. 422.

https://scholarship.law.upenn.edu/faculty_articles/422

<https://doi.org/10.58112/jlpa.8-2.2>

This Article is brought to you for free and open access by the Faculty Works at Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact biddlerepos@law.upenn.edu.

UNIVERSITY *of* PENNSYLVANIA

JOURNAL *of* LAW & PUBLIC AFFAIRS

Vol. 8

No. 2

ADDRESSING THE EVOLVING CONCEPT OF GENDER AND INTERSECTIONAL STEREOTYPES IN INTERNATIONAL NORM CREATION: DIRECTIONS FOR A NEW CEDAW GENERAL RECOMMENDATION

*Rangita de Silva de Alwis**

A mapping of recent Concluding Observations issued to States Parties by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on the Elimination of Racial Discrimination (CERD) provides an analysis of the evolving human right standard by which to examine gender and intersectional stereotypes. The mapping exercise focused on cultural practices and gender stereotypes in the Concluding Observations reveals the CEDAW Committee is more likely than any other above-mentioned treaty body to discuss stereotypes. This provides us with a textual understanding of how stereotypes, culture and traditional practices often overlap and intersect. While gender stereotypes have replaced more overt forms of gender discrimination, these subtle stereotypes constitute different challenges as they are less visible to the untrained eye. A new generation of stereotypes are much more subtle – almost invisible to the naked eye, like the wind that we cannot see but can feel. These stereotypes are also not only single- axis stereotypes based only on gender – but include an ever- expanding range of intersectional stereotypes.

* The author is faculty at the University of Pennsylvania Law School and an expert on the treaty body to the UN Convention on the Elimination of Discrimination against Women (CEDAW) and Visiting Faculty at Harvard Kennedy School of Government, Senior Fellow at the Harvard Law School Center for the Legal Profession and, Hillary Rodham Clinton Global Fellow on Gender Equity at the Georgetown Institute for Women, Peace and Security. She will be spending the 2024 Trinity term at Oxford's Bonavero Institute for Human Rights and as a Visiting Fellow at Mansfield College, Oxford working on a related paper on Culture, Constitutions and Courts. She thanks Tess Markovich for inviting her to publish with the *University of Pennsylvania Law Journal of Law and Public Affairs*.

The second part of the Article examines how a new generation of stereotypes are being baked into Artificial Intelligence (AI) through AI training data. This new incarnation of coded stereotypes can be named digitized bias that reproduces an automated form of extant stereotypes. While writing this Article, Open AI released ChatGPT and other Generative AI and Large Language Models which demand critical examination for emerging forms of gender bias. Despite the strides in AI innovation, the dangers of potential gender bias are real. Prometheus stole fire from the Greek Gods and was punished for his folly and hubris. He still provided humans with the fire of life and was pardoned by the great Zeus himself. As much as these new technologies have the potential for great good and can advance medicine, science, health care, food security and other forms of human endeavor, they also have great potential for harm and pose risks to human rights. The CEDAW's new General Recommendation (GR) 40 and the GR 41 (in the pipeline) can create important new normative frameworks that propose a human right-based approach to dislodge both direct and indirect stereotypes that have been embedded throughout human history and risk being reproduced in emerging automated codes.

INTRODUCTION.....	131
I. CEDAW AND STEREOTYPES	132
A. <i>The CEDAW Committee: Conceptualizing Stereotypes</i>	135
1. Travaux Préparatoires	135
2. Normative Framework: Culture & Stereotypes	136
3. Normative Framework: Measures to Modify Stereotyped Representation of Women in Education, Advertising, and Media.....	142
B. <i>Revising Laws and Policies</i>	148
C. <i>Optional Protocol Jurisprudence</i>	152
D. <i>Stereotypes to Address in a New CEDAW Recommendation</i>	153
1. Gender-Based Violence	153
2. Religion and Stereotypes.....	154
3. Male Head of Household Stereotype:	156
4. Stereotypes in Employment	157
5. Stereotypes on Reproductive Health.....	158
6. Intersectional Stereotypes	161
E. <i>The Special Procedures</i>	167
II. PART TWO	168
A. <i>A New Generation of Stereotypes</i>	168
B. <i>Mapping the CEDAW Committee's Focus on New and Evolving Technology</i>	169
1. South Asia, Middle East, and North Africa	169
2. The Americas	171
C. <i>Algorithmic Bias</i>	174

CONCLUSION.....	179
APPENDIX	182

INTRODUCTION

The Convention of the Elimination of All Forms of Discrimination against Women, (CEDAW),¹ provides the only universally recognized normative framework on the elimination of discrimination against women. The 16 substantive Articles of the CEDAW and its 39 General Recommendations form the basis of this international framework.²

General Recommendations are authoritative statements on the meaning of the provisions in the CEDAW Convention with respect to the rights of women and the obligations of the State. To date, there are 39 General Comments/Recommendations under the CEDAW Convention (as of October 2022).³ The General Recommendations not only have authoritative value but act as important interpretive tools to fill the lacuna in the treaty. The General Recommendations ensure that the convention is a living document that keeps up with the dramatic changes taking place in the world.

The CEDAW Committee has embarked on an ambitious project to develop a new General Recommendation to create a normative framework to address gender stereotypes. General Recommendation 41 on Stereotypes, in the pipeline to be drafted, will enlarge the normative framework of the CEDAW and its global jurisprudence.⁴ This Article sets out in Part One to analyze the CEDAW Committee’s extant analysis of stereotypes. In Part Two, it looks at the way in which a new General Recommendation can address some of the emerging changes brought about by Artificial Intelligence. The Article concludes by arguing that AI-driven bias will reproduce and reinforce a new generation of stereotypes and offers that it

¹ Convention on the Elimination of All Forms of Discrimination against Women, United Nations General Assembly, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter, “CEDAW”].

² Christine Chinkin and Marsha Freeman argue that although the “Convention is the only universal legally binding instrument to concentrate comprehensively on the achievement of women’s equality.... partly because it is a product of its time, some key terms are not defined and some issues that are critical to women’s full enjoyment of their human rights are not mentioned.” See *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 13 (Marsha A. Freeman et al. eds., Oxford University Press) (2012).

³ CEDAW General Recommendation No. 39 on the Rights of Indigenous Women and Girls, Committee on the Elimination of Discrimination against Women, 2022, CEDAW/C/GC/39.

⁴ The 41st General Recommendation will focus on Equal and Inclusive Representation of Women in Decision-Making Systems. See *Concept Note on the Future General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems*, unpublished (2023) (article is with the author).

needs to be fully unpacked in the new General Recommendation. These burgeoning technology-amplified stereotypes must be given name to in a critical examination in the new General Recommendation. The idea that stereotypes are structural forms of biases embedded in code calls for a more nuanced recognition of primary and secondary stereotypes that usher in an understanding of direct and indirect discrimination against women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, was the first international human rights treaty to introduce stereotyping as a form of gender discrimination.⁵ The CEDAW's Article 5(a), which requires states to modify customs based on the inferiority of women, presents an obligation to transform culture, rather than just law, and is a marked shift from other human rights treaties.⁶ Despite progress, recognizing gender and intersectional stereotypes as a human rights issue creates a challenge. Stereotypes do not always result in direct physical violations but can be seen in association with other forms of rights violations such as gender-based violence. Given the non-explicit nature of stereotypes, redress lies in both law reform and non-legal change such as through media and education.

Building on the CEDAW, the Convention on the Rights of Persons with Disabilities (CRPD) is the newest human rights convention of the 21st century, holding States Parties accountable to combating stereotypes of people with disabilities.⁷ Adopted on December 13, 2006 and entered into force in 2008 in Articles 4(1)(b) and 8(1)(b),⁸ the CRPD is the first and only international human rights treaty to impose an express obligation to address compounded stereotypes, though other treaty bodies have addressed compounded stereotyping through their work.⁹

I. CEDAW AND STEREOTYPES

The Convention's Article 5(a) on stereotypes is seen as a two-pronged tool, both as an interpretive tool and a substantive provision of the CEDAW. Article 5 within the treaty framework connects it to all other Articles while holding out as a stand-alone Article and as a barometer through which implementation can be measured.

⁵ CEDAW, *supra* note 1.

⁶ CEDAW, *supra* note 1, at art. 5(a).

⁷ Convention on the Rights of Persons with Disabilities, United Nations General Assembly, art. 4(1)(b), 8(1)(b), March 13, 2006, A/RES/61/106 [hereinafter, "CRPD"].

⁸ *Id.*

⁹ *Id.* The CEDAW, for example, has also sought to address compounded stereotyping. CEDAW, *supra* note 1.

A CEDAW Committee member, Frances Raday, has argued that one of the most globally pervasive 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.”¹⁰ As Raday rightly stated, the assumption that women are the primary or sole caregivers of children is often used to exclude women from the public sphere, especially regarding political life, promotions, and high-profile employment opportunities. In enacting the Family and Medical Leave Act of 1993 (FMLA), the US Congress sought to address the stereotyping of women exclusively as mothers, and the US Supreme Court upheld the validity of the FMLA in *Nevada Department of Resources v. Hibbs*.¹¹ There, the Court held that employees of the State of Nevada may recover money damages in the event of the State’s failure to comply with the family-care provision of the Act, and argued that “differential leave policies were not attributable to any differential physical needs of men and women, but rather to the pervasive sex-role stereotype that caring for family members is women’s work.”¹²

However, a new generation of stereotypes has moved away from the overt and explicit forms of stereotypes such as motherhood to the more subtle and insidious forms of biases that are almost invisible to the naked eye. As Martha Minow has argued, “power is at its peak when it is least visible.”¹³ The recent Sabarimala case in India revolved around the issue of menstruation practices and the entry of women of menstruating age into the Sabarimala temple. Traditionally, the temple had barred women of reproductive age (10-50 years) from entering, based on the belief that the deity is celibate. However, in September 2018, the Supreme Court of India lifted the ban, declaring it unconstitutional and discriminatory. This decision sparked widespread debates on menstruation related stereotypes, religious practices, and constitutional rights.¹⁴

The case of *Hong Kong Equal Opportunities Commission v. Director of Education* was a paradigmatic case that went to the heart of gender

¹⁰ Frances Raday, *Gender and Demographic Citizenship: The Impact of CEDAW*, 10 INT’L. J. CONST’L. L. 512, 519 (Mar. 2012).

¹¹ *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003)

¹² *Id.* at 731 (2003).

¹³ Martha Minow, *The Supreme Court 1986 Term: Foreword: Justice Engendered*, 101 HARV. L. REV. 7, 68 (Nov. 1987).

¹⁴ *Sabarimala Temple Entry*, SUPREME COURT OBSERVER (last visited Jan. 10, 2024), <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>.

stereotypes.¹⁵ It illustrates how Article 5 of the CEDAW is not only a substantive article but one which can act as an additive or an interpretive tool to other substantive articles such as article 10 on the right to education. The case examined the system whereby students underwent evaluation through an Internal Assessment (IA) and an Academic Aptitude Test (AAT) to determine their placement in secondary schools. Historically, girls tended to score higher in the IA, while boys performed better in the Academic Aptitude Test. Recognizing this pattern, the Director of Education asserted that an inherent gender bias existed in the testing system. To address this perceived bias, the Director advocated for admitting boys with lower overall SSPA scores into top secondary schools. This position was grounded in the belief that boys experience a delayed academic development, a phenomenon referred to as the late bloomer's effect. The Director argued that this developmental gap between boys and girls converges by the time of graduation. The Director's stance hinged on the idea that the SSPA system did not discriminate based on gender, or if there was any such discrimination, it was justified by valid educational reasons. However, the Court disagreed with this perspective. The Court established that exceptions to the fundamental right of equal treatment could only be permissible if the State could demonstrate the legislation's significant importance, the rational connection between the measures and the objective, and the necessity of the restrictions (proportionality). In the Court's assessment, the SSPA system failed to meet this burden in its application, thereby violating the Sex Discrimination Ordinance. Furthermore, the Court emphasized that, whenever possible, the ordinance should be interpreted in a manner consistent with Hong Kong's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Specifically, the Court highlighted Article 10 of CEDAW, which mandates governments to eradicate gender stereotypes. It rejected the Director's unsupported claims about divergent development in boys and girls as insufficient justification for discrimination and stereotypes against girls.

For this paper, culture refers to those practices that maintain a rigid fidelity to immutable traditional norms that conflict with and resist gender equality. The patriarchal interpretation of a certain culture perpetuates norms that subordinate women and reproduce and reinforce gendered stereotypes. Accordingly, culture will be used here to signify a patriarchal concept of culture.¹⁶ While the right to culture is an established principle of the human

¹⁵ Equal Opportunity Comm'n v. Dir. of Educ., [2001] HCAL 1555/2000 (C.F.I.), <https://www.escri-net.org/caselaw/2009/equal-opportunities-commission-v-director-education-no-1555-2000>.

¹⁶ See generally Frances Raday, *Culture, Religion and Gender*, 1 INT'L J. CONST'L L. 663 (2003).

rights framework,¹⁷ it is only when culture collides with rights or when a cultural defense is used as a shield in continuing violations of women's rights does the clash between culture and rights give rise to gendered stereotypes.¹⁸ Many of these practices have been the subject of critical concern in the Concluding Observations on Country Reports by the CEDAW Committee and those are mapped in the Table in the Appendix.

Religion and culture, although different categories, perform a dialectic in that they influence each other and are often used as a defense against the actualization of women's rights. In many religions, an ongoing hermeneutical enterprise is looking closely at the alignment of those religious practices and laws through the lenses of the human rights framework.¹⁹

A. The CEDAW Committee: Conceptualizing Stereotypes

In this section, I will examine the Travaux Préparatoires, or drafting history, of the CEDAW Article 5, then trace the way stereotypes have been enshrined in international human rights normative frameworks and defined in treaty body jurisprudence.

1. Travaux Préparatoires

The Travaux Préparatoires to Article 5 show that there were concerns about how the text of Article 5 could impact free speech.²⁰ The first drafts of article 5(a) were based on the terms used in article 3 of the Declaration on the Elimination of Discrimination against Women (DEDAW) 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.”²¹ The state responsibility was narrowly tailored to “the education of public opinion.”²²

¹⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), art. 27.

¹⁸ See MARTHA NUSSBAUM, *SEX AND SOCIAL JUSTICE* 35–39 (1999).

¹⁹ For literature on hermeneutical efforts-in Islam, see generally Abdullah Ahmed An-Naim, *Human Rights in the Muslim World Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13 (1990).

²⁰ See generally LARS ADAM REHOF, *GUIDE TO THE TRAVAUX PREPARATOIRES OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 77-88* (1993) (explaining the drafting history of Article 5 of the CEDAW).

²¹ Declaration on the Elimination of Discrimination against Women, art. 3, United Nations General Assembly, A/RES/22/2263 (Nov. 7, 1967) [hereinafter, “DEDAW”].

²² *Id.*

The first draft of Article 5 of the CEDAW, written by the Philippines, indicated:

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.²³

This draft seems to have limited states' obligations for revising and addressing stereotypes to educational and media reform rather than through legislative reform. The USSR similarly proposed a draft focusing on "public opinion."²⁴ 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."²⁵ In contrast, Sierra Leone's comment was an important one recognizing that not all customs were negative, noting that "customary practices would have to be carefully studied to ascertain whether in fact they were based on the idea of inferiority of women... some customary functions by women were not based on inferiority of one of the sexes."²⁶ Ultimately, Mexico's draft language was more consistent with the draft that was finally adopted and was opened for discussion.²⁷

2. Normative Framework: Culture & Stereotypes

Cultural stereotypes have been used to justify laws and practices which oppress women and render women as inferior to men. This problem arises when law and practice treat culture as a monolithic and legitimizes monopolistic claims about cultural traditions. Essentialized views of culture as immutable and frozen in amber creates a world view where religion and rights are in binary opposition with each other, reinforcing stereotypes about those on either side of the debate and creating a dualism between secularist and pluralist notions of human rights.

An understanding of cultural change is crucial to addressing stereotypes which are often born of an essentialist view of culture. Culture is not immutable or frozen in amber. It is a living organism which is dynamic

²³ REHOF, *supra* note 14 at 78.

²⁴ REHOF, *supra* note 14 at 79.

²⁵ *Id.*

²⁶ REHOF, *supra* note 14 at 80.

²⁷ REHOF, *supra* note 14 at 81.

and interconnected. It is not a static view of society but adjusts to change. Cross cultural dialogue has resulted in a new meaning of evolution and a development of culture and tradition.

Radhika Coomaraswamy has argued that "culture and cultural practices are always being contested and are constantly changing."²⁸ Sally Merry has posited that the "practice of human rights is burdened by a colonialist understanding of culture that smuggles nineteenth-century ideas of backwardness and savagery into the process, along with ideas of racial inferiority."²⁹ Internal discourse and cross-cultural dialogue can help to expose the stereotypes perpetuated through traditional practices and develop a conceptual clarification on how culture and human rights can co-exist.

For stereotypes to be addressed, we have to acknowledge that culture is not monolithic, but open to interpretation. Ideas and practices that shape and are shaped by a new generation's encounters with culture reveals that culture is a dynamic, historical, conflicting part of our lives and institutions. Cultural ideas can be a source of strength as well as oppression, depending on the context. How can we examine tradition and customs from a plural perspective, from traditional exegesis to hermeneutics, from critical theory and gender analysis?

Cultural and religious traditions cannot prevail over the human rights of any group. This is enshrined in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) in Article 2:

No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.³⁰

²⁸ Radhika Coomaraswamy, *Women and Children's Rights: The Cutting Edge of Human Rights*, 30 AM. U. L. REV. 1, 29 (2015).

²⁹ Sally E. Merry, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 226 (2006); see also Maroyi Mulumeoderhwa, *Landless and "Childless" in the Eastern Democratic Republic of Congo: High School Students' Perceptions of Gendered Constitutional Rights*, 52 L. & SOC'Y REV. 1026, 1035 (2018) (explaining that "[c]ulture is fluid, despite efforts of some cultural advocates to maintain adherence to static tradition ubiquitously referred to as the 'customs of the ancestors'").

³⁰ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, United Nations Educational, Scientific and Cultural Organization, art. 2 (Oct. 20, 2005) (entered into force with its Article 29 on June 5, 2007). The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religious Belief includes in Article 5 (5) that no child may be injured under the pretext of religious belief. G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religious Belief (Nov. 25, 1981).

Rikki Holtmaat writes in Oxford's *The UN Convention on the Elimination of All Forms Discrimination Against Women: A Commentary* that "the Committee's position conforms to many other international legal instruments, which acknowledges the right of all human beings to live according to cultural traditions and a right to practice one's beliefs. These rights exist under the condition that the human rights of others, including women, are not in any way restricted or violated."³¹

Scholars, too, have challenged the way in which culture is often sanctified in the name of religion, religious authority and divine or sacred texts. The argument is that divine texts are not fixed in stone for all times, but a dynamic text that every generation must encounter anew.³² We need to explore the religious texts from a variety of perspectives, from traditional exegesis to hermeneutics, critical feminist theory and cultural analysis drawing fresh and contemporary lessons on gender equality from sacred texts.³³ CEDAW recommends that countries provide information, disaggregated by sex, age, disability, ethnicity, religion and geographical location, collected through the Human Rights Information Management System, on women facing intersecting forms of discrimination in their next periodic reports.³⁴ Interpretation calls for going beyond religious texts as frozen in amber to look at the role played by social and historical conditions – most interpretations of culture presuppose knowledge of the historical situations. For example, it is important to understand why the Quran permitted certain traditions such as polygamy, in the seventh century Hijaz, which are no longer relevant in modern times.³⁵

Scholars have argued that an interpretation of cultural and religious traditions are not possible without taking the needs and contexts of our times.³⁶ We can only engage with a tradition according to the contemporary

³¹ Rikki Holtmaat, *Article 5*, in *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS DISCRIMINATION AGAINST WOMEN: A COMMENTARY*, *supra* note 2, at 160 (need to double check this page number in some way).

³² SILVIA SARA CANETTO & SHAWN MEGHAN BURN, *THE CAMBRIDGE HANDBOOK OF PSYCHOLOGY AND HUMAN RIGHTS* 126–27 (Neal S. Rubin & Roseanne L. Flores eds., 2020).

³³ See generally, Jaclyn Ling-Chien Neo, "Anti-God, Anti-Islam, and Anti-Quran": *Expanding the Range of Participants and Parameters in Discourse Over Women's Rights and Islam in Malaysia*, UCLA PAC. BASIN L. J. 29 (2003) (exploring "the social-political environment within which Islamic discourse in relation to human rights and duties takes place within Malaysia, with a focus on women's rights issues"; arguing also for varied perspectives on the coexistence of religion and women's human rights).

³⁴ See, e.g., *Concluding observations on the fifth periodic report of Pakistan*, C/PAK/CO/5 (2020).

³⁵ ZIAUDDIN SARDAR, *READING THE QUR'AN: THE CONTEMPORARY RELEVANCE OF THE SACRED TEXT OF ISLAM* 27 (2017).

³⁶ *Id.* at 28.

needs. Inherited traditions must allow the exigencies of our time to tailor their interpretations. As the scholar Ziauddin Sardar asks, “[t]he troubling question for me as an individual, as well as for Muslims generally, is how to transcend tradition and find the meaning and implications of the Holy Book for our time and place.”³⁷ This is a question that must be asked of all traditions. The Committee has also focused on a constellation of harmful practices³⁸ that

³⁷ *Id.* at 58.

³⁸ In writing this article, we examined the CEDAW Committee’s Concluding Observations over the last 5 years (2017–2022) for the Middle East and North Africa (MENA), South Asia and East Asia regions. Of the States Parties reviewed by the Committee, Concluding Observations mentioned stereotypes based on harmful traditional practices, such as those listed above, in 75 places. *See, e.g., Concluding observations on the fifth periodic report of Pakistan, supra* note 32 (recommending that the state party “adopt a bill to amend the Child Marriage Restraint Act to set the minimum age of marriage at 18 years for both sexes without exceptions throughout the State party”); *see also Concluding observations on the sixth periodic report of Jordan, C/JOR/CO/6* (2017) (recommending that the state party should “prevent the practice of early and/or child marriage in all societal groups with a view to giving priority to the best interests of girls and their right to education, and conduct awareness-raising campaigns concerning the many negative consequences of such marriages”; for a more complete list of which CEDAW Concluding Observations mention stereotypes based on harmful traditional practices, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD) for the MENA and Asia regions. Of the countries reviewed, stereotypes based on harmful traditional practices such as female genital mutilation (hereinafter FGM), forced marriage, child marriage, femicide, honor crimes, polygamy, dowry, or virginity testing were mentioned in the CRC Concluding Observations of eight countries, the CRPD Concluding Observations of seven countries, and the CERD Concluding Observations of three countries. For example, in its Concluding Observations to Kuwait, the CRC posited: “[t]he Committee is also seriously concerned that ... female genital mutilation persists, in particular among migrant communities, in the State party.” Convention on the Rights of the Child, *Concluding observations on the combined third to sixth periodic reports of Kuwait, CRC/C/KWT/CO/3-6* (2022). In its Concluding Observation to Nepal, CERD stated: “[t]he Committee recommends that the State party: effectively operationalize its strategy to end child marriage by 2030, including by establishing related activities, targets, timelines, budgets and data collection methods ... [and] [r]aise awareness in affected communities about the legal prohibition of child marriage, and about the value of girls, their education, and their ability to pursue economic independence.” Convention on the Elimination of Racial Discrimination, *Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal, CERD/C/NPL/CO/17-23* (2018). Finally, in its Concluding Observations to India, the CRPD explained: “[t]he Committee is concerned about: Harmful practices against women with disabilities, particularly ... dowry payments from families ... [t]he Committee recommends that the State party: Redouble its efforts to enforce the legal prohibition of harmful practices such as dowry payments and forced marriages, in relation to women and girls with disabilities, and end harmful practices.” Convention on the Rights of Persons with Disabilities, *Concluding observations on the initial report of India, CRPD/C/IND/CO/1* (2019).

violate the CEDAW, including child marriage,³⁹ forced marriage,⁴⁰ FGM,⁴¹ femicide or honor crimes,⁴² polygamy,⁴³ traditional practices related to dowry,⁴⁴ bride price,⁴⁵ virginity testing⁴⁶ among others.⁴⁷ Moreover, the Committee has noted the correlation between customs and unequal inheritance⁴⁸ and property ownership,⁴⁹ the male breadwinner head of household models.⁵⁰

The Committee has often called for cross-cultural and transnational dialogue to address the way in which culture and rights might collide. At all times, the Committee has made it clear that the primacy of women's rights prevails over cultural traditions that violate women's rights.⁵¹ Sustainable Development Goal 5, which focuses on gender equality and empowerment of all women and girls, in Target 5.3 calls for elimination of "all harmful

³⁹ CEDAW, *supra* note 1, at art. 16 (2).

⁴⁰ CEDAW, *supra* note 1, at art. 16(1)(a)–(c).

⁴¹ CEDAW General Recommendation No. 14: Female Circumcision, Committee on the Elimination of Discrimination against Women, A/45/38 (1990).

⁴² CEDAW General Recommendation No. 19: Violence against Women, Committee on the Elimination of Discrimination against Women, Eleventh Session, A/47/38 (1992).

⁴³ CEDAW General Recommendation on Article 16 of the Convention of Elimination of Discrimination against Women, Committee on the Elimination of Discrimination against Women, A/46/38 (2013).

⁴⁴ Kitchen crimes related to dowry are forms of violence against women that are common in India and Pakistan. *See, e.g.,* Juliette Terzieff, *Pakistan's Fiery Shame: Women Die in Stove Deaths*, WOMEN'S ENEWS, Oct. 27, 2002, <http://www.womensenews.org/story/domestic-violence/021027/pakistans-fiery-shamewomen-die-stove-deaths> ("...more than 4000 women have been doused in kerosene and set alight by family members...in the area surrounding the capital Islamabad alone.").

⁴⁵ Rangita de Silva de Alwis, *Domestic Violence Lawmaking in Asia: Some Innovative Trends in Feminist Lawmaking*, UCLA PAC. L. J., 176, 181 (2012).

⁴⁶ *Id.*

⁴⁷ CEDAW, Universal Decl. of Hum. Rts., *supra* note 15 at art. 2 (a) (stating that "violence against women shall be understood to encompass, but not be limited to, the following: physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation"). *See also* The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (2011) (criminalizing "various forms of violence against women... including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilisation").

⁴⁸ CEDAW General Recommendation No. 21: Equality in marriage and family relations, Committee on the Elimination of Discrimination against Women, A/49/38 (1994).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Rikki Holtmaat, *supra* note 29, at 161 (Marsha A. Freeman et al. eds., 2012).

practices, such as child, early and forced marriage and female genital mutilation.”⁵² The UN Special Rapporteur has also explained:

[g]ender ideologies that dictate that men should control women or allow for men to physically control their partners or children are forms of gender-based structural violence. Therefore, when a woman is abused by a husband because he believes he has the right to physically assault her, the woman is experiencing interpersonal and structural violence simultaneously.⁵³

This is also reflected in CEDAW General Recommendation No. 29 on Marriage and Family Relations.⁵⁴

Apart from the CEDAW, Article 8 (b) of the Convention on the Rights of Persons with Disabilities and Articles 12 and 14 of the Council of Europe Convention on preventing and combating violence against women and domestic violence also address stereotypes. Naming stereotypes makes them visible. Stereotyping harms men as well as women. Increasingly, human rights courts and treaty bodies – including the European Court of Human Rights (EctHR), the Inter-American Court of Human Rights (IACtHR), the CEDAW Committee, and the Committee on the Elimination of Racial Discrimination (CERD) – voice concerns about stereotyping and insist that states should not enforce harmful stereotypes.⁵⁵ For example, the CRPD states in its *General Comment No. 3 on women and girls with disabilities*:

⁵² United Nations Sustainable Development Goals, Goal 5: Gender Equality, Target 5.3 (2015). *See also* United Nations Sustainable Development Goals, Goal 5: Gender Equality, Target 5.b: Women Empowerment through ICT (explaining that “‘Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women’”).

⁵³ Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/17/26 (2 May 2011), ¶26.

⁵⁴ CEDAW General Recommendation No. 29: Marriage and Family Relations, Committee on the Elimination of Discrimination against Women, 2013, C/GC/29.

⁵⁵ *See, e.g.*, CEDAW, *Concluding observations on the combined second and third periodic reports of Oman*, C/OMN/CO/2-3 (2017) (recommending that the State party should “[p]ut in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women, which should include efforts, in collaboration with civil society and community and religious leaders, to educate and raise awareness with regard to the equal roles and responsibilities of women and men in the family and in society;”); *see also* Petrovic v Austria, 1998-II 33 Eur. Ct. H.R. ¶¶31-37 (concerning parental leave allowance. Austrian law provided that only mothers were entitled to receive such payments- by denying this form of social benefits to fathers, and thus enforcing the traditional gender role model, Austria imposed the task of looking after the children on mothers); *see also* González et al. (“Cotton Field”) v. Mexico, Order of the Court of Jan. 19, 2009, Inter-Am. Ct. H.R. ¶¶116, 132, 134 (Nov. 16, 2009); *see also* Yilmaz-Dogan v. Netherlands, Communication No. 1/1984, Committee on the Elimination of Racial Discrimination 1988, CERD/C/36/D/1/1984.

Ensuring the human rights of women requires, first and foremost, a comprehensive understanding of the social structures and power relations that frame laws and policies, as well as of economic and social dynamics, family and community life, and cultural beliefs. Gender stereotypes can limit women's capacity to develop their own abilities, pursue professional careers and make choices about their lives and life plans. Both hostile/negative and seemingly benign stereotypes can be harmful. Harmful gender stereotypes need to be recognized and addressed to promote gender equality. The Convention enshrines an obligation to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.⁵⁶

3. Normative Framework: Measures to Modify Stereotyped Representation of Women in Education, Advertising, and Media

The CEDAW Committee has posited that the media and education are two critical sectors in transforming stereotypes.⁵⁷ Both sectors can play a dual

⁵⁶ Committee on the Rights of Persons with Disabilities, *General Comment No. 3 on women and girls with disabilities*, art. 8, CRPD/C/GC/3 (2016)..

⁵⁷ See CEDAW, *supra* note 1, Art. 10 (stating that "States Parties shall take all appropriate measures to eliminate ... (c) any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes [sic] and the adaptations of teaching methods..."); see also Beijing Decl. and Platform for Action, Fourth World Conference on Women, (Sep. 15, 1995) (calling for the "creation of an educational and social environment, in which women and men, girls and boys, are treated equally and encouraged to achieve their full potential ... where educational resources promote non-stereotyped images of women and men"); see also Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union, Art. 12 (July 11, 2003) (stating that "State Parties shall ... eliminate all stereotypes in textbooks, syllabuses and the media that perpetuate ... discrimination"); see also Convention of Belem do Para, ch. 2, art. 6 (1994) (articulating that "the right of every woman to be free from violence includes, among others ... the right of women to be valued and educated free of stereotyped patterns of behavior"); see also Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Ch. III, Art. 14 (2011) (stating that "Parties shall take ... the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles ..."); see also European Parliament Resolution of 12 March 2013 on Eliminating Gender Stereotypes in the EU (2012/2116(INI)) (emphasizing "the need for education programmes/[sic]curricula focusing on equality between men and women").

role in reproducing and reinforcing stereotypes and in combating stereotypes.⁵⁸ Curricular reform, teacher training, reform of gender segregated vocational training and positive gender-neutral roles in the media can be key in addressing social change.⁵⁹ Apart from Article 5 of the treaty, the CEDAW has examined stereotypes in its General Recommendations. In the CEDAW Committee General Recommendation No. 3: Education and Public Information Programmes, the CEDAW urged States Parties “to adopt education and public information programmes, which will help eliminate prejudices.”⁶⁰

The Committee has also called upon States Parties in its Concluding Observations to address stereotypes in educational institutions, curriculum, the media, and advertising.⁶¹ Several States Parties have enacted laws

⁵⁸ CEDAW, *supra* note 1, Art. 10.

⁵⁹ CEDAW, *supra* note 1, Art. 10.

⁶⁰ CEDAW General Recommendation No. 3: Education and Public Information Programmes, Committee on the Elimination of Discrimination against Women, A/42/38 (1987).

⁶¹ In writing this article, we examined the CEDAW Committee’s Concluding Observations over the last 5 years (2017–2022) for Middle East and North Africa (MENA) and South Asia and East Asia regions. Of the countries reviewed, Concluding Observations issued to 22 countries focused on stereotypes in education. *See, e.g.,* CEDAW, *Concluding observations on the combined second and third periodic reports of Oman, C/OMN/CO/2-3* (2017) (recommending that the State party: “Accelerate its efforts to launch information campaigns with the media to strengthen understanding of substantive gender equality, and continue to eliminate discriminatory stereotypes through the education system to enhance a positive and non-stereotypical portrayal of women [as well as to] ... Review curricula and textbooks at all levels of education to eliminate discriminatory stereotypes on the roles of women, and enhance training for teachers on women’s rights and gender equality, with a view to changing existing stereotypes on the roles of women and men in the family and in society”); *see also* CEDAW, *Concluding observations on the seventh periodic report of Iraq C/IRQ/CO/7* (2019) (calling upon the State party to “ensure that discriminatory gender stereotypes are removed from school curricula and textbooks”); for a more complete list of which CEDAW Concluding Observations mention stereotypes in education, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD) for the MENA and Asia regions. Of the countries reviewed, stereotypes in education, advertising, and the media were mentioned in the CRC Concluding Observations of two countries, the CRPD Concluding Observations of two countries, and CERD Concluding Observations of three countries. For example, in its Concluding Observation for Bahrain, the CRC posited: “while welcoming the advances made in the education and vocational training of girls, the Committee remains concerned about persistent gender stereotypes regarding certain areas of education, and recommends that the State party: Review and update school curricula and texts at all levels, with a view to eliminating discrimination and gender stereotypes, addressing the structural causes of gender-based discrimination, diversifying the educational and vocational choices of girls and boys and

banning stereotypes in educational textbooks, curricula, and vocational training. Spain, for example, passed a law in 2004 ensuring that “sexist or discriminatory stereotypes will be eliminated in all educational materials and [that such materials] shall promote the equal value of men and women.”⁶² Similarly, France, in its Education Code, states that the administrators of higher education “shall take action against sex stereotypes in teaching and in all aspects of life in educational communities.”⁶³ Tanzania also pledges to eliminate gender stereotyping through “the curricula, textbooks, and classroom practices.”⁶⁴ Finally, Article 14 of Croatia’s Gender Equality Act seeks to promote the teaching of gender equality in all levels of education, with the goal of eliminating “inequality of sexes and gender-related stereotypes in the education process at all levels as well as to respect gender-related aspects in all areas of education.”⁶⁵

Through these Concluding Observations, States Parties are also held accountable to addressing damaging stereotypes in the media and advertising. What follows is a review of states’ laws adopted to mitigate the CEDAW’s concerns regarding harmful gender stereotypes in the media; each state law takes a different approach to the issue of gender stereotyping in the media. Argentina’s legislature, for example, focused on corporations and businesses, and passed a law in 2009 charging them as a matter of their social responsibility and impact to prevent and eliminate advertisements that promote stereotypes of women.⁶⁶ In contrast, Benin drafted a law calling upon the Highest Authority for Advertising and Communications (HAAC) to ensure equal representation of women and men in the media, requiring that

encouraging girls to be interested in all possible educational and vocational training.” Convention on the Rights of the Child, *Concluding observations on the combined fourth to sixth periodic reports of Bahrain*, 2019 CRC/C/BHR/CO/4-6.

⁶² Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género, art. 6, 1/2004 (Dec. 28, 2004) (Organic/Fundamental law on Measures of Integral Protection against Gendered Violence).

⁶³ Education Code, Book I: General Educational Principles, Title II: Objectives and Missions in Public Education, Ch. III: Objectives and Missions in Higher Education, Art. L123-6, (July 22, 2013).

⁶⁴ Education and Training Pol’y 3.2.11, Ministry of Ed. and Culture, United Republic of Tanzania (1995).

⁶⁵ Act on Gender Equality, Gov. of the Republic of Croatia, Office for Gender Equality, Part V, Art. 14 (Nov. 2017).

⁶⁶ Law on the Comprehensive Protection of Women, Tit. 2, Ch. 3, Art. 8, 2009 (Arg.) (arguing that the “Secretariat of the Media and Communications of the Nation must promote, as topic of corporate social responsibility, the diffusion of advertising campaigns to prevent and eradicate violence against women”).

HAAC combat and fight against stereotypes.⁶⁷ While a Bolivian law requires that its Ministry of Communication design a framework and communication strategy that actively dismantles the patriarchal stereotypes of the inferiority of women and advances cultural and intersectional inclusion as matter of national development,⁶⁸ Cape Verde takes a new approach to address the unequal representation of men and women, focusing on social media.⁶⁹ Through a more general law, the Comoros legislature called upon the press to combat sexist stereotypes.⁷⁰ In Ecuador, the legislature attempted to *use* the media as a medium to proactively address prejudice and violence against women⁷¹ as well as ask that any dissemination or publication of media proactively advance the dignity and rights of all and charges the relevant authority to remove advertisements that assail the security of the members of

⁶⁷ Law on the Prevention and Repression of Violence Against Women, Tit. 2, Ch. 2, Art. 11, 2012 (Benin) (highlighting that “[t]he High Authority for Audiovisual and Communication (HAAC) must ensure the equitable representation of women and men in the media, in particular by avoiding, as far as possible, degrading and vexatious representations, by combating sexist stereotypes and by avoiding an unbalanced presence of persons of both sexes in the programs broadcasted. The broadcasters' specifications must include these principles. The power to sanction the concerned media must be exercised”).

⁶⁸ Comprehensive Law to Guarantee Women a Life Free of Violence, Tit. 3, Ch. 1, Art. 22, 2012 (Boliv.) (explaining that “[t]he Ministry of Communication, within the scope of its competences, shall adopt the following measure: design and implementation of a national communication strategy, including campaigns in mass media, aimed at informing and raising awareness about the causes, forms and consequences of violence against women, as well as to deconstruct patriarchal stereotypes of subordination and devaluation of women, considering cultural diversity and allocating for this purpose the same resources assigned to advertising on strategic issues for national development”).

⁶⁹ Special Law Against Gender-Based Violence, Tit. 2, Ch. 1, Sec. 1, Art. 9, 2011 (Cape Verde) (establishing “measures that limit advertising which violates the principles and rules for promotion of gender equality, defined and established under the terms of this law”).

⁷⁰ Law on the Prevention and Repression of Violence Against Women in the Union of Comoros, Tit. 1, Ch. 1, Art. 10, 2014 (holding that “[t]he Audiovisual and the Press Authorities must ensure fair representation of women and men by the media, in particular by avoiding degrading and upsetting representations as far as possible, by fighting against sexist stereotypes, avoiding an uneven presence of people of both sexes in their broadcast. The provisions for the broadcasters will essentially include these principles. [The authorities] must exercise their sanctioning power over the media in question”).

⁷¹ Law to Prevent and Eradicate Violence Against Women, Tit. 2, Ch. 3, Art. 41, 2018 (explaining that “[t]he State, through the entities that make up the System, within the scope of its powers, will apply the following policies, plans, programs, projects, guidelines and actions, without prejudice to the functions established for each institution: regulate and prohibit the dissemination of communication and advertising content in audiovisual, radio, written and digital media that incite, produce and reproduce violence against women; They must also develop contents related to awareness, prevention, protection, punishment and reeducation for the eradication of violence against women and members of the family”).

the community.⁷² An Indian law addresses stereotypes in the media in a twofold manner: first, it leaves one clause vague with room for ambiguity in interpretation of the law,⁷³ and second, it provides more concrete analysis of the correlation between sexual objectification of women and violence against women and prohibits advertising that promotes any stereotypes that objectify women.⁷⁴ Finally, a South African law prohibits gender stereotyping in advertising but permits it if the stereotyping is deemed “reasonable” by a regulatory board.⁷⁵

Recently, several States Parties have also adopted gender-sensitive codes of ethics for the media.⁷⁶ For example, in the United Kingdom in 2019,

⁷² *Id.* (explaining that the purpose of the law is “to ensure that the dissemination of information in all its forms and related to violence against women be treated with the corresponding informative objectivity in favor of the defense of human rights and dignity of women victims of violence and their children. They must also develop content related to awareness, prevention, protection, punishment and reeducation for the eradication of violence against women, girls, adolescents, youth, adults and the elderly and members of the family. Publicity or information placed on public roads, shopping centers, spaces with significant foot traffic, should not spread sexist messages, be sexist or violate the rights of people. The governing body of Transportation and Public Works must withdraw the advertising placed”).

⁷³ The Code for Self-Regulation of Advertising Content in India, Guidelines on Harmful Gender Stereotypes, Sec. 1 (explaining that “[w]hile advertisements may feature people undertaking gender stereotypical roles e.g., a woman cleaning the house or a man going to an office, or displaying gender-stereotypical characteristics e.g., a man being assertive or a woman being sensitive to others’ needs, they must not suggest that stereotypical roles or characteristics are: (1) always uniquely associated with a particular gender, (2) the only options available to a particular gender, and (3) never carried out, or displayed by, another gender(s)”).

⁷⁴ The Code for Self-Regulation of Advertising Content in India, Guidelines on Harmful Gender Stereotypes, Sec. 1, Cl. 7 (arguing that “advertisements should not indulge in the sexual objectification of characters of any gender or depict people in a sexualized and objectified way for the purposes of titillating viewers. This would include the use of language or visual treatments in contexts wholly irrelevant to the product. For example, an online takeaway service featuring an image of a woman wearing lingerie lying back in a provocative pose behind various fast-food items would be considered problematic. Even though the image may not be sexually explicit, by using a suggestive image of a woman that bears no relevance to the advertised product, the ad would be considered objectifying women by presenting them as sexual objects, and therefore is a gender stereotype that is likely to cause harm”).

⁷⁵ Advertising Regulatory Board (ARB), Code of Advertising Practice, General Principles, Sec. 2, Cl. 3.5 (holding that “gender stereotyping or negative gender portrayal must not be permitted in advertising, unless in the opinion of the ARB, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”).

⁷⁶ In addition to the two examples mentioned above, several other States Parties have adopted legislation and regulations banning gender stereotyping in advertising. Belgium, for

a new rule was promulgated into the UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing (CAP Code) and UK Code of Broadcast Advertising (BCAP Code) outlawing harmful gender stereotypes in advertisements.⁷⁷ Moreover, the Australian Association of National Advertisers (AANA) introduced a new advertising Code of Ethics in 2021 which addresses gender portrayals and sexualization in advertising.⁷⁸ It bans the focus on body parts and the use of overtly sexual images in outdoor advertising or shop front windows or where the image is not salient to the product or service being advertised.⁷⁹

example, provides in Sec. 1 of its Code of Conduct on Sexist, Hypersexualised and Gender-Stereotyped Commercial Communications that a review of proposed commercial communications will take place to “determine whether they violate the requirements against sexist, hypersexualised or gender-stereotyped commercial communications.” Conseil Supérieur de l’Audiovisuel de la Fédération Wallonie-Bruxelles, *Code of Conduct on Sexist, Hypersexualised and Gender-Stereotyped Commercial Communications* (2022). India also published its Guidelines for Specific Category Ads: Harmful Gender Stereotypes, which states that “Advertisements must not include gender stereotypes that are likely to cause harm or serious or widespread offence.” Advertising Standards Council of India, *The Code for Self-Regulation of Advertising Content in India* 55 (2022), <https://ascionline.in/index.php/ascicodes.html>. Sec. 3.18 of Ireland’s General Rules states that “marketing communications should respect the principle of equality of men and women. They should avoid gender stereotyping and any exploitation or demeaning of men or women. Where appropriate, marketing communications should use generic terms that include both the masculine and feminine gender; for example, the term ‘business executive’ can be used to refer to both men and women.” Advertising Standards Authority for Ireland, *ASAI Code – Sec. 3: General Rules* (2016), <https://www.asai.ie/asaicode/section-3-general-rules/>. Article 10 of Italy’s Rules of Behavior similarly states that “marketing communication should respect human dignity in every form and expression and should avoid any form of discrimination, including that of gender.” Istituto dell’Autodisciplina Pubblicitaria, *Code of Marketing Communication Self-Regulation Italy* (2021), <https://www.iap.it/about/the-code/?lang=en&lang=en>. In South Africa’s Code of Advertising, its Advertising Regulatory Board states that “gender stereotyping or negative gender portrayal must not be permitted in advertising, unless in the opinion of the ARB, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.” Advertising Regulatory Board, *Code of Advertising Practice: Section II – General Principles* (2021), <https://arb.org.za/#codes>. Finally, New Zealand’s Rule 1 (c) Decency and Offensiveness cautions that “advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.” Advertising Standards Authority, Advertising Standards Code (effective Nov. 1, 2018 for new ads, effective Feb. 1, 2019 for all ads), <https://www.asa.co.nz/codes/codes/advertising-standards-code/>.

⁷⁷ UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing 2019, Rule 4.9 (U.K.); UK Code of Broadcast Advertising 2019, Rule 4.14 (U.K.).

⁷⁸ *Australian Association of National Advertisers Code of Ethics 2021*, Sec. 2.

⁷⁹ *Id.*

B. Revising Laws and Policies

The Committee has called upon States Parties to abolish laws that help construct and reproduce gender stereotypes, including penal codes that provide mitigatory and exculpatory provisions in relation to honor crimes or marital rape.⁸⁰ The Committee has also called upon governments to revise gendered language in laws and policies.⁸¹ The Committee has urged States Parties to equalize caregiving roles and to address gender stereotypes in family leave policies and other family benefits that privilege one sex over the other.⁸² Moreover, in General Recommendation 25, the Committee has asked States Parties to adopt “temporary special measures ... to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviors that discriminate against or are disadvantageous for women.”⁸³

CEDAW’s article 2 requests that States Parties “condemn discrimination against women in all its forms.”⁸⁴ Where article 2(a) calls for the adoption of laws on the elimination of gender discrimination, article 2(b) requires that a state adopts a range of measures prohibiting discrimination against women.⁸⁵ Article 2(b) and (c) also overlap in a number of respects, as article 2(c) calls for the legal protection of the rights of women.⁸⁶ Article 2(e) requires that States address discrimination against women by private or non-State actors, and imposes a due diligence obligation on States Parties to prevent discrimination by private actors.⁸⁷ Article 2(f) requires states to modify or abolish discriminatory laws, regulations, and practices.⁸⁸ This article is reinforced by General Recommendation 28, which requires availability of appropriate remedies, including financial penalties and punishment, in case the state and non-state parties do not fulfill their obligations.⁸⁹

⁸⁰ See, e.g., CEDAW, *Concluding observations on the fifth periodic report of Pakistan*, C/PAK/CO/5 (2020).

⁸¹ See, e.g., CEDAW, *Concluding observations on the fifth periodic report of Singapore*, C/SGP/CO/5 (2017)

⁸² See, e.g., CEDAW, *Concluding observations on the second periodic report of Qatar*, C/QAT/CO/2 (2019).

⁸³ CEDAW General Recommendation No. 25: Art. 4 ¶ 1, of the Convention (temporary special measures), Part IV, Committee on the Elimination of All Forms of Discrimination against Women, C/GC/29 (2004).

⁸⁴ CEDAW, *supra* note 1, Art. 2, 2(a).

⁸⁵ CEDAW, *supra* note 1, Art. 2(a), (b).

⁸⁶ CEDAW, *supra* note 1, Art. 2(b), (c).

⁸⁷ CEDAW, *supra* note 1, Art. 2(e).

⁸⁸ CEDAW, *supra* note 1, Art. 2(f).

⁸⁹ CEDAW General Recommendation No. 28 on the core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against

A review of the Committee's work shows that the concept of women as the primary homeworkers has hamstrung women's engagement with the labor market and informed the work of the Committee.⁹⁰

Other areas include recommendations to modify stereotypes that recognize men as heads of households and breadwinners and ways in which gender stereotypes inform judicial decision making on violence against women.⁹¹ The CEDAW Committee's General Recommendation No. 19 calls for addressing the underlying causes of violence against women.⁹² The Committee notes the following: (1) "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion..."; (2) "these attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals ... [which] in turn contributes to gender-based violence"; and (3) "rural women are at risk of gender-based violence because [of the] traditional attitudes regarding the subordinate role of women that persist in many rural communities."⁹³

In addressing General Recommendation No. 19 on violence against women in Concluding Observations to state party reports, the Committee has affirmed repeatedly that stereotyping is a root cause of gender violence and stressed the need to challenge stereotyping as a way of preventing such violence.⁹⁴ Furthermore, the Committee has routinely argued that gender-

Women, Committee on the Elimination of All Forms of Discrimination against Women, Part III (A), C/GC/28 (2010).

⁹⁰ See Frances Raday, *Article 11*, The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary 304 (Marsha A. Freeman et al. eds., 2012).

⁹¹ See, e.g., CEDAW General Recommendation No. 21: Equality in Family and Marital Relations, Committee on the Elimination of All Forms of Discrimination against Women, Thirteenth Session, 1994, A/49/38 (commenting that variations in States Parties' laws on practices relating to marriage have "wide-ranging consequences for women," resulting in the "husband being accorded the status of head of household and primary decision maker").

⁹² CEDAW General Recommendation No. 19: Violence against women, Committee on the Elimination of All Forms of Discrimination against Women, Eleventh Session, A/47/38 (1992).

⁹³ *Id.*

⁹⁴ See, e.g., CEDAW, *Concluding observations on the third periodic report of Afghanistan*, CEDAW/C/AFG/CO/3 (2020) (urging the State party "to address cultural norms and discriminatory stereotypes that lead to social stigma associated with gender-based violence against women and girls ..."); for a more complete list of CEDAW Concluding Observations to State parties addressing the connection between stereotypes and gender-based violence, see appendix to this article.

based violence is often committed in the name of tradition or cultural practice.⁹⁵

At the same time, General Recommendation No. 35 sees gender-based violence as a way in which the devaluation of women and girls are perpetuated. It calls for gender-sensitivity in judicial decision-making, especially in regard to the harmful role of stereotypes that can contribute to violence against women.⁹⁶ The Committee notes that: “gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.”⁹⁷ In effect, General Recommendation No. 35 goes further than General Recommendation No. 19; General Recommendation No. 35 articles 2 (d), 2 (f), and 5 (a) call upon the judicial branch to abstain from stereotyped decision making in the interpretation of legal provisions: “the application of preconceived and stereotyped notions of what constitutes gender-based violence against women, what women’s responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women’s right to the enjoyment of equality before the law, fair trial and the right to an effective remedy established in articles 2 and 15 of the Convention.”⁹⁸ This acknowledgment of the significance of judicial obligations to address direct and indirect discrimination that flows from, among other factors, wrongful gender stereotyping, is key to the enforcement of CEDAW’s Article 5. General Recommendation No. 35 also calls for legislative and education initiatives that must address stereotyped gender roles.⁹⁹

Several violence against women laws address gender and intersectional stereotypes as causes and consequences of violence against women. These laws attempt to address gender stereotyping as a root cause of violence against women and view education to combat structural and systemic causes of gender-based violence.

⁹⁵ See, e.g., CEDAW, *Concluding observations on the combined third and fourth periodic reports of Saudi Arabia*, CEDAW/C/SAU/CO/3-4 (2018) (explaining that “[t]he Committee draws the attention of the State party to its obligation to ensure that traditions, religion and culture are not used to justify discrimination against women and violations of the rights enshrined in the Convention”); for a more complete list of CEDAW Concluding Observations to State parties recognizing that culture can be an excuse for gender-based violence, see appendix to this article.

⁹⁶ CEDAW General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19, Part IV (C), Committee on the Elimination of All Forms of Discrimination against Women, C/GC/35 (2017).

⁹⁷ *Id.* at Part II.

⁹⁸ *Id.* at Part III.

⁹⁹ *Id.* at Part IV (A), (B).

An examination of the World Bank compendium of legal frameworks on domestic violence reveals those laws in Argentina,¹⁰⁰ Bolivia,¹⁰¹ Brazil,¹⁰² Burundi,¹⁰³ Costa Rica,¹⁰⁴ Ecuador,¹⁰⁵ Guatemala,¹⁰⁶ Guinea Bissau,¹⁰⁷

¹⁰⁰ Law No. 26.485, Tit. I, Art. 5 (2009) (Arg.) (highlighting symbolic violence against women present in Argentina that is evidence through stereotyped patterns in society that have not been disturbed: “symbolic violence [is the type that aims] through stereotyped patterns, messages, values, icons or signs to transmit and reproduce domination, inequality, and discrimination in social relations, naturalizing the subordination of women in society”).

¹⁰¹ Law No. 1674 (Ley Contra La Violencia en la Familia o Doméstica) [Law Against Family or Domestic Violence], Ch. 1, Art. 3 (1995) (Bol.) (requesting that the State “counteract prejudices, costumes and all other types of practices based on the supposed inferiority of any of the genders or in stereotyped roles for men and women that legitimize or exacerbate violence”).

¹⁰² Law No. 11.340 (Lei Maria da Penha) [Maria da Penha Law], Tit. 3, Art. 8, Sec. 3 (2006) (Braz.) (providing one way to curb or restrain domestic violence: to respect the ethical and social values of the person [woman] and avoid promoting stereotyped roles).

¹⁰³ Law No. 1/13 (Loi portant prevention, protection des victimes et régression des violences basees sur le genre) [Law on the Prevention, Protection of Victims and Punishment of Gender-Based Violence], Ch. 2, Art. 5 (2016) (Burundi) (emphasizing that the government of Burundi must take any measure necessary to bring awareness and education to the issue of gender-based violence so that the cultural and societal harmful patterns of men come to an end).

¹⁰⁴ Law No. 7586 (Law Against Domestic Violence), Ch. 5, Art. 21 (1996) (Costa Rica) (highlighting the relationship between the formulation and promotion of stereotypes and how that legitimizes and exacerbates violence against women).

¹⁰⁵ Law to Prevent and Eradicate Violence against Women, Ch. 1, Art. 2 (2018) (Ecuador) (preventing stereotypes from serving as the catalyst to perpetuate violence or inequality through “the transformation of sociocultural patterns and stereotypes that neutralize, reproduce, perpetuate and sustain inequality between men and women”); Law to Prevent and Eradicate Violence against Women, Ch. 2, Art. 38 (2018) (Ecuador) (defining “instruments in order to strictly control any public spectacle and prohibit, suspend or close those in which violence or discrimination is promoted; or the reproduction of stereotypes that reinforce inequality”); Law to Prevent and Eradicate Violence against Women, Ch. 3, Art. 40 (2018) (Ecuador) (explaining that “prevention . . . and awareness mechanisms [are] aimed at progressively eliminating sociocultural patterns and stereotypes that are justified or neutralized in order to eradicate violence against women”).

¹⁰⁶ Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar [Law to Prevent, Punish and Eliminate Interfamily Violence], Art. 13 (1996) (Guat.) (recommending “modification of sociocultural behavior patterns of men and women . . . for all levels of the educational process, in order to counteract prejudices, customs and all kinds of practices that are based on the premise of the inferiority of any of the genres or in the stereotypes for men and women, which legitimize or exacerbate violence against people”).

¹⁰⁷ Domestic Violence Law, preamble (2014) (Guinea-Bissau) (explaining that the combat of domestic violence “demands the elimination of stereotypes, myths, alterations of gender representations and the values that have perpetuated the existence of unequal relationships in the family, school and social environment”).

Mexico,¹⁰⁸ Nicaragua,¹⁰⁹ Panamá,¹¹⁰ Sao Tome,¹¹¹ and Peru¹¹² address stereotypes. While Argentina and Bolivia address stereotypes as a category of symbolic violence against women, Mexico, Nicaragua, Guatemala and Burundi call for educational institutions to combat stereotypes in gender roles.

C. *Optional Protocol Jurisprudence*

The Optional Protocol of the CEDAW provides an opportunity for the CEDAW Committee to address stereotyping on the rights of individual women. The CEDAW Committee's interpretation of state action is one that calls for transforming rather than eradicating stereotypes. For example, in *R.K.B. v. Turkey*, an employment discrimination case, the CEDAW Committee argued that the CEDAW requires States Parties "to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a

¹⁰⁸ Ley General de Acceso de Las Mujeres a una Vida Libre de Violencia [General Law on Women's Access to a Life Free of Violence], Diario Oficial de la Federación [DOF], Ch. IV, Art. 52 (2007) (Mex.) (representing a reactive, rather than proactive, law seeking to minimize (1) domestic violence against women and (2) stereotypes that influence perpetrators of domestic violence to commit violent acts").

¹⁰⁹ Law No. 779 (Integral Law on Violence Against Women and to Reform Law No. 641 "Penal Code"), Tit. 3, Ch. 1, Art. 19 (2012) (Nicar.) (believing that educating the aggressor or perpetrator of domestic violence on the elimination of stereotypes of "male supremacy and the macho patterns that generated their violence" may eliminate domestic violence completely).

¹¹⁰ Law No. 82 (Law to Criminalize Femicide and Violence Against Women), Ch. 1, Art. 9 (2013) (Pan.) (arguing that the judiciary plays a role in minimizing instances of domestic violence and mistreatment of women; as the judiciary often treats women as lesser based on the sexual stereotypes of women, women are subjected to even more violence since victims of domestic violence turn to the judicial system to seek redress); Law to Criminalize Femicide and Violence Against Women, Ch. 3, Art. 14, Sec. 15 (2013) (Pan.) (holding that victims of domestic violence or other forms of violence should be able to receive an education that is not fueled by harmful, negative stereotypes); Law to Criminalize Femicide and Violence Against Women, Ch. 5, Art. 120, Sec. 2 (2013) (Pan.) (discussing the increased knowledge of the societal factors and stereotypes that promote violence against women).

¹¹¹ Law on Domestic and Family Violence, Tit. 3, Ch. 1, Art. 8 (2008) (Sao Tome & Principe) (calling for a change in policy and legislation to "punish stereotyped roles that legitimize or exacerbate domestic and family violence").

¹¹² Law No. 30364 (Act to Prevent, Punish and Eradicate Violence Against Women and Members of the Family Group), Ch. 3, Art. 9 (2015) (Peru) (arguing that "women and members of the family group have the right to a life free of violence, to be valued and educated, to be free from all forms of discrimination, stigmatization and stereotyped patterns of behavior, social and cultural practices based on concepts of inferiority and subordination").

root cause and consequence of discrimination.”¹¹³ Below is an examination of representative cases under the categories of gender-based violence and stereotypes relating to the male head of household, reproductive health, unemployment, and intersectional discrimination.

D. Stereotypes to Address in a New CEDAW Recommendation

1. Gender-Based Violence

In *Karen Tayag Vertido v. The Philippines*, the CEDAW Committee held the trial judge’s decision to acquit an accused of rape was anchored on gender stereotypes, rather than on law or fact.¹¹⁴ The CEDAW called on the State Party to ensure that legal procedures in rape cases are “impartial and fair, and not affected by prejudices or stereotypical gender notions.”¹¹⁵ In this case, the CEDAW Committee considered how sexual stereotypes of both women and men had informed the decision of the trial judge to acquit Jose B. Custodio of raping Karen Tayag Vertido.¹¹⁶ In addition to examining stereotypes of women and how they had shaped the evaluation of Vertido’s testimony, the Committee analyzed the trial court’s implicit assumptions about masculinities.¹¹⁷ The Committee held the trial court’s decision to acquit an accused of rape on the basis of assumptions about the sexuality of men in their 60s was based on stereotyped assumptions of gender.¹¹⁸ Moreover, the Committee addressed the criminal justice system and its role in reinforcing stereotypes: “[t]he Committee stresses that stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”¹¹⁹

Similarly, in *Angela González Carreño v. Spain*, another domestic violence case, the CEDAW Committee emphasized that stereotyping should not color judicial decision-making, especially about the rights of abusers

¹¹³ R.K.B. v. Turkey, Communication No. 28/2010, Committee on the Elimination of Discrimination against Women, ¶ 8.8 (Feb. 24, 2012).

¹¹⁴ Karen Tayag Vertido v. The Philippines, Communication No. 18/2008, Committee of the Elimination of Discrimination against Women, ¶ 8.5 (July 16, 2010).

¹¹⁵ *Id.* at ¶ 8.9 (b).

¹¹⁶ *Id.* at ¶¶ 3.5, 6.2

¹¹⁷ *Id.* at ¶¶ 8.5–8.6.

¹¹⁸ *Id.* at ¶ 8.6.

¹¹⁹ *Id.* at ¶ 8.4.

being prioritized over those of victims and survivors in child custody and visitation decisions.¹²⁰

In *Ms. A. T. v. Hungary*, the Committee went further to address the inaction of the State Party to address harmful gender stereotypes.¹²¹ It noted that it had said “on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them.”¹²² The Committee also argued that the case underscored “aspects of the relationships between the sexes and attitudes towards women, vis-à-vis the country as a whole.”¹²³ In *Ms. V. K. v. Bulgaria*, the Committee similarly explained that “stereotyping affects women’s right to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence.”¹²⁴ The CEDAW Committee also addressed the State party’s reliance on an “overly narrow concept” and “stereotyped interpretation” of what constitutes domestic violence and urged the State Party to “[p]rovide mandatory training for judges, lawyers and law enforcement personnel . . . on gender stereotypes.”¹²⁵

2. Religion and Stereotypes

Violations of women's rights originating from stereotypical gender roles are one of the most widespread types of human rights abuses worldwide. The connection between freedom of religion or belief and women's rights to equality and non-discrimination has been described as a political and legal minefield. Article 5’s provisions which call upon States Parties to take all appropriate measures to modify the cultural practices of conduct of men and women with a view to achieving the elimination of prejudice and customary and all other practices addresses gender-based stereotypes in relation to stereotypes based on religion. Stereotypical ideas of gender roles are deeply ingrained in the cultures of many countries and arguably, these cultural practices are interwoven with religious norms and practices. An examination of the reservations to the CEDAW reveals the way

¹²⁰ *Angela González Carreño v. Spain*, Communication No. 47/2012, Committee on the Elimination of Discrimination against Women, ¶ 9.7 (July 16, 2014).

¹²¹ *Ms. A. T. v. Hungary*, Communication No. 2/2003, Committee on the Elimination of Discrimination against Women, ¶ 8.5 (Jan. 26, 2005).

¹²² *Id.* at ¶ 9.4.

¹²³ *Id.*

¹²⁴ *Ms. V. K. v. Bulgaria*, Communication No. 20/2008, Committee on the Elimination of Discrimination against Women, ¶ 9.11 (Oct. 15, 2008).

¹²⁵ *Id.* at ¶¶ 9.12, 9.16.

in which religious or cultural practice might collide with the full exercise of gender equality under CEDAW.

Sharia is the justification used in a majority of the reservations made by countries and countries in the Middle East and North African region are in the majority in citing the *Sharia* a defense against reservations. Other countries like Israel, India and Singapore cite religion as a justification for a majority of these countries for making reservations. Malaysia and Saudi Arabia provide reservations to their accession to CEDAW as a whole, noting that they are not bound to provisions that are contrary to the provisions of *Sharia*.

Of the countries that have made reservations to Article 2,¹²⁶ Bahrain, Bangladesh, Egypt, Libya, and Morocco have cited contradiction of Islamic *Sharia* as the reason. Although Iraq does not mention *Sharia* directly, however; Iraq merely states that it is providing a reservation to the Article, while Singapore mentions contradiction with its “religious” laws. A majority of the countries have made reservations to some parts of Article 16.¹²⁷ Many of these countries have justified their reservations to either specific paragraphs of Article 16 or the Article as a whole on the basis of *Sharia*.¹²⁸ Malaysia, Mauritania, and Singapore also cite contradiction with their national laws or constitution,¹²⁹ while the Maldives provides a reservation with no justification.¹³⁰ Israel, India, and Singapore provide different reasons than the other countries for their reservations. India cites their policy of non-interference in the personal affairs of any community without its consent, and notes that while it fully supports compulsory registration in marriages, “it is not practical in a vast country like India with its variety of customs, religions, and level of literacy.”¹³¹ Similarly, Israel provides their reservation to Article 16 to the extent that the personal status laws binding on various religious communities in Israel do not conform with the Article’s provisions.¹³² Singapore cites contradiction with their “religious laws,” without specification.¹³³

India notes that it will abide by Article 5(a) insofar as it is in conformity with the country’s policy of non-interference in personal affairs

¹²⁶ Bahrain, Bangladesh, Egypt, Iraq, Libya, Morocco, Singapore, and Syria have voiced reservations to Article 2.

¹²⁷ Bahrain, Bangladesh, Egypt, India, Iraq, Kuwait, Libya, Malaysia, the Maldives, Mauritania, Singapore, and Syria have voiced reservations to Article 16.

¹²⁸ Bahrain, Bangladesh, Egypt, Iraq, Kuwait, Libya, Malaysia, Mauritania, Syria.

¹²⁹ See Malaysia, Mauritania, and Singapore reservations to CEDAW Art. 16.

¹³⁰ See the Maldives reservations to CEDAW Art. 16.

¹³¹ See India reservations to CEDAW Art. 16(2).

¹³² See Israel reservations to CEDAW Art. 16.

¹³³ See Singapore reservations to CEDAW Art. 16(1)–(2).

without consent.¹³⁴ Israel provides a reservation to 7(b) concerning the appointment of women to serve as judges of religious courts were prohibited by any religious group in the country.¹³⁵ Malaysia expresses a reservation to Article 9(2) insofar as it is contrary to *Sharia* or its Constitution and interprets Article 11 to mean “discrimination on the basis of equality between men and women only.”¹³⁶ Lastly, Mauritania provides a reservation to 13(a) insofar as it is contrary to *Sharia* and its Constitution,¹³⁷ and Syria provides a reservation to 9(2), 15(4), and 29(1), without reason.¹³⁸

3. Male Head of Household Stereotype:

The CEDAW Committee has identified several pervasive stereotypes, including that of the harmful stereotype that men are the primary heads of household.¹³⁹

¹³⁴ See India reservations to CEDAW Art. 5(a).

¹³⁵ See Israel reservations to CEDAW Art. 7(b).

¹³⁶ See Malaysia reservations to CEDAW Art. 9(2).

¹³⁷ See Mauritania reservations to CEDAW Art. 13(a).

¹³⁸ See Syria reservations to CEDAW Art. 9(2), 15(4), 29(1).

¹³⁹ In writing this article, we examined the CEDAW Committee’s Concluding Observations over the last 5 years (2017–2022) for Middle East, North Africa (MENA) and South and East Asia regions. Of the countries reviewed, Concluding Observations issued to 10 countries focused on the male head of household stereotype. See, e.g., *Concluding observations on the sixth periodic report of Jordan, C/JOR/CO/6* (2017) (recommending that the State party should “ensure equal rights between men and women with regard to marriage and divorce and eliminate restrictions on married women’s freedom of movement and right to work”); see also *Concluding observations on the combined second and third periodic reports of Oman, C/OMN/CO/2-3*, (2017) (recommending that the State party should “review all discriminatory provisions of the Personal Status Law within a specific time frame, in particular to remove, gradually, discriminatory provisions regulating legal capacity, polygamy, divorce, the guardianship system and inheritance, taking into account the experience of other countries with similar cultural backgrounds and legal systems”); for a more complete list of which CEDAW Concluding Observations mention the male head of household stereotype, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD), for the MENA and Asia regions. Of the countries reviewed, the male head of household stereotype was mentioned only once in the CRPD Concluding Observations to Saudi Arabia. There, the CRPD explained the problems with male guardianship: “the Committee is concerned about . . . [t]he continued system of male guardianship, which subjects the enjoyment of most of the rights guaranteed to women with disabilities under the Convention to the authorization of a male guardian.” Convention on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Saudi Arabia, CRPD/C/SAU/CO/1* (2019).

In *Isatou Jallow v. Bulgaria*,¹⁴⁰ the Committee held the State Party accountable for its failure to provide effective protection against domestic violence.¹⁴¹ The communication focused on the State Party's failure to act in conducting an effective investigation into allegations of domestic violence made by Jallow.¹⁴² The Committee determined that the stereotype of men as heads of households and the related stereotype of male superiority had informed the decision of the State Party to investigate allegations of domestic violence made by Jallow's partner, but not to investigate the allegations of violence made by Jallow herself.¹⁴³ According to the Committee, the authorities based their decisions "on a stereotyped notion that the husband was superior and that his opinions should be taken seriously."¹⁴⁴

4. Stereotypes in Employment

Another pervasive stereotype is that concerning women's employment.¹⁴⁵ *R.K.B. v. Turkey*,¹⁴⁶ a case concerning unlawful termination of employment, is one of the clearest unpacking of stereotypes. There, the

¹⁴⁰ *Isatou Jallow v. Bulgaria*, Communication No. 32/2011, Committee on the Elimination of Discrimination against Women, ¶ 8.8 (July 23, 2012).

¹⁴¹ *Id.*

¹⁴² *Id.*, at ¶ 8.2.

¹⁴³ *Id.*, at ¶ 8.6.

¹⁴⁴ *Id.*

¹⁴⁵ In writing this article, we examined the CEDAW Committee's Concluding Observations over the last five years (2017–2022) for Middle East and North Africa (MENA), South Asia and East Asia regions. Of the countries reviewed, Concluding Observations issued to 5 countries focused on stereotypes in unemployment. *See, e.g., Concluding observations on the combined third and fourth periodic reports of Saudi Arabia*, C/SAU/CO/3-4 (2018) (recommending that the State party should "enforce the ministerial decree of 2012 that women no longer need a male guardian's permission to work, including by issuing clear directives to all employers and prosecuting or fining those who continue to require such permission"); *see also Concluding observations on the fifth periodic report of Pakistan*, C/PAK/CO/5 (2020) (recommending that the State party should "promote equal sharing of family and care responsibilities between women and men by introducing flexible working arrangements, increasing the number of childcare facilities and introducing innovative measures to increase the social acceptance of men taking care of their children and of women choosing to return to work following childbirth"); for a more complete list of which CEDAW Concluding Observations mention stereotypes in unemployment, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD) for the MENA and Asia regions. Of the countries reviewed, stereotypes in unemployment were mentioned in none of the concluding observations for the CRC, CRPD, nor CERD.

¹⁴⁶ *R.K.B. v. Turkey*, Communication No. 28/2010, Committee on the Elimination of Discrimination against Women (Feb. 24, 2012).

CEDAW Committee members determined that the State Party violated CEDAW when its courts failed to hold the employer accountable for unequal treatment of employees.¹⁴⁷ The court's decision was based on gender stereotypes that normalized extramarital affairs by men but not women, contrary to article 5(a) of CEDAW.¹⁴⁸ In finding the State Party in violation of article 5(a), the Committee affirmed that CEDAW requires States Parties to “modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination.”¹⁴⁹ Importantly, it called for the State Party to “[p]rovide . . . appropriate and regular training on the Convention, its Optional Protocol and its general recommendations for judges, lawyers and law enforcement personnel in a gender-sensitive manner, so as to ensure that stereotypical prejudices and values do not affect decision-making.”¹⁵⁰

5. Stereotypes on Reproductive Health

Reproductive health is another area where the Committee has expressly stated that States Parties are obligated to address gender stereotyping.¹⁵¹

¹⁴⁷ *Id.* at ¶ 8.10.

¹⁴⁸ *Id.* at ¶ 8.8.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at ¶ 8.10.

¹⁵¹ In writing this article, we examined the CEDAW Committee's Concluding Observations over the last 5 years (2017–2022) for Middle East and North Africa (MENA), South Asia and East Asia regions. Of the countries reviewed, Concluding Observations issued to 22 countries focused on stereotypes in reproductive health. *See, e.g.,* CEDAW, *Concluding observations on the combined second and third periodic reports of Oman, C/OMN/CO/2-3* (2017) (recommending that the State party should “provide comprehensive health services, in particular sexual and reproductive health services, including antenatal, delivery and postnatal services, in all governorates”); *see also* *Concluding observations on the second periodic report of Qatar, C/QAT/CO/2* (2019) (recommending that that the State party should “ensure that mandatory, age-appropriate education on sexual and reproductive health and rights... are incorporated as a mandatory subject into all school curricula”); for a more complete list of which CEDAW Concluding Observations mention stereotypes in reproductive health, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD), for the MENA and Asia regions. Of the countries reviewed, stereotypes in reproductive health were mentioned in the CRC Concluding Observations of nine countries, the CRPD Concluding Observations of seven countries, and CERD Concluding Observations of one country. For example, in its Concluding Observations to Bahrain, the CRC stressed “prioritiz[ing] the roll-out of the reproductive health and puberty programme for adolescents (*Kabarna*) to all schools, and

The CEDAW Committee's first decision on abortion, *L. C. v. Peru*,¹⁵² provides a recent illustration of the Committee's approach in this area. In this case, the Committee held the State Party had violated the CEDAW based on the decision of a public hospital to delay spinal surgery and refusal to perform a therapeutic abortion on L. C., a minor who had attempted suicide after learning that she was pregnant as a consequence of being raped repeatedly.¹⁵³ Despite the fact that it is lawful in Peru to preserve a woman's life and health, L. C. was denied an abortion.¹⁵⁴ L. C. later miscarried, but the delays in providing critical medical care left her paralyzed.¹⁵⁵ The CEDAW Committee condemned the decision of the doctors to rely on stereotypes that "protection of the fetus should prevail over the health of the mother."¹⁵⁶ The CEDAW Committee urged the State Party to implement "education and training programmes to encourage health providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence."¹⁵⁷

Reading article 12 on women's right to health care together with articles 2(f) and 5 of CEDAW, the Committee emphasized in *L. C. v. Peru* that States Parties are required by CEDAW to refrain from stereotyping women who are seeking health care and to create measures to expose and

ensur[ing] that it includes education on preventing early pregnancy and sexually transmitted infections, as well as life-skills education on preventing substance abuse." *Concluding observations on the combined fourth to sixth periodic reports of Bahrain*, CRC/C/BHR/CO/4-6, Convention on the Rights of the Child (2019). Similarly, in its Concluding Observations to India, the CRPD explained: "[t]he Committee is concerned about: The lack of gender-sensitive programmes on sexual and reproductive health and rights for women and girls with disabilities . . . [t]he Committee recommends that the State party: Adopt measures to provide women and girls with disabilities with appropriate and accessible sexual and reproductive health care, and ensure that response and counselling in cases of gender-based violence against women and girls with disabilities is accessible, inclusive and age- and gender-sensitive." *Concluding observations on the initial report of India*, CRPD/C/IND/CO/1, Convention on the Rights of Persons with Disabilities (2019). In its one Concluding Observation addressing stereotypes in reproductive health, CERD explained that in Nepal, "[t]he Committee is further concerned by reports of caste disparities in reproductive health and maternal mortality, as Dalit women are far less likely to have access to a skilled birth attendant." *Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal*, CERD/C/NPL/CO/17-23, Convention on the Elimination of Racial Discrimination (2018).

¹⁵² *L. C. v. Peru*, Communication No. 22/2009, Committee on the Elimination of Discrimination against Women (Oct. 17 2011).

¹⁵³ *Id.*, at ¶ 8.15.

¹⁵⁴ *Id.*, at ¶ 8.14.

¹⁵⁵ *Id.*, at ¶ 8.18.

¹⁵⁶ *Id.*, at ¶ 8.15.

¹⁵⁷ *Id.*, at ¶ 9(b)(ii).

modify harmful gender stereotypes within the healthcare field.¹⁵⁸ This case shone a spotlight on the globally pervasive stereotype of motherhood as the natural status of women. The unexamined assumption that women should prioritize childbearing and childrearing over their own lives and health seem to have influenced the decision of doctors to delay spinal surgery, and their refusal to perform a therapeutic abortion, on a minor who was raped and subsequently attempted suicide. Furthermore, the CEDAW Committee in the Ciudad Juárez Inquiry into the abduction, rape and murder of women in the Ciudad Juárez region of Mexico, highlighted how gender stereotypes and gender stereotyping contributed to the physical health and security of women.¹⁵⁹ The Committee noted, for instance, that “even the campaigns aimed at preventing violence . . . have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women’s dignity, but on making potential victims responsible for their own protection by maintaining traditional cultural stereotypes.”¹⁶⁰

In *Carvalho Pinto de Sousa Morais v. Portugal*, the European Court of Human Rights addressed the stereotype of women as primarily destined to be mothers and caregivers. In this case, the petitioner suffered from medical negligence, and as a consequence, had difficulties in having sexual intercourse. The trial court awarded her damages, but in appeal, the Supreme Administrative Court reduced the damages based on several reasons, including that “at the time of the operation the plaintiff was already 50 years old and had two children, that is, an age when sex is not as important as in younger years, its significance diminishing with age.”¹⁶¹ The European Court of Human Rights ruled that the assumption of the Supreme Administrative Court that sex is less important for a fifty-year-old woman and mother of two children than for someone of a younger age “reflects a traditional idea of female sexuality as being essentially linked to child-bearing purposes and thus ignores its physical and psychological relevance for the self-fulfillment of women as people.”¹⁶²

¹⁵⁸ *Id.*, at ¶ 8.15-8.16.

¹⁵⁹ *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, Committee on the Elimination of Discrimination against Women (2005).

¹⁶⁰ *Id.* at 14.

¹⁶¹ *Carvalho Pinto de Sousa Morais v. Portugal*, Application No. 17484/15, 25 July 2017 (European Court of Human Rights), ¶16.

¹⁶² *Id.* at ¶52.

6. Intersectional Stereotypes

The most egregious effects of stereotypes are experienced by women of intersectional identity. The complexity of identity disadvantages women. Gender is only one axis of difference and is complicated and enriched by race, religion ethnicity, age, disability, sexual orientation, language, class, appearance, which inhabit the margins of human rights. Stereotypes affect everyone but do not affect everyone equally. The recognition of stereotypes cannot ignore the complexity of the compounded nature of identity. The single axis approach to stereotypes in media law reform can no longer align with a growing category of structural inequalities. Human rights law on stereotypes must address intersectionality and the multiple grounds of differences and how these differences are disadvantaged because of systemic and structural challenges. Stereotypes based on transgender identity is yet an evolving legal category. In a recent case in China, adjudicated in January 2020, *Gao v. Dangdang Inc. On Employment Dispute*,¹⁶³ Beijing Second Intermediate People's Court recognized that transgender persons' rights should be respected. Gao was an employee at Dangdang, a big internet company. She underwent a transgender operation in 2018. Soon after, Dangdang dismissed Gao based on continuing absence from work during and after the operation and told Gao that her "mental disease" may cause danger to other workers, and that Gao may cause "fear, unsettlement and moral awkwardness" for other workers, and cause difficulties on using the bathroom. The Court held that the company had not established a ground to fire Gao because Gao had the right to take time off from work, and that the company's policies on "mental disease" constituted discrimination. The judgement held that since the Ministry of Public Security approved to issue transgender citizens new identity cards with new gender, transgender rights should be respected and protected. It also appealed to people to adopt a tolerant mind towards different sexual identity. Gao's case is groundbreaking as the court proactively supported transgender rights when the law was yet to officially recognize transgender rights. It sets a good example in eliminating gender stereotypes within the existing legal framework.

The analysis below maps the way the CEDAW has engaged with the concept of intersectionality. This engagement needs to be broadened to include the way in which stereotypes find their worst expression with intersectional identities.

In the mapping exercise below, we use the keywords from the Generation Equality Forum's Action Coalition Global

¹⁶³ Translation of case with author.

Acceleration Plan's definition of intersectionality to identify the use of it in the CEDAW General Recommendations. I do a word search analysis on these words for the General Recommendations and trace the changes that have taken place over the years within the CEDAW Committee in recognizing different barriers women face to their enjoyment of human rights. In the table below, when the keywords are mentioned in the General Recommendation in question, the cells will read 1 and when the terms are not mentioned the cells will read 0. I used this binary Y = 1, N = 0 for clearer visibility of the data. General Recommendations are numbered 22 to 38 in the first row and the keywords are listed in the first column.

When we look at the data collected in the table below, it is notable to point out that of all the keywords, we see that sexuality is an evolving term in General Recommendations. A footnote mention of sexuality in General Recommendation 25, adopted in 2004, read: “[t]hus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age.”¹⁶⁴

¹⁶⁴ CEDAW General Recommendation No. 25, Committee on the Elimination of Discrimination against Women, (2004).

Although this is a mention of sexuality, it is not in the main text of the General Recommendation. Seven years later, sexuality, sexual orientation, and gender identity were examined in General Recommendation 27: “The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination.”¹⁶⁵

This was the first explicit textual mention of sexual orientation in a CEDAW General Recommendation. Following this, General Recommendation 28 on Education includes gender identity explicitly in the definition of intersectionality: “Intersectionality is a basic concept for understanding the scope of the general obligations of States Parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.”¹⁶⁶

If we look at the distribution of 0s and 1s across the table it is important to note that as the years progress, most of the cells of the table go from being mostly 0s to 1s. Two General Recommendations did not include any of the keywords indicating intersectionality. The first time some of the keywords were mentioned was in General Recommendation No. 24 in 1999. This shows a gradual intersectional approach adopted by the CEDAW Committee. As the years progress, almost all the intersections identified (the keywords) are included in most of the GRs. Overall, we see a slow march of progress in adopting an intersectional approach to gender equality. The slowest progress has been on sexual identity.

Although human rights scholars like Shreya Atrey argue that intersectionality remains largely absent in the human rights treaty jurisprudence, the CEDAW more than other treaty committee has been willing to address as a way to address systemic challenges to gender equality.

In *Kell v. Canada*,¹⁶⁷ under the Optional Protocol, the CEDAW Committee recommended individual remedies for the complainant but also

¹⁶⁵ CEDAW General Recommendation No 27, Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/27 (2010).

¹⁶⁶ CEDAW General Recommendation No. 28, Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/28 (2010).

¹⁶⁷ *Kell v. Canada*, Communication No. 19/2008, Committee on the Elimination of Discrimination against Women (Feb. 28 2012).

made broader recommendations to the Canadian government to address structural and intersectional discrimination.¹⁶⁸ These recommendations included specific strategies to address violence in the indigenous community and [VERB] indigenous legal aid providers.¹⁶⁹

As the Committee noted: As the author is an aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination.”¹⁷⁰ “States Parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”¹⁷¹

The CEDAW Committee noted General Recommendation 28 which states that:

Intersectionality is a basic concept for understanding the scope of the general obligations of States Parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.¹⁷²

In *Isatou Jallow v. Bulgaria*,¹⁷³ the CEDAW Committee held that migrant women experience intersecting subordination when they are subjected to violence by a man who is a national of the country they have moved to. In this case, the migrant women faced challenges caused by racism, sexism and migrant status in seeking assistance.

The CEDAW Committee has also examined compounded stereotyping of women and girls with disabilities.¹⁷⁴ A case in point is *R.P.B.*

¹⁶⁸ *Id.* at ¶11.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at ¶10.3.

¹⁷¹ *Id.* at ¶10.2--10.3 .

¹⁷² CEDAW General Recommendation No. 28 on the core obligations of States Parties, Convention on the Elimination of All Forms of Discrimination against Women Art. 2, Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/28 (2010).

¹⁷³ *Isatou Jallow v. Bulgaria*, Communication No. 32/2011, Committee on the Elimination of Discrimination against Women (July 23, 2012).

¹⁷⁴ In writing this article, we examined the CEDAW Committee’s Concluding Observations over the last 5 years (2017–2022) for Middle East and North Africa (MENA) and Asia regions. Of the countries reviewed, Concluding Observations issued to 15 countries focused on intersectional stereotypes. *See, e.g., Concluding observations on the seventh periodic report of Iraq, C/IRQ/CO/7* (2019) (recommending that the State party should “take effective measures to mainstream a disability perspective into all gender-specific policies and legislation and to mainstream a gender perspective into all disability-specific policies and legislation”); *see also Concluding observations on the sixth periodic report of Maldives, C/MDV/CO/6* (2021) (recommending that the State party should “adopt all necessary

v the Philippines,¹⁷⁵ which concerned the rape of a 17-year-old girl who was both deaf and mute. The Committee argued that the Philippines violated CEDAW when the trial court acquitted the accused of rape on the grounds of stereotypes.¹⁷⁶ The trial judge's assumption that R.P.B. would respond to the attack in a certain way was based on a prejudicial view of her credibility and disregarded crucial facts of the case, such as the lack of consent and how R.P.B.'s age and disability directed her response.¹⁷⁷ Moreover, the Committee urged the State Party to provide regular gender sensitivity training to judges and other legal officers, so that stereotypes do not impact judicial decision-making.¹⁷⁸

A hallmark of recent change can be evidenced through an increasing understanding of gender and disability stereotyping. The seminal provision on intersectional discrimination¹⁷⁹ is a novel growth in international human rights law. Through a burgeoning number of Concluding Comments, the Committee on the Rights of Persons with Disabilities (CRPD Committee) is beginning to emphasize the importance of adopting education and training

measures, including temporary special measures, to combat the intersectional discrimination that disadvantaged groups of women encounter, such as migrant women, women with disabilities, lesbian, bisexual and transgender women and intersex persons, and women professing religions other than Islam, in relation to all aspects covered by the Convention"); for a more complete list of which CEDAW Concluding Observations mention intersectional stereotypes, see the appendix to this article. We also examined the Concluding Observations over the last five years produced by the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Racial Discrimination (CERD), for the MENA and Asia regions. Of the countries reviewed, intersectional stereotypes were mentioned in the CRC Concluding Observations of zero countries, the CRPD Concluding Observations of two countries, and CERD Concluding Observations of zero countries. For example, in its Concluding Observation for Saudi Arabia, the CRPD commented: "[t]he Committee is concerned that: multiple and intersectional forms of discrimination are not explicitly recognized in national legislation ... [t]he Committee recommends that the State party: [t]ake measures to permit and promote the participation of women with disabilities in political and public life, including by setting and implementing specific quotas for women with disabilities and mainstreaming the rights of women with disabilities across all laws, policies and programmes, with an intersectional perspective." Convention on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Saudi Arabia*, CRPD/C/SAU/CO/1 (2019).

¹⁷⁵ *R.P.B. v. the Philippines*, Communication No. 34/2011, Committee on the Elimination of Discrimination against Women (Feb. 21, 2018).

¹⁷⁶ *Id.* at ¶ 8.10-8.11, 9.

¹⁷⁷ *Id.* at ¶ 8.9-8.10.

¹⁷⁸ *Id.* at ¶ 9(b)(iv).

¹⁷⁹ Convention on the Rights of Persons with Disabilities, U.N. G.A., Art. 6, , A/RES/61/106 (Mar. 13, 2006).

measures to combat stereotypes and to promote the dignity of persons with disabilities.

E. The Special Procedures

To examine just one representative example of intersectional stereotyping addressed by a special procedure, the UN Special Rapporteur on causes and consequences of violence against women looked both to the CRPD and CEDAW as well as the CEDAW Committee's jurisprudence, when analyzing the linkages between stereotyping and violence against women and girls with disabilities. Her reports illustrate that "[w]omen with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence."¹⁸⁰ According to the Special Rapporteur, compounded stereotyping can also lead to adverse findings about the legal capacity and credibility of women and girls with mental disabilities in gender-based violence cases, such as intellectual disabilities:

[N]ot only are [women with disabilities] excluded as witnesses because they may have difficulty communicating with the police, but stereotypes operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses. On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control.¹⁸¹

Similarly, the UN Special Rapporteur on freedom of religion emphasized the way in which educational institutions can play a role in addressing harmful stereotypes.¹⁸² Moreover, CEDAW's General Recommendation No. 33 on women's access to justice emphasizes the adoption of rules of procedure, and evidence that are not informed by stereotypes.

¹⁸⁰ *Report of the Special Rapporteur on violence against women, its causes and consequences* 9, A/67/227 (Aug. 3, 2012).

¹⁸¹ Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 41, U.N. Doc. A/67/227 (Aug. 3, 2012).

¹⁸² U.N. Human Rights Council, *Rep. by Special Rapporteur on Freedom of Religion or Belief* (2010).

II. PART TWO

A. A New Generation of Stereotypes

Part One examined the scope of stereotyping as set out in the CEDAW normative framework and its jurisprudence, examining some of the work done by CEDAW and other treaty bodies and special procedures on framing and defining the concept. In my final analysis, I suggest for the study of stereotypes that are yet to be named as a legal category in the international human rights framework: coded bias generated by Artificial Intelligence (AI).

Any new General Recommendation on stereotypes must recognize the systemic biases that build subtly over time so that they may appear to be normalized. There exists an insidious, and often invisible undercurrent of bias that bleeds into AI and likely would not give rise to a viable anti-discrimination claim. Yet AI-driven bias can accumulate to create very real obstacles and barriers to advancement for women, especially women of intersectional identity.¹⁸³ These stereotypes warrant significant attention for their potential to silence and marginalize these women. Silicon Valley lawyer Ellen Pao once described the biases she experienced working in venture capital as “a thousand paper cuts.”¹⁸⁴ The daily indignities, slights, and exclusions based on gender, race, ethnicity, class, caste, color, sexual identity, non-binary gender, religion, disability, appearance, caregiving status, age, urban/rural divide, and migrant status can deliberately exclude women while reproducing and amplifying second-generation forms of biases that reinforce women’s pervasive under-representation in all areas of life and work.

¹⁸³ Although Kimberlé Crenshaw coined the term in 1989, the notion of intersectionality only became a part of the international human rights law language, documents, and conferences at the Fourth World Conference on Women (1995) in Beijing. The Beijing Declaration and Platform of Action, which was adopted at the Fourth World Conference on Women, implicitly mentioned the notion of intersectionality. Annex I, paragraph 32 of the Beijing Declaration reads: “[i]ntensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.” Beijing Declaration and Platform of Action, Ann. I, p. 32, The Fourth World Conference on Women (1995).

¹⁸⁴ See Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. FORUM 22 (2018) (quoting Ellen Pao, RESET: MY FIGHT FOR INCLUSION AND LASTING CHANGE (2017)).

B. Mapping the CEDAW Committee's Focus on New and Evolving Technology

A preliminary mapping of the CEDAW's Concluding Observations to countries in South Asia, the Middle East and North Africa, and the Americas between 2017 and 2022 indicates that the CEDAW Committee is at an incipient stage in addressing the impacts of new and emerging technologies on gender stereotypes, such as AI, Large Language Models (LLM) or Machine Learning (ML) on gender stereotypes.¹⁸⁵ One of the root causes of algorithmic bias is the asymmetry in AI and other new digital technology workforce.

1. South Asia, Middle East, and North Africa

The extant recommendations of the CEDAW for countries in the MENA and South Asia regions do recognize various parameters that lay the groundwork for the future development of gender equality in artificial intelligence. For example, the CEDAW consistently evaluates whether women and girls are concentrated in traditionally female dominated fields of study, and whether they have a high presence in non-female-dominated fields of study and career paths, such as science, technology, engineering and mathematics. It notes that girls are under-represented in non-traditional fields of study in Saudi Arabia,¹⁸⁶ Palestine,¹⁸⁷ Qatar,¹⁸⁸ Lebanon,¹⁸⁹ Afghanistan,¹⁹⁰ Maldives,¹⁹¹ and Egypt¹⁹² and recommends the "enrolment of women and girl in non-traditional fields of education, such as science, technology, engineering and mathematics, as well as in the digital field, through career counseling for young women and girls on non-traditional

¹⁸⁵ There is no mention of the keywords, "artificial intelligence", "digital network", "internet", "robot" or "computer" in any of the concluding observations of the CEDAW from 2017-22 for all the countries in South Asia, the Middle East, and North Africa.

¹⁸⁶ CEDAW, *Concluding observations on the combined third and fourth periodic reports of Saudi Arabia* at 12, CEDAW/C/SAU/CO/3-4 (Mar. 14, 2018).

¹⁸⁷ CEDAW, *Concluding observations on the initial report of the State of Palestine* at 11, CEDAW/C/PSE/CO/1 (Mar. 6, 2020).

¹⁸⁸ CEDAW, *Concluding observations on the second periodic report of Qatar* at 11, CEDAW/C/QAT/CO/2 (July 30, 2019).

¹⁸⁹ CEDAW, *Concluding observations on the sixth periodic report of Lebanon* at 11, CEDAW/C/LBN/CO/6 (Mar. 1, 2022).

¹⁹⁰ CEDAW, *Concluding observations on the third periodic report of Afghanistan* 13, CEDAW/C/AFG/CO/3 (Mar. 10, 2020).

¹⁹¹ CEDAW, *Concluding observations on the sixth periodic report of Maldives* at 10, CEDAW/C/MDV/CO/6 (Nov. 23, 2021).

¹⁹² CEDAW, *Concluding observations on the combined eighth to tenth periodic reports of Egypt* at 9, CEDAW/C/EGY/CO/8-10 (Nov. 26, 2021).

career paths and awareness-raising among parents and legal guardians.”¹⁹³ In certain instances, such as UAE and Morocco,¹⁹⁴ the CEDAW notes with appreciation, “the high number of women and girls enrolled in public and private universities, including in science, technology, engineering and mathematics.”¹⁹⁵ Along a similar vein, the Committee also recommends that member states “establish training and vocational courses to ensure the equal participation of women in the development of digital technology”¹⁹⁶ and “enhance the capacity of women and girls in entrepreneurship and their use of digital technology.”¹⁹⁷ These criteria are relevant and important to ensure that women and girls have access to technology by including gender sensitive training data into evolving technology to ensure that the algorithms of evolving technologies do not reproduce existing biases.

A second related criteria that the CEDAW Committee considers is the limited access of rural women to finance and technology, and the consequent impact on their ability to invest and accumulate assets.¹⁹⁸ It notes that rural women in Afghanistan,¹⁹⁹ Israel (Bedouin Women),²⁰⁰ Yemen,²⁰¹ Lebanon,²⁰² and Maldives²⁰³ have limited access to financial and technical support and recommends state parties to facilitate such access. In addition to the above two criteria, CEDAW evaluates the impact of limited access to digital technologies for women in specific areas such as healthcare, child care, and literacy. In Egypt, the CEDAW Committee notes with concern that

¹⁹³ CEDAW, *Concluding observations on the initial report of the State of Palestine* at 11, CEDAW/C/PSE/CO/1 (Jul. 25, 2018).

¹⁹⁴ The Committee welcomes the “increase in enrolment rates of girls in primary and secondary education and in the fields of science, technology, engineering and mathematics and information and communications technology.” CEDAW, *Concluding observations on the combined fifth and sixth periodic reports of Morocco* at 9, CEDAW/C/MAR/CO/5-6 (July 12, 2022).

¹⁹⁵ CEDAW, *Concluding observations on the fourth periodic report of the United Arab Emirates* at 9, CEDAW/C/ARE/CO/4 (July 12, 2022).

¹⁹⁶ CEDAW, *Concluding observations on the sixth periodic report of Israel* at 14, CEDAW/C/ISR/CO/6 (Nov. 17, 2017).

¹⁹⁷ *Id.* at 15.

¹⁹⁸ CEDAW, *Concluding observations on the third periodic report of Afghanistan* at 13, CEDAW/C/AFG/CO/3 (Mar. 10, 2020).

¹⁹⁹ *Id.*

²⁰⁰ CEDAW, *Concluding observations on the sixth periodic report of Israel* at 16, CEDAW/C/ISR/CO/6 (Nov. 22, 2017).

²⁰¹ CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Yemen* at 13, CEDAW/C/YEM/CO/7-8 (November 24, 2021).

²⁰² CEDAW, *Concluding observations on the sixth periodic report of Lebanon* at 14, CEDAW/C/LBN/CO/6 (Mar. 1, 2022).

²⁰³ CEDAW, *Concluding observations on the sixth periodic report of Maldives* at 14, CEDAW/C/MDV/CO/6 (Nov. 23, 2021).

digital literacy is low among rural women and girls.²⁰⁴ In Yemen, it notes the negative impact of limited digital access upon women and states that women in Yemen had “disproportionate lack of access to COVID-19 treatment and vaccination”²⁰⁵ due to “women’s restricted access to health services, digital registration and public information and due to cultural and economic constraints.”²⁰⁶ In Iraq, it notes with concern that registration of nationality of children born outside Iraq is gendered and limited in many ways, including that Iraqi women are allowed to transmit their nationality to children only if the father is unknown or stateless. While making recommendations to amend this law, CEDAW also recommends that Iraq “accelerate efforts to facilitate birth registration, including through the use of modern technology to simplify and ensure affordable birth registration procedures.”²⁰⁷ As part of Pakistan’s elimination of barriers to justice for women, CEDAW specifically recommends that Pakistan ensure the availability “of modern and accessible information and communications technologies and by using the media, including social media, to raise awareness among women and girls of their rights and the remedies available to them.”²⁰⁸

2. The Americas

Much like their work in the MENA Region, the CEDAW Committee has noted whether females and girls are involved in “non-traditional” fields of employment, including those related to technology or engineering, in the Americas. They note that there is a continued disparity in the number of women enrolled in education/careers in non-traditional areas, such as science and technology, in places such as Antigua and Barbuda,²⁰⁹ Bahamas,²¹⁰

²⁰⁴ CEDAW, *Concluding observations on the combined eighth to tenth periodic reports of Egypt* at 9, 12, CEDAW/C/EGY/CO/8-10 (Nov. 26, 2021).

²⁰⁵ CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Yemen* at 11, CEDAW/C/YEM/CO/7-8 (Nov. 24, 2021).

²⁰⁶ *Id.*

²⁰⁷ CEDAW, *Concluding observations on the seventh periodic report of Iraq* at 9, CEDAW/C/IRQ/CO/7 (Nov. 12, 2019).

²⁰⁸ CEDAW, *Concluding observations on the fifth periodic report of Pakistan* at 5, CEDAW/C/PAK/CO/5 (Mar. 10, 2020).

²⁰⁹ CEDAW, *Concluding observations on the combined fourth to seventh periodic reports of Antigua and Barbuda*, CEDAW/C/ATG/CO/4-7 (Mar. 14, 2019).

²¹⁰ CEDAW, *Concluding observations on the sixth periodic report of the Bahamas*, CEDAW/C/BHS/CO/6 (Nov. 14, 2018).

Bolivia,²¹¹ Guyana,²¹² Mexico,²¹³ and Panama.²¹⁴ In such cases, the Committee thus recommends and encourages changes to the barriers in place within state parties in the Americas. In Bahamas and Guyana, for example, the Committee encourages the elimination of both negative stereotypes and structural barriers that deter women from enrolling in these non-traditional fields of study like technology and science.²¹⁵ In places like Bolivia, the Committee recommends that the State party “promote the participation of women and girls in non-traditional fields,”²¹⁶ while in the Dominican Republic, they recommend “[e]nsur[ing] adequate human and financial resources to promote women’s representation in non-traditional fields of study and career paths, in particular science, technology . . . ”²¹⁷ It is important to note that the Committee did not mention technology at all in Peru.²¹⁸

While much of the Committee’s focus in these countries within the Americas have been general, they have also made sure to address the gap with regards to rural women in some areas as well. In Panama, for example, the Committee recommended the expansion of “coverage and human, technical and financial resources allotted to bilingual education for indigenous women, and adopt and implement a strategy to guarantee access to technology for indigenous girls and women, allowing them to enroll in Internet-based programmes.”²¹⁹ Furthermore, in Honduras, the Committee similarly recommends the adoption and implementation of a strategy “to guarantee access to technology for Indigenous and rural girls and women, to enable them to benefit from distance learning and enroll in Internet-based

²¹¹ CEDAW, *Concluding observations on the seventh periodic report of the Plurinational State of Bolivia*, CEDAW/C/BOL/CO/7 (Jan. 8, 2020).

²¹² CEDAW, *Concluding observations on the ninth periodic report of Guyana*, CEDAW/C/GUY/CO/9 (July 30, 2019).

²¹³ CEDAW, *Concluding observations on the ninth periodic report of Mexico*, CEDAW/C/MEX/CO/9 (July 25, 2018).

²¹⁴ CEDAW, *Concluding observations on the eighth periodic report of Panama*, CEDAW/C/PAN/CO/8 (Mar. 1, 2022).

²¹⁵ CEDAW, *Concluding observations on the sixth periodic report of the Bahamas*, CEDAW/C/BHS/CO/6 (Nov. 14, 2018); CEDAW, *Concluding observations on the ninth periodic report of Guyana*, 2019, CEDAW/C/GUY/CO/9 (July 30, 2019).

²¹⁶ CEDAW, *Concluding observations on the seventh periodic report of the Plurinational State of Bolivia*, CEDAW/C/BOL/CO/7 (Jan. 8, 2020).

²¹⁷ CEDAW, *Concluding observations on the eighth periodic report of the Dominican Republic*, CEDAW/C/DOM/CO/8 (Mar. 1, 2022).

²¹⁸ CEDAW, *Concluding observations on the ninth periodic report of Peru*, CEDAW/C/PER/CO/9 (Mar. 1, 2022).

²¹⁹ CEDAW, *Concluding observations on the eighth periodic report of Panama*, 2022, CEDAW/C/PAN/CO/8 (Mar. 1, 2022).

education programmes.”²²⁰ In Suriname, the Committee recommends the development and implementation of a policy “to support the economic and social development of rural women, Maroon women and indigenous women and to overcome persistent gender inequalities limiting their access to land, social services, economic opportunities, sanitation facilities, and communications technologies.”²²¹

Therefore, while emerging technologies are not explicitly mentioned in these concluding reports, there are some seminal starting points. First, in Panama, an important aspect to note is that the Committee recommended that they “strengthen its systems of data collection and ensure that statistical data on the number of complaints about all forms of gender-based violence against women cover all forms of violence, including technology-mediated violence...”²²² This recommendation is extremely important because it can signal a step forward in the ways in which the Committee can now approach the issues of emerging technologies. Specifically, the Committee should aim to further recommend, as they did in Panama, the strengthening of data collection all throughout its state party membership, especially in a way that covers technological violence.

Second, emerging technologies are mentioned once by the Committee in the concluding reports of Honduras. There, the Committee recommends strengthened efforts “to eliminate horizontal and vertical occupational segregation and encourage women and girls to choose non-traditional career paths, in particular in science, technology, engineering and mathematics, information and communications technology, and artificial intelligence.”²²³

Their recommendation for Honduras should provide a stepping off point for the Committee’s approach to emerging technologies in the region and globally going forward. It is true, as the Committee has made aware throughout these reports, that there truly is a gap in the involvement of women within non-traditional career paths. But there needs to be explicit mention of emerging technologies as well.

The CEDAW Committee has taken steps to recommend gender equal representation in digital technology. However, more must be done to address gender gaps in designing, coding, and programming in new technologies and

²²⁰ CEDAW, *Ninth periodic report submitted by Honduras under article 18 of the Convention*, CEDAW/C/HND/CO/9 (Nov. 1, 2022).

²²¹ CEDAW, *Concluding observations on the combined fourth to sixth periodic reports of Suriname*, CEDAW/C/SUR/CO/4-6 (Mar. 14, 2015).

²²² CEDAW, *Concluding observations on the eighth periodic report of Panama*, CEDAW/C/PAN/CO/8 (Mar. 1, 2022).

²²³ CEDAW, *Ninth periodic report submitted by Honduras under article 18 of the Convention*, CEDAW/C/HND/CO/9 (Apr. 1, 2021).

digital networks. Similarly, the CEDAW Committee must tackle the challenges that AI, including, Generative AI like ChatGPT, ML, Deep Fakes and LLM's can pose in perpetuating gender and intersectional stereotypes, including race, ethnicity and sexual identity. Further research in the area must strive to understand that new technologies can reproduce an essentialized conception of gender which can be reinforced. The CEDAW Committee must ask questions and seek answers on the conceptions and definitions of gender embedded in technological design. Biased Datasets do not capture the women's experiences. The CEDAW Committee must recommend gender-specific guidelines for best practice regarding data. Below, I examine the ways in which AI training data reproduce societal gender bias.

C. Algorithmic Bias

In 1950, Alan Turing anticipated that by the year 2000, "one will be able to speak of machines thinking without expecting to be contradicted."²²⁴ It is the understanding that Machine Learning and AI are unassailable that poses the greatest threat to the 21st century. Artificial intelligence is no longer an engineering discipline but requires engagement across disciplinary boundaries, including in the human rights arena. At the same time, similar to an early warning system, AI can help identify biases. For example, institutions can analyze data sets related to healthcare services, lending decisions, and other decisions or behaviors using AI techniques, and identify areas where challenges might exist.

Although much has been written about the way in which AI implicates human rights, less has been written about applying human rights treaties, including the CEDAW in address inequity in AI. The CEDAW Committee has made a breakthrough in including AI in the Concept Note on General Recommendation No. 40 on the equal and inclusive representation of women in decision-making systems.²²⁵ General Recommendation No. 40 will aim "to provide guidance to strengthen access for all women to both education and employment, in particular by addressing and eliminating the clear gender digital gap in access to and participation in the design of all areas of digital and communication technology, with a special focus on artificial intelligence."²²⁶ Also, while the extant scholarship on human rights and AI have looked at the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic Social and Cultural

²²⁴ A.M. TURING, COMPUTING MACHINERY AND INTELLIGENCE 440 (1950).

²²⁵ See *Concept Note on the Future General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems*, *supra* note 4.

²²⁶ *Id.*

Rights (ICESCR), few scholarly papers have looked at the importance of the CEDAW's core articles in combating Bias in AI. This must be anchored in all of the articles of the CEDAW, and primarily in two articles of the CEDAW as important as standard-setting guidelines.

Article 10 (c) of the Convention calls for modification of educational curriculum to address gendered stereotypes:

The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.²²⁷

The new CEDAW General Recommendation on Stereotypes must seek to understand whether and how gender and intersectional bias are being reproduced in new technologies and in STEM education, including how implicit and unconscious biases are being baked into technological design and algorithms.

Currently, there is gender and intersectional asymmetry in the Artificial Intelligence (AI) workforce. Those designing, coding, engineering, and programming AI technologies do not represent a diverse demographic. AI is becoming ubiquitous, so it is vital to mitigate bias-creep. These biases, embedded in AI systems, amplify, and magnify inequality and reinforce a legacy of gender differences into perpetuity by reproducing, reinforcing, and perpetuating bias.²²⁸ Educational and curricular reform based on Article 10 of the CEDAW is an important starting point to address the gendered asymmetry in the STEM and AI workforce.

Central to the nature of AI is that functions are performed repeatedly; this repetitiveness is amplified by AI development across the globe. This behavior can be processed so well that it is normalized. In fact, AI has the potential to scale up bias in unprecedented ways. Judith Butler's critical feminist theory

²²⁷ Art. 10(c), Convention on the Elimination of All Forms of Discrimination against Women, United Nations General Assembly, 1249 U.N.T.S. 13 (Dec. 18, 1979); similarly, Article 5 of the CEDAW Convention which has already been discussed, calls for states parties to: "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Article 5, Convention on the Elimination of All Forms of Discrimination against Women, United Nations General Assembly, 1249 U.N.T.S. 13 (Dec. 18, 1979).

²²⁸ In her forthcoming article, Martha Minow explains: "the existence of racial, gender, and other biases in prior practices is captured in and potentially amplified by the data used in machine learning." See Martha Minow, *Equality, Equity, and Algorithms: Learning from Justice Abella* 12 (2023) (article with author).

examines how gender is performative and is constituted and constructed through repeated performance.²²⁹ This gendered performative behavior can be amplified and magnified through AI. The application of the CEDAW can assist in addressing two forms of bias:

1. Data bias: The CEDAW must recognize that datasets are unrepresentative of women and minority groups. Women, especially in the global south, have restricted access to technology and therefore are not generating data. This underrepresentation in the data reproduces existing biases and exclusions.
2. Algorithmic bias: The developers, builders, engineers, and programmers of algorithms are mostly male. Homophily and Affinity bias have shown that people within a certain group impose their values and their biases into an algorithmic system, which in turn reinforces societal biases. Biases come from people who design codes rather than from a mathematical formula. A 2019 UNESCO report²³⁰ reveals the gender biases found in AI training data sets, algorithms, and devices and the potential of reinforcing harmful gender stereotypes. These gender biases risk further stigmatizing and marginalizing women on a global scale. Given the increasing ubiquity of AI in our societies, such biases put women at grave risk in all areas of life.

Both the former and the latter problems call for education and training based on Article 10 of the CEDAW. The former calls for an understanding of gender and intersectionality in providing training for AI developers. An example of bias is when a chatbot assumes that “doctor” indicates “man” and “nurse” indicates “woman.” Studies have shown that the female projection of voice assistants often sends negative messages about girls and women.²³¹

Bias also permeates the ways in which digital advertising can reflect harmful stereotypes. When Latayna Sweeney, the first Black woman to receive a Ph.D. in computer science at MIT and current Harvard Professor, googles her own name, she comes across ads like: “Have you been arrested? Have you been charged with a crime?”²³² For women of color and disability status, algorithmic bias is further pronounced.

²²⁹ See generally, Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 *Theatre J.* 519 (Dec. 1988).

²³⁰ Mark West, Rebecca Kraut, and Han Ei Chew, “*I’d Blush if I Could*”: *Closing Gender Divides in Digital Skills through Education* 106-08, United Nations Educational, Scientific and Cultural Organization (2019).

²³¹ *Id.* at 106–08.

²³² Latanya Sweeney, *Discrimination in Online Ad Delivery* 2-3 (Jan. 28, 2013).

Online gendered stereotypes and harassment, especially against women of color in politics and women of color in the media, have emerged as two of the most pervasive threats to gender equality. Priti Patel, Secretary of State for the Homeland Department in the United Kingdom, and Kamala Harris, Vice President of the United States, for example, have been victims of online attacks criticizing their gender.²³³ A thin membrane divides offline and online, and the continuum of the dialectic of online/offline violence is a broader representation of the power disparities between men and women. It is critical to emphasize that online gender-based violence²³⁴ is one of the crucial social mechanisms by which women are forced into subordinate positions compared with men. Moreover, online gender-based violence, in addition to creating tangible harms like psychological distress and suppression of free speech and expression, spills over to offline violence, including trafficking of women, rape, and “honor crimes.”²³⁵ Some groups of women — such as women belonging to minority groups, indigenous women, refugee women, migrant women, women with disabilities, women in the public eye, transgender women, and LGBTQ+ women — are especially vulnerable to such violence. These marginalized groups of women may learn to “self-censor” their opinions and viewpoints in fear of repercussions from harassers. Their voices, however, are among the most important to be heard—they educate and empower.²³⁶

²³³ See Nina Jankowicz, Jillian Hunchak, Alexandra Pavliuc, Celia Davies, Shannon Pierson, and Zoe Kaufmann, *Malign Creativity: How Gender, Sex, and Lies are Weaponized Against Women Online* (2021), <https://www.wilsoncenter.org/publication/malign-creativity-how-gender-sex-and-lies-are-weaponized-against-women-online>; see also Lucina Di Meco and Kristina Wilfore, Gendered disinformation is a National Security Problem, Brookings (March 8, 2021), <https://www.brookings.edu/techstream/gendered-disinformation-is-a-national-security-problem/>.

²³⁴ The Special Rapporteur on violence against women defined online violence against women in 2018 as “any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately.” Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, A/HRC/38/47 (2018).

²³⁵ Katya N. Vera Morales, *Online gender-based violence against women and girls: guide of basic concepts*, Organization of American States, <https://www.oas.org/en/sms/cicte/docs/Guide-basic-concepts-Online-gender-based-violence-against-women-and-girls.pdf>.

²³⁶ The CEDAW’s approach to online gender-based violence is highlighted in General Recommendation 35. CEDAW General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19, Part II, Committee on the Elimination of All Forms of Discrimination against Women, C/GC/35 (2017) (stating that

Recent generative AI tools, such as ChatGPT or DALL-E, have also caused concerns regarding the hidden biases of data and language models.²³⁷ While programmers and developers seek to block discriminatory content, there have been many examples of ChatGPT reflecting racist and sexist beliefs found on the Internet.²³⁸ Hannah Bloch-Wehba, a law professor at Texas A&M University, warns that “there’s always a risk that this kind of output might be seen as more ‘objective’ because it is rendered by a machine.”²³⁹ Other forms of chatbots are subject to abuse; there is an emerging trend involving the use of chatbots to create on-demand romantic and sexual partners being abused by their users.²⁴⁰ It is important to note that chatbot mistreatment has a gendered component; it is often observed that men create digital partners representing women and proceed to berate them with abusive language and aggression. Again, while the AI-powered chatbot is not a real entity, this kind of abuse is a reflection and normalization of already prevalent violence against women and their objectification. In fact, apart from the pending EU bill, AI leaders like China and the US have begun to think of regulatory landscapes to address gender bias. China, one of the leaders in AI promulgated in April 2023 policies that call for guard rails and safeguards. In April 2023, Cyberspace Administration of China released regulation for generative AI Article 4 sec. 2 Companies should ensure the data being used to train these AI models will not discriminate against people based on ethnicity, race and gender.:

In early 2023, the Biden Administration’s proposed Blueprint for an AI Bill of Rights included an anti-discrimination provision. It states: “Algorithmic discrimination occurs when automated systems contribute to unjustified different treatment or impacts disfavoring people

“despite those advances, gender-based violence against women, whether committed by States, intergovernmental organizations or non-State actors, including private persons and armed groups, remains pervasive in all countries, with high levels of impunity. It manifests itself on a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries”).

²³⁷ See Davey Alba, *OpenAI Chatbot Spits Out Biased Musings, Despite Guardrails*, Bloomberg (Dec. 8, 2022), <https://www.bloomberg.com/news/newsletters/2022-12-08/chatgpt-open-ai-s-chatbot-is-spitting-out-biased-sexist-results>.

²³⁸ Kate Brennan, *ChatGPT and the Hidden Bias of Language Models*, The Story Exchange (Jan. 20, 2023), <https://thestoryexchange.org/chatgpt-and-the-hidden-bias-of-language-models/>.

²³⁹ Sam Biddle, *The Internet’s New Favorite AI Proposes Torturing Iranians and Surveilling Mosques*, The Intercept (Dec. 8, 2022).

²⁴⁰ Amiah Taylor, *Men are creating AI girlfriends, verbally abusing them, and bragging about it on Reddit*, Fortune Magazine (Jan. 19, 2022), <https://fortune.com/2022/01/19/chatbots-ai-girlfriends-verbal-abuse-reddit/>.

based on their race, color, ethnicity, sex (including pregnancy, childbirth, and related medical conditions, gender identity, intersex status, and sexual orientation), religion, age, national origin, disability, veteran status, genetic information, or any other classification protected by law.” The Blueprint also calls upon an equitable development process: “Designers, developers, and deployers of automated systems should take proactive and continuous measures to protect individuals and communities from algorithmic discrimination and to use and design systems in an equitable way.”

CONCLUSION

Research on the new General Recommendation on stereotypes must pursue a multilateral conversation with international stakeholders, technologists and designers, to understand the conceptions and definitions of gender and intersectionality, and why and how they are being embedded into technological design. Theories of gender inclusion must be employed by designers and technologists to embed pluralism into AI systems.

This Article calls for an exploration of the complexities of the AI ecosystem to systematize, magnify, and amplify stereotypes. This Article is a starting point for an intersectional conversation with the ten human rights treaty bodies on AI-driven stereotypes and how this burgeoning new threat be addressed in a new CEDAW General Recommendation.²⁴¹

This General Recommendation must also re-examine international frameworks such as the Women’s Empowerment Principles, which were established by UN Global Compact and UN Women and offer guidance to both State parties and businesses on how to combat stereotypes in new technology.²⁴² The drafting of new human rights principles of AI in the United States and Europe provide a new momentum for deep thinking regarding the role of AI.

²⁴¹ At the University of Cambridge, research has begun on the connection between AI and gender and its associated problems. See Clementine Collett and Sarah Dillon, *AI and Gender: Four Proposals for Future Research* 4, The Leverhulme Centre for the Future of Intelligence at the University of Cambridge (2019). The authors of this 2019 research report establish four areas of AI and gender in which problems exist and future research is needed; these four areas include: (1) bridging gender theory and AI practice; (2) developing effective law and policies surrounding AI; (3) the unrepresentative nature of datasets in capturing vulnerable groups; and (4) increasing diversity in the AI workforce. *Id.* at 4–5.

²⁴² See United Nations, *Women’s Empowerment Principles: Equality Means Business*, United Nations Development Fund for Women.

Moreover, the Charter of Fundamental Rights of the EU encompasses under Article 21 on non-discrimination the following grounds, which can be a reference point, amongst others, for sex and sexual orientation.²⁴³ In the final analysis, transforming stereotypes through both judicial human decision-making and AI-driven justice systems, gender is only one aspect of stereotyping persons with disabilities, migrants and refugees, rural people, and indigenous people. The overarching goal is to increase participation by all women and girls, by transforming stereotypes that impede their participation.

UNESCO's report "I'd Blush if I Could, Closing Gender Disparities" in one part explores how AI Voice Assistants can reproduce gender bias.²⁴⁴ The title of the Report echoes the response given by Siri, a female-gendered voice assistant, when user of the device would tell "her," "Hey Siri, you're a bi***." ²⁴⁵

In 2019, the AI software that powers Siri was revised to respond to that gross insult ("I don't know how to respond to that"); however, the assistant's gendered obsequiousness remains the same since 2011.²⁴⁶ This example of coded bias is pervasive in AI. For example, these voice assistants which are AI-based digital assistants like Amazon Alexa, Apple Siri, Google voice assistant, or Microsoft Cortana reproduce the concept of the female figure as the loyal assistant. Further research must engage in a multilateral conversation with international stakeholders, designers, and programmers to understand how and why gender and race stereotypes are being embedded.

A theoretical exploration of coded bias must include not only the lenses of the human rights framework but also post-colonial theory and critical information theory and explore subtle barriers to equality that bleed into the design of AI technologies. Working together with tech leaders, designers, developers, programmers, philosophers, and technologists, the CEDAW General Recommendation must address the ways in which stereotypes bleed into code and are embedded and normalized into systems, structures, and institutions as coded bias.

The end of 2022 and the beginning of 2023 were marked by a new revolution on technology, especially with the release of ChatGPT by Open AI. In what Noam Chomsky has referred to as the promise and the peril of a new technology moment. In this "Promethean Moment," I call for an

²⁴³ European Union Charter of Fundamental Rights, Title III: Equality, Article 21: Non-discrimination, Official Journal of the European Union C 303/17 (2007).

²⁴⁴ Mark West et al., *supra* note 224.

²⁴⁵ *Id.*

²⁴⁶ United Nations Educational, Scientific and Cultural Organization, *Science Report: The race against time for smarter development 2*, 112 (S. Schneegans, T. Straza and J. Lewis eds., 2021).

approach to AI that is grounded in human rights, inclusivity, and intersectionality to address algorithmic bias and exclusion. AI governance anchored in human rights provides a shared framework of norms acknowledged by governments, businesses, and civil society. Secondly, this framework offers a legal basis for more specific regulation in a way that ethical frameworks do not. The Universal Declaration on Human Rights, drafted in December 1948, 75 years ago, is a shared standard of achievement for all people and nations. Article 27 of the UDHR establishes that “Everyone has the right to share in scientific advancement and its benefits.”²⁴⁷ At the same time, Article 12 establishes that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, and everyone has the right to the protection of the law against such interference or attacks.²⁴⁸ Moreover, the “due diligence” standards of the Guiding Principles on Business and Human Rights provide an agreed set of norms, a shared language, and institutional infrastructure to hold the business ecosystem accountable to AI-related discrimination and bias.²⁴⁹

CEDAW’s approaches on substantive equality, specifically in Article 4,²⁵⁰ provides guidance for potential resolutions for each of these issues. Substantive equality, as opposed to formal equality, is a fundamental concept in the CEDAW which requires proactive and positive temporary special measures to be taken to address a legacy of historic discrimination. Whereas formal equality models disavow policies that aim to redress imbalances on a systemic level, a substantive model of equality envisions an intersectional approach that takes into account systemic stereotypes.

In the final analysis, guidance on state obligations and a new General Recommendation should involve an intersectional approach, a cultural analysis, and the way in which AI can replicate and amplify stereotypes. In the final analysis, I argue that the CEDAW must be the barometer to measure the success of bias- mitigation of AI systems. The act of naming brings something into being and creates a new discourse. We need a new normative framework that can seize that potential power to create a new language to address emerging gender biases.

²⁴⁷ United Nations, Universal Decl. on Human Rights, Art. 27 (1948).

²⁴⁸ *Id.*

²⁴⁹ See generally Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) (advocating for “human rights due diligence”).

²⁵⁰ CEDAW, *supra* note 1, Art. 4.

APPENDIX

Each table lists the countries that have mentioned a particular stereotype in a concluding observation (CO), civil society report (CSR), or state party report (SPR). The tables are divided by treaty body (CEDAW, CRC, CRPD, and CERD), and reports published from January, 2017 – December, 2022 were examined.

1. Stereotypes Based on *Harmful Traditional Practices: Female Genital Mutilation*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (6): Oman, Israel, Iraq, Yemen, Egypt, UAE	CO (2): Kuwait, Tunisia; CSR (2): Lebanon, Lebanon	X	SP (1): Iraq
South Asia	CO (1): the Maldives	X	X	X
East Asia	CO (2): Malaysia, Indonesia	SP (1): Japan	X	CSR (2): Hong Kong, South Korea

2. Stereotypes Based on *Harmful Traditional Practices: Child Marriage*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (13): Jordan, Oman, Kuwait, Israel, Saudi Arabia, Palestine, Iraq, Yemen, Egypt, Lebanon, Morocco, UAE	CO (2): Kuwait, Bahrain; SP (3): Jordan, Syria, Bahrain	CO (1): Saudi Arabia	CSR (1): Iraq

South Asia	CO (4): Nepal, Afghanistan, Pakistan, the Maldives	CO (1): Sri Lanka; CSR (2): Bhutan, Sri Lanka	SP (1): Bangladesh	CO (1): Nepal; SP (2): Nepal, Pakistan
East Asia	CO (5): Myanmar, Singapore, Malaysia, Cambodia, Indonesia	CO (2): Japan, South Korea	X	CSR (1): South Korea

3. Stereotypes Based on *Harmful Traditional Practices: Forced Marriage*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (10): Jordan, Kuwait, Israel, Saudi Arabia, Iraq, Yemen, Egypt, Lebanon, Morocco, UAE	CO (1): Syria; SP (2): Syria, Jordan	X	CO (1): Jordan; CSR (1): Iraq
South Asia	CO (2): Afghanistan, Pakistan	CSR (1): Sri Lanka	CO (2): Bangladesh, India; SP (1): Afghanistan; SP (1): Bangladesh	CO (1): Nepal; SP (1): Pakistan
East Asia	CO (3): Myanmar, North Korea, Indonesia	X	CO (3): China, Hong Kong, Macau; CSR (1): China	CSR (1): Hong Kong

4. Stereotypes Based on *Harmful Traditional Practices: Femicide/Honor Crimes*

	CEDAW	CRC	CRPD	CERD
--	--------------	------------	-------------	-------------

MENA Region	CO (9): Jordan, Oman, Kuwait, Israel, Palestine, Iraq, Yemen, Egypt, UAE	X	X	SP (1): Kuwait
South Asia	CO (2): Afghanistan, Pakistan	X	X	SP (1): Pakistan
East Asia	X	X	X	X

5. Stereotypes Based on *Harmful Traditional Practices: Polygamy/dowry/virginity Testing*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (11): Jordan, Oman, Kuwait, Israel, Saudi Arabia, Qatar, Iraq, Yemen, Egypt, Morocco, UAE	X	X	X
South Asia	CO (4): Nepal, Afghanistan, Pakistan, the Maldives	CSR (2): Sri Lanka, Bhutan	CO (1): India; SP (1): Bangladesh	SP (2): Pakistan, Nepal
East Asia	CO (3): Singapore, Malaysia, Indonesia	X	CSR (1): China	X

6. Stereotyped Representation of *Women in Education, Advertising, and Media*

	CEDAW	CRC	CRPD	CERD
--	--------------	------------	-------------	-------------

MENA Region	CO (13): Jordan, Oman, Kuwait, Israel, Saudi Arabia, Palestine, Qatar, Iraq, Yemen, Egypt, Lebanon, Morocco, UAE	CO (1): Bahrain; SP (3): Jordan, Kuwait, Syria	CO (2): Iraq, Oman	CO (2): Israel, Saudi Arabia; SP (4): Iran, Lebanon, Morocco, Israel
South Asia	CO (3): Afghanistan, Pakistan, the Maldives	CO (1): Sri Lanka; CSR (1): Sri Lanka	SP (2): Bangladesh, Bangladesh	CO (1): Nepal; SP (1): Pakistan
East Asia	CO (6): Singapore, North Korea, South Korea, Malaysia, Cambodia, Indonesia	SP (1): South Korea; CSR (1): Mongolia	CSR (1): China	CSR (3): South Korea, China, Hong Kong

7. Male Head of Household Stereotype

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (9): Jordan, Oman, Kuwait, Israel, Saudi Arabia, Palestine, Qatar, Yemen, UAE	X	CO (1): Saudi Arabia	X
South Asia	CO (1): Afghanistan	X	X	X
East Asia	X	X	X	X

8. Stereotypes in *Unemployment*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (3): Saudi Arabia, Palestine, Iraq	X	CO (3): Kuwait, Oman, Saudi Arabia	SP (1): Morocco
South Asia	CO (1): Pakistan	X	X	X
East Asia	CO (1): North Korea	X	CSR (1): South Korea	X

9. Stereotypes on *Reproductive Health*

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (11): Jordan, Oman, Kuwait, Saudi Arabia, Palestine, Qatar, Iraq, Yemen, Egypt, Morocco, UAE	CO (4): Kuwait, Syria, Tunisia, Bahrain; SP (3): Bahrain, Syria, Jordan	X	SP (1): Iraq
South Asia	CO (4): Nepal, Afghanistan, Pakistan, the Maldives	CO (1): Sri Lanka; CSR (2): Sri Lanka, Bhutan	CO (2): Bangladesh, India; SP (2): Bangladesh, Bangladesh	CO (1): Nepal; SP (2): Nepal, Pakistan; CSR (1): Nepal
East Asia	CO (7): Singapore, North Korea, South Korea, Malaysia, Myanmar, Cambodia, Indonesia	CO (4): Japan, North Korea, Mongolia, South Korea; SP (1): Japan; CSR (1): Mongolia	CO (5): China, Hong Kong, Macau, Japan, South Korea; SP (2): North Korea, China; CSR (8): South Korea, South Korea, South Korea, South Korea, China, Japan, Japan, Japan	X

10. *Intersectional* Stereotypes

	CEDAW	CRC	CRPD	CERD
MENA Region	CO (6): Kuwait, Israel, Qatar, Iraq, Egypt, Lebanon	X	CO (2): Kuwait, Saudi Arabia	CSR (2): India, India
South Asia	CO (3): Nepal, Pakistan, the Maldives	X	CO (1): Bangladesh; SP (1): Bangladesh	X
East Asia	CO (6): Singapore, North Korea, South Korea, Malaysia, Cambodia, Indonesia	X	CO (5): South Korea, China, Hong Kong, Macau, Japan; CSR (7): China, China, Japan, Japan, Japan, South Korea, Hong Kong	CSR (1): Mongolia