

A guide to international legal standards on gender stereotyping

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Gender bias and gender stereotyping constitute forms of gender discrimination prohibited under international law. It is now widely recognised that the persistence of gender stereotypes creates a normative framework in which discrimination and violence against women is normalised and perpetuated. This briefing note discusses key concepts and international legal standards relating to gender stereotyping and explores the relationship between gender stereotyping and discrimination and violence against women.

KEY CONCEPTS

Gender refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities.¹ When individuals or groups do not “fit” established gender norms or binary male or female sex categories, they often face stigma, discriminatory practices and social exclusion.

Gender relations are the specific sub-set of social relations uniting men and women as social groups in a particular community, including how power and access to and control over resources are distributed between the sexes. Gender relations intersect with all other influences on social relations – age, ethnicity, race, religion – to determine the position and identity of people in a social group. Since gender relations are a social construct, they can be transformed over time to become more equitable.²

Patriarchy is defined as a traditional form of organising society which often lies at the root of gender inequality. According to this kind of social system, men, or what is considered masculine, is accorded more importance than women, or what is considered feminine. Traditionally, societies have been organised in such a way that property, residence, and descent, as well as decision-making regarding most areas of life, have been the domain of men. This is often based on appeals to biological reasoning (women are more naturally suited to be caregivers, for example) and continues to underlie many forms of gender discrimination.³

Gender bias is a preference or prejudice of one gender over another. It can be conscious or unconscious and can manifest in ways that are difficult to detect.

1 UN Women, *Gender Equality Glossary* (UN Women Gender Equality Glossary), available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=P&sortkey=&sortorder>

2 UN Women Gender Equality Glossary.

3 UN Women Gender Equality Glossary.

Gender stereotypes are generalised views or preconceptions about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.⁴ Stereotypes are often used to justify gender discrimination and can be reflected and reinforced by traditional and modern practices. Messages reinforcing gender stereotypes and the idea that women are inferior come in a variety of forms, from criminal justice laws and procedures to advertising. Gender bias and gender stereotypes affect the way family, community members, religious leaders, health professionals, law enforcement and criminal justice authorities respond to incidents of gender-based violence. A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and make choices about their lives.

Gender-based violence against women is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”⁵ 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 and a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms.⁶

Gender-based violence myths are widely and persistently held beliefs about the causes of gender-based violence and the nature of victims and/or perpetrators. Similar to stereotypes, myths usually serve to justify gender-based violence and male aggression. These myths often originate from traditional gender roles and societal acceptance or promotion of interpersonal violence. Gender-based violence myths encourage victim blaming and normalise toxic masculinity, which leads to an underreporting, investigation and prosecution of gender-based violence against women.

Gender equality (equality between women and men) refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognising the diversity of different groups of women and men.⁷

INTERNATIONAL HUMAN RIGHTS STANDARDS ON GENDER STEREOTYPING

- 1 Two international human rights treaties contain express obligations on combating stereotyping:
 - + The Convention on the Elimination of All Forms of Discrimination against Women; and
 - + The Convention on the Rights of Persons with Disabilities.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

- 2 CEDAW is the primary international instrument that imposes obligations on State Parties to combat discrimination and violence against women. In broad terms, CEDAW requires states to embody the principle of equality between men and women in their laws and institutions and ensure the practical realisation of that principle by taking measures to eliminate discrimination against women and guarantee the civil, political, social, economic and cultural rights of women.
- 3 **CEDAW Article 1** defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Gender-based violence against women constitutes discrimination against women under Article 1 and therefore engages all obligations under the Convention.

4 OHCHR Report, *Gender Stereotyping as a Human Rights Violation*, 2013.

5 CEDAW Committee, *General Recommendation No. 19* (GR 19), 1992, para. 6.

6 CEDAW Committee, *General Recommendation No. 35* (GR 35), 2017, para.10.

7 OSAGI, *Gender mainstreaming – Concepts and definitions*, available at: <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

- 4 CEDAW Article 2 sets out the overarching obligation of States parties to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. Recognising the inextricable link between gender discrimination, gender-based violence against women and harmful gender stereotypes, **CEDAW Articles 2(f) and 5** create specific obligations on State Parties to eliminate prejudices and practices based on the perceived inferiority or superiority of either sex, as well as stereotyped roles for men and women.
- 5 **Article 2(f)** requires States Parties to undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- 6 **CEDAW Article 5** requires States Parties to take all appropriate measures:
 - (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
 - (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.
- 7 Article 5 requires State Parties to identify and modify harmful gender stereotypes and parental gender roles. CEDAW recognises that it is impossible to eradicate discrimination and gender-based violence against women without tackling gender stereotypes and the CEDAW Committee has explicitly stated that gender-based violence against women is rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour and that those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women.⁸
- 8 In its General Recommendation 28 (2010), the CEDAW Committee recognises that there are implied obligations in each of CEDAW's substantive provisions, including Article 15(1) on equality before the law, to address gender stereotyping. The Committee states that the obligations extend further, to rights and freedoms not explicitly covered by CEDAW, but which are recognised under other international human rights treaties or customary international law and have an impact on the elimination of discrimination against women.
- 9 In General Recommendation No. 33 (2015) on women's access to justice, the CEDAW Committee states:

Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the re-victimization of complainants.

Convention on the Rights of Persons with Disabilities (CRPD)

10 Article 8(1)(b) is the key provision of the CRPD on stereotyping. It requires States Parties to undertake to adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life. Article 8(1)(b) is the first provision in an international human rights treaty to impose an express obligation to address compounded or intersectional stereotypes. This is important for women and girls with a disability whose experiences of violence and discrimination may differ from the experiences of men and other women.

11 CRPD Article 6 explicitly recognises that gender and disability stereotypes coincide to have a compounded effect on women with disabilities. In 2012, in her report on violence against women with disabilities, the Special Rapporteur on violence against women, its causes and consequences highlighted that women with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanise or infantilise, exclude or isolate them, and target them for sexual and other forms of violence.⁹ The Special Rapporteur stated:

“Not only are [women with disabilities] excluded as witnesses because they may have difficulty communicating with the police, but stereotypes operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses. On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control.”¹⁰

Other international instruments

12 The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the equal enjoyment of economic, social and cultural rights by women and men. The Committee on Economic, Social and Cultural Rights (CESCR) has interpreted Article 3, which establishes the right to equality between women and men, to imply a requirement that states eliminate practices that “perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women.” In concluding observations made to State Parties, the CESCR has also recognised the link between persistent gender stereotypes and violence against women.

13 Many forms of gender-based violence that take place in the public sphere are recognised as a form of torture or ill-treatment within the meaning of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). General Comment No. 2 issued by the CAT Committee in 2008, brought violence perpetrated by private actors within the scope of CAT. While CAT does not impose explicit obligations on states to address gender stereotyping and bias, the CAT Committee has referred to “actual or perceived nonconformity with socially determined gender roles” as the basis for torture, ill-treatment and other contraventions of CAT. The CAT Committee has also pointed to gender (and in particular its intersection with other identifying characteristics) as a key factor that determines the way that women and girls are at risk of torture, which can assume a variety of forms including domestic violence, deprivation of liberty and the delivery of healthcare, particularly reproductive healthcare.

⁹ Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/67/227, 3 August 2012 (SR VAW 2012 Report), para. 32.
¹⁰ SR VAW 2012 Report, para.41.

RAPE & GENDER-BASED MYTHS

- 14** Common stereotypes and myths about the behaviour and conduct of rape victim serve to undermine victims' recourse to justice and contribute to the perpetuation of sexual violence against women. Common rape and gender-based violence myths include:
- + If the victim did not report immediately, it was not rape.
 - + If the victim did not physically resist or was not injured, it was not rape.
 - + Victims of rape react in a certain, predictable way.
 - + A victim must try to escape at every opportunity.
 - + Victims of rape are timid or easily cowed.
 - + If the victim has a relationship with the perpetrator, it is not rape.
 - + Rape is a crime of lust or passion associated with love and desire.
- 15** Gender stereotyping and rape myths damage women's access to justice and the manner in which criminal justice systems deal with sexual violence crimes against women. Judges exhibit gender bias when influenced by testimony of the past sexual conduct of a rape victim or the past good conduct of the perpetrator, or when they disbelieve or diminish a victim's testimony and experience. The notion that either of these factors should influence a conviction or result in a mitigated or suspended sentence is an illustration of the real-world harm of gender bias and stereotyping. There is now a strong body of CEDAW decisions that examines the link between harmful stereotypes and gender-based violence against women. The CEDAW Committee has repeatedly condemned reliance on both gender stereotypes regarding women's sexuality or gender roles that position them as subordinate to men, and gender-based myths about how victims of sexual violence should behave and has made clear that States Parties are required to modify or transform "harmful gender stereotypes"¹¹ and "eliminate wrongful gender stereotyping."¹²
- 16** The landmark CEDAW decision addressing gender stereotyping and rape myths is *Karen Tayag Vertido v Philippines*.¹³ Ms Vertido was employed as the Executive Director of the Davao City Chamber of Commerce when she was raped by the former President of the Chamber. After an eight-year trial, the man accused of raping Ms Vertido was acquitted. In Ms Vertido's complaint to the CEDAW Committee, she alleged that the Court's decision was discriminatory within the meaning of Article 1 and violated Articles 2(c), 2(f) and 5(a) of CEDAW.
- 17** The CEDAW Committee concluded that the Court had based its findings on gender-based myths and misconceptions about rape and rape victims and that this amounted to a contravention of the Philippines' obligations under CEDAW and a violation of Ms Vertido's rights under Articles 2(c), 2(f) and Article 5(a), read in conjunction with CEDAW Article 1 and General Recommendation No. 19. The Committee noted that the Court did not apply the principle that, "the failure of the victim to try and escape does not negate the existence of rape" and instead judged Ms Vertido on the basis that she failed to conform to what the judge expected from a rational and 'ideal victim' of rape. The Committee stressed that, "there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence." The Committee noted further stereotypes in the decision of the Court in relation to male and female sexuality, viewing with particular concern the findings of the judge "according to which it is unbelievable that a man in his sixties would be able to proceed to ejaculation with the [victim] resisting the sexual attack."

¹¹ *V.V.P. v. Bulgaria*, UN Doc. CEDAW/C/53/D/31/2011, 24 November 2012.

¹² *R.K.B. v. Turkey*, UN Doc. CEDAW/C/51/D/28/2010, 13 April 2012.

¹³ CEDAW/C/46/D/18/2008, 22 December 2010.

- 18** The Committee found that Ms Vertido had suffered moral and social damage and prejudice, in particular by the excessive duration of the trial proceedings and by the revictimisation through the stereotypes and gender-based myths relied upon in the judgment. The CEDAW Committee recommended the Philippines pay Ms Vertido compensation commensurate with the gravity of the violation of her rights and made general recommendations for addressing gender biases and stereotyping in cases involving sexual gender-based violence.
- 19** In the 2020 decision of *S. F. M v Spain*,¹⁴ the CEDAW Committee considered gender stereotypes in the context of obstetric health services. S.F.M. alleged that Spain violated her rights to high-quality health services free from violence and discrimination; to personal autonomy; and to physical and psychological integrity under CEDAW articles 2, 3, 5 and 12 through the obstetric violence she suffered in hospital during childbirth. S.F.M maintained that the pathologisation of her labour, through early admission, unnecessary digital vaginal examinations, the administration of oxytocin without information or consent, forcing her to give birth in the lithotomy position, performing an instrumental extraction and an episiotomy without information or consent, and, lastly, separating her from her daughter because of an infection probably caused by the medical interventions occasioned by the 10 vaginal examinations carried out in her case, was due to structural discrimination based on gender stereotypes regarding sexuality, maternity and childbirth. She also maintained that these stereotypes were perpetuated in the administrative and judicial proceedings relating to her case.
- 20** The Committee noted its role was to assess the State Party's compliance with its obligation to exercise due diligence in the administrative and judicial proceedings initiated because of the acts alleged by S.F.M. The Committee found that in spite of the various items of evidence and reports that demonstrated the cause-and-effect relationship between the health service's actions and the harmful outcome, the administrative and judicial authorities gave credence only to the hospital reports and made assumptions based on stereotypes. The Committee stated that stereotyping affects the right of women to be protected against gender-based violence, in this case obstetric violence, and that the authorities responsible for analysing responsibility for such acts should exercise particular caution in order not to reproduce stereotypes. The Committee found that there was an alternative to the situation experienced by S.F.M, given that her pregnancy had progressed normally and without complications and that there was no emergency when she arrived at the hospital but that, nevertheless, from the moment she was admitted, she was subjected to numerous interventions about which she received no explanation and was allowed to express no opinion.
- 21** The Committee concluded that the administrative and judicial authorities of the State Party applied stereotypical and thus discriminatory notions by assuming that it was for the doctor to decide whether or not to perform an episiotomy; stating without explanation that it was "perfectly understandable" that the father was not allowed to be present during the instrumental delivery; and taking the view that the psychological harm suffered by S.F.M was a matter of "mere perception" and found a violation of CEDAW Articles 2(b), (c), (d) and (f), 3, 5d 12.

For further information about international standards on gender stereotyping and the link between gender stereotyping and violence against women and girls, please access the SFC-EJA report *Comparative legal review of the impact of gender stereotyping on judicial decisions in VAWG cases across the Pacific Island Region* available on our website, www.sistersforchange.org.uk/global-law-reform-resource-hub/