



Joint Submission from Women's Platform for Action International (WoPAI) and the Swedish Women's Lobby (SWL), to the CEDAW Committee on the impact of stereotyped roles on the enjoyment of the rights enshrined in the Convention

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About WoPAI

Women's Platform for Action International, WoPAI, is a new global Non-Profit Women's Association. It is an umbrella of members and informal women's rights groups globally.

Women's Platform for Action International is religiously and politically independent. Our vision is a world where women's human dignity is respected, and where women and girls fully exercise their rights and freedoms as foundation for a human agreement of our global future.

The purpose of Women's Platform for Action International is to take action for the acceleration of women's rights globally by realising CEDAW and further advancing the Platform for Action from Beijing 1995 also in perspective of other relevant International Instruments.

About Swedish Women's Lobby

The Swedish Women's Lobby, is a politically and religiously independent umbrella organization for the Swedish women's movement. We bring together 50 associations that together represent over 130 000 women and girls.

We welcome the initiative of the CEDAW experts to elaborate the General Recommendation 41 on stereotypes. We also share the committee's interpretation of Article 5 of CEDAW being horizontal, in line with the General Recommendation 25 that states that "a joint reading of articles 1 to 5 and 24, form the general interpretative framework for all of the Convention's substantive articles". We support the joint submission of the Nordic Model Now! and 25 NGOs and platforms. Considering the deterioration of women's rights globally, we would like to put forward the following observations, concerns, and recommendations regarding stereotyped roles for women and girls.

Background

Globally, living conditions of women and girls are deteriorating. Feminised poverty and the income gap between women and men around the world increase, with this gap increasing manifold between those in the global South and the global North. Women and girls are worse affected than men by pandemics, austerity policies, environmental and climate change, war and conflict. Women are harassed, beaten, tortured, raped, exploited, mutilated and murdered because we are women, in war and in peace. The very concept of sex is being annihilated in language and legislation, and women as a legal class of right holders are being erased. We are discriminated against and abused in public and in private spheres, offline and online. Women's human rights are questioned, eroded and eliminated.

The background for our concerns is also that many UN global agencies, programmes, secretariats and experts mandated to safeguard international human rights law and women's human rights enshrined therein, have abandoned their mission and, at times, taken on the role of global law-makers. They have engaged in creating - and imposing on CSO and states alike - terms and frameworks that not only have no legal basis in international human rights law but are designed to dismantle the very protections of women and girls this law provides for globally as stated in the Convention.

We expect and hope that the GR 41 is to restore women's rights not to be discriminated based on sex, never allowing women's role in the human procreation and our biological distinctions to be exploited, commodified or used as a basis for stereotyping.

GENDER AND SEX IN CEDAW JURISPRUDENCE

Article 1 of CEDAW 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".

Sex as the basis for discrimination against women has played a key role in the evolution of the CEDAW jurisprudence, reflected in many of its recommendations and reports¹. The CEDAW committee also clarified the convention's meaning of the term sex as "biological differences between women and men"² while also adding that the convention goes beyond the concept of sex discrimination enshrined in other international instruments: "While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women [...] the Convention focuses on discrimination against women, emphasising that women have suffered, and continue to suffer from various forms of discrimination **because they are women**"³. In CEDAW, sex is also the basis for the permanent *differentiated measures* that state parties are obligated to introduce under CEDAW's Article 2, arising, in the words of the CEDAW experts, from "women's biologically determined permanent needs and experiences"⁴. As examples of such needs and experiences the committee acknowledged such as "menstrual cycle and their reproductive function and menopause" unique to women⁵.

With regards to the subject of the current consultation, the CEDAW Committee also clarified that the "stereotyped conceptions of women, owing to socio-cultural factors, perpetuate discrimination based on sex and hinder the implementation of article 5 of the Convention".⁶

While the meaning of the word sex in the CEDAW texts is unambiguous, throughout the years, the CEDAW Committee has incorporated in its jurisprudence the term "gender" with contradictory and unclear meaning. On one hand, the committee defined gender as a "social stratifier" and the "social meanings given to biological sex differences" identifying as its "pervasive trait" the "asymmetry of power between men and women"⁷. On the other hand, in some texts, the committee used the term gender to refer to "sex"⁸ contradicting its own definition of gender. In others, it introduced terms without defining them (e.g. "gender issues", "gender perspective"). In 1992, in its crucial for the women's movement General Recommendation 19 on Violence against Women, the committee recognised "gender-based violence" as a form of discrimination against women within the meaning of Art 1 of the convention, defining it as "violence that is directed against a woman because she is a woman or that affects women disproportionately". However, the French version of the same

¹ See General Recommendations 23, 24, 25, 28 that speak about the importance of sex as a discrimination ground, as an indicator, and as a comparator between women and men.

² General Recommendation 28, Para 5

³ Ibid.

⁴ General Recommendation 25, Para 11

⁵ General Recommendation 24, Para 12(a)

⁶ General Recommendation 3

⁷ See General Recommendations 25 Note 2, and General Recommendation 25

⁸ For example, GR9 (1989) on Statistical data concerning the situation of women states that "data can be disaggregated according to gender", whereas the French version of the same document states "les données puissent être ventilées par sexe". Similarly GR17 (1991) speaks about "statistics disaggregated by gender", while the French version states "des statistiques désagrégées par sexe". The same confusion can be found in the GR21 (1994), GR23 (1997), GR24 (1999) and consequent documents.

document speaks exclusively about “sex based violence” (la violence fondée sur le sexe)⁹ without mentioning the word gender. Similarly, in the General Recommendation 24 on Health, where the document uses “gender discrimination” in English, it uses “sex discrimination” in French¹⁰, creating an unclarity as to whether the committee used the term “gender” when it meant “sex” in the English version as well.

Overtime, these contradictions and unclarity proliferated in the CEDAW jurisprudence, particularly its English versions, resulting in the near elimination of the word “sex” from many of CEDAW (English) reports and replacement of what constitutes the core of the convention, “sex discrimination” defined in Article 1, with the term “gender discrimination”.

Following this, the CEDAW experts introduced in some country and general reports¹¹, additional notions of “gender identity”, “transgender”, “transpersons”, etc., blindly borrowing them from the lobbying texts that have no basis in international law such as the Yogyakarta principles. In doing so, the experts failed to discuss the meaning of these terms and their potential impact on/clash with women’s human rights and fundamental freedoms protected by CEDAW. The committee also failed to consider that the lobbying tool from which the notion of “gender identity” originates in the UN, explicitly **demands the abolition of the registration of sex in all legal documents**¹², and as such, advocates for the abolition of CEDAW itself and all sex-based protections contained in it. More recently, the committee issued astounding observations that welcomed states allowing legal recording of sex on the say-so basis¹³.

All the above underscores the urgent need for the CEDAW experts to clarify terminology they use, relying on international standards and definitions agreed upon by state parties and firmly rooted in the purpose and intent of the Convention as well as their own role as its guardians. There is an urgent need that the *conflation of sex and gender* in the texts that the committee produces stops, that the translations of all versions of CEDAW documents are coherent and consistent, and that the terms, concepts and recommendations in any way undermining women’s rights to sex-based protections do not become entrenched in the CEDAW jurisprudence inadvertently destroying the only international bill of rights for women and girls.

⁹https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F3731&Lang=en

¹⁰https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F4738&Lang=en

¹¹ See for example CEDAW General recommendation 28, CEDAW Decision on Communication No. 134/2018, or state recommendations CEDAW/C/BGR/CO/8, CEDAW/C/AUT/CO/9, CEDAW/C/LUX/CO/6-7, CEDAW/C/ITA/CO/7, CEDAW/C/DEU/CO/7-8, CEDAW/C/IRL/CO/6-7, CEDAW/C/NLD/CO/6, CEDAW/C/EST/CO/5-6, CEDAW/C/FRA/CO/7-8, CEDAW/C/SVK/CO/5-6.

¹² See Yogyakarta principle 31 (<http://yogyakartaprinciples.org/principle-31-yp10/>)

¹³ See 2023 CEDAW Concluding observations on Germany

ON THE MEANING OF THE TERM STEREOTYPES

In its Concept note for the consultation, the Committee offers a concerning interpretation of “gender stereotypes”. It posits that there exist “wrongful” and “harmful” stereotypes, suggesting the existence of “rightful” and “harmless” ones. While such a typology of stereotypes may be permissible in other sectors, international human rights law, CEDAW in particular, does not offer such differentiation of stereotyped roles of women and men. In fact, the CEDAW Article 5 is clear that states parties are obliged to modify stereotyped roles of women and men in society without distinguishing between positive and negative stereotypes.

We note that some of materials regarding stereotypes produced by the Office of High Commissioner for Human Rights (OHCHR) pursue the same ambiguity about stereotypes. In its publication *Gender Stereotypes and Stereotyping and Women’s Rights*, OHCHR describes “women are nurturing” as a “positive stereotype”¹⁴. Without disregarding or diminishing women’s reproductive and maternal capacity and status in society protected in CEDAW, we strongly disagree with such interpretation as the stereotype of nurturing and caring women historically has been used within societies and families to control women’s sexuality, behaviour, and reproductive rights. In other areas, this stereotype has contributed to the institutionalisation of the systems of prostitution and its filmed form, pornography, which feed off the idea of women’s “nature” or “destiny” being (emotional, sexual, reproductive) care for men. What OHCHR describes as a “positive stereotype” has contributed to acts of violence against lesbians, including the so-called “corrective rape” and imposing compulsory heterosexuality on females who exclude males from their sexual lives. The very same stereotype is used by the multi-million surrogacy industry currently expanding globally at unprecedented speed: in it, women are not only used as stereotyped reproductive commodities, but also promoted as stereotypically “altruistic” and “innately nurturing” beings at the service of others.

Having said this, it is also crucial to distinguish between what constitutes an actual stereotype, or stereotyped roles of women and men, and what are biological and scientific facts pertaining to female biology (maternal capacity, but not only), supposed to be protected by state parties through implementing differentiated positive measures for women.

It is of great concern that OHCHR nowadays appears to give an unfounded meaning to the term stereotype, divorcing it from the original intent of CEDAW entirely, while suggesting that sex differences between women and men are stereotypes in themselves: “Sex stereotypes of binary physical and biological differences between males and females at birth”¹⁵.

¹⁴

https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OnePagers/Gender_stereotyping.pdf

¹⁵ See the 2018 OHCHR Background paper on the role of the judiciary in addressing the harmful gender stereotypes related to sexual and reproductive health and rights: A review of case law, section on “Stereotypes of Gender Identity”

Article 5 (b) of CEDAW describes “maternity as a social function”, whereas Article 4 on temporary special measures states that such measures, including those aimed at protecting maternity, “shall not be considered discriminatory”.

Effective implementation of CEDAW requires a balance between *avoiding stereotyping women* based on physiological distinctions from men, and *maintaining differentiated protections and positive measures for women*, based on such distinctions. In other words, in attempting to eliminate stereotypes that impede the fulfilment of women’s human rights, States should not simultaneously attempt to eliminate the protection of distinctions of women that exist independently of socially and culturally constructed meaning ascribed to them, and neither do they arise from such stereotypes.

In fulfilling their core obligations under Article 2 and 5 to eliminate stereotypes, State parties cannot forget about their obligations under Articles 1 and 4, and cannot do away with sex-based protections of women, or special and differentiated measures they are obliged to introduce to protect women from such discrimination.

NEW FORMS OF BACKLASH AGAINST WOMEN USING STEREOTYPES

According to the CEDAW committee, identical or neutral treatment of women and men may constitute sex-discrimination against women when such treatment results in or has an effect of women being denied the exercise of a right¹⁶. Today, many states in the West and the Global North have adopted laws and policies blind to the specific and permanent needs of women and girls, and realities that women and girls face due to our status and position in society. The absence of single sex spaces and services, progressive elimination of funding and policy mechanisms aimed at supporting women, or specific groups among women (women with disabilities, refugee women), diluting of sex-specific protections for women, removing of terms describing lived realities of women, failure to collect and meaningfully analyse sex-disaggregated data, can be observed in many states that moved from “equality between women and men” or “sex equality” to “gender equality” in their policies and targets. Often the steps States take in the direction of disregarding women-specific needs and risks we face because we are women (aka “gender neutral” or “unisex” policies), are precipitated by and coupled with the emergence of ideas that an individual choice of a woman, no matter how harmful it may be due to limiting or coercive circumstances, is always empowering.

In such contexts, gross violations of women rights in the systems and industries that profit from the commodification of women’s sexuality and reproduction (pornography, prostitution, surrogacy), pass unchallenged and unnoticed, justified by “freedom of choice” and “right to consent”, and glossed over by new terms such as “gender diversity” and “gender inclusivity”. In reality, most institutional actors have very poor understanding what those terms mean and

¹⁶ General Recommendation 28, Para 5.

how they should be implemented in practice, using them as a pretext to dismiss women's well founded concerns and demands.

While "harmful" stereotypes seem to be a concern of some policymakers, addressing those is often limited to superficial measures dealing with mannerism, life-styles and dress-code, often reducing women to even worse, more gross stereotypes than those our mothers and foremothers had to confront to attain their rights.

As a result, while the targets for equality and diversity appear on paper in many states, women's substantive equality has become relegated to secondary and even tertiary issues, and even claimed to be not needed because "equality between all (multiple) genders" has taken precedent. In this midst of these processes, women and girls are left behind, those in most disadvantaged positions suffering most.

While freedom of choice and personal expression, and a life free from stereotyping remains fundamental for both women and men, using these concepts to substitute substantive equality, eliminating male violence against women, or addressing material inequalities women of different backgrounds face daily all over the world, has not led to solutions to deepening inequalities and discrimination women continue to face. There is an urgent need to revisit international community's original understanding of stereotyped roles of women and men in the light of emerging forms of commodification, objectification, commercialisation and exploitation of women and girls, our sexuality, and our biological and reproductive functions and capacities.

In addressing stereotypes, States must not confuse actions related to personal identification and superficial measures on personal expression, with measures that must address, as CEDAW requires, "social and cultural meaning for the biological differences [between women and men] resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women"¹⁷.

Conclusions:

- There is an urgent need to go back to the purpose and intent of the Convention, its founding principles, dealing with discrimination based on sex and stereotyped roles for women (and men).
- Gender as used in the Concept Note and many other texts produced by the Committee does not address root causes of discrimination against women.
- A critical and updated explanation of what 'gender stereotypes' means is needed. We recommend the use of "stereotyped roles for women"

¹⁷ General Recommendation 28, Para 5.

- Discrimination of women should be understood as any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field.
- The Convention devotes major attention to women's reproductive rights. The preamble sets the tone by stating that the role of women in procreation should not be a basis for discrimination.
- Stereotyped roles for women should not be interpreted as symptoms of discrimination but as agents bringing into light the interests laying behind discrimination of women based on sex and the exploitation of women's reproductive rights.
- All stereotypes are used as tools by concrete power structures and actors turning women and girls into commodities. The commodifying of women and girls is the essence of stereotyped roles for women.
- Stereotypes are turned into business plans for vested interests of various actors, entities, and groups (commercial companies, states, organisations, influencers, pornography industry, prostitution, surrogacy industry, cosmetics, etc.) and can be identified as based on sex, also frequently incorporated in legislation showing the vested interests of states.

We consider addressing stereotyped roles for women as an entry point for action for defending women's rights based on sex, not as a goal in itself. Addressing stereotypes through addressing mannerism and expression of sexes as proposed by some neoliberal ideologies is not enough to end discrimination of women. Such measure may and do lead to not only normalising well-known stereotypes but creating new ones, further perpetuating substantive inequality between women and men, and further disadvantaging women and girls.

We urge the CEDAW experts in their work on the forthcoming recommendation 41 to respect and protect the original intent and purpose of the Convention - the only global instrument created to protect women and girls from discrimination based on sex, with non-commodifiable human dignity, bodily integrity, and indivisibility of our rights.