



International Law on Women's Human Rights on the concerns triggered by the
introduction of sex robots into society

by

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ABSTRACT

In a human-like form and programmed with artificial intelligence, sex robots are becoming increasingly prevalent, also as a result of the restrictions on social interactions caused by the COVID-19 pandemic. Because of their programming, sex robots offer both a physical and psychological dimension for users, thereby raising concerns not usually linked to sex toys. The purpose of this dissertation is to examine whether the international human rights instruments on women's human rights relates to concerns raised by sex robots. The focus is mainly on whether sex robots exacerbate harmful gender stereotypes or can be considered discriminatory against women. Furthermore, it is examined whether a State is obligated to respond to the manufacture, distribution and use of sex robots, even though these activities are carried out by private citizens and entities.

By applying a dynamic and teleological approach combined with the Vienna Convention on the Law of Treaties' provisions on treaty interpretation, the relevant treaties, treaty body decisions and soft law are examined to determine whether sex robots are harmful to women and what obligations states have in that regard as a result of private actor activities. Sex robots in their current form portray women in a hypersexualised manner, both with appearance and behaviour. While it is not yet clear whether such portrayal will cause a surge in sexual violence against women, sex robots undoubtedly represent a stereotypical and degrading depiction of women, resulting in adverse effects on women's mental health.

According to the Convention on the Elimination of All Forms of Discrimination Against Women and other key human rights treaties, member states have an obligation to modify harmful gender stereotypes and eliminate gender stereotyping and other discriminatory practices towards women. Thus, in relation to sex robots, member states must take appropriate measures, like introducing legislation or policies on sex robots' manufacture, distribution and use. Since restrictive legislation on the use of sex robots may interfere with other fundamental human rights - including the user's right to privacy and health - it is recommended that the measures introduced by states focus on the production of sex robots.

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LIST OF ABBREVIATIONS

Artificial Intelligence	AI
Charter of the United Nations	The UN Charter
Committee on the Elimination of All Forms of Discrimination Against Women	The Committee
Committee on Economic Social and Cultural Rights	CESCR
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW
Convention on the Rights of Persons with Disabilities	CRPD
Convention on the Rights of the Child	CRC
Declaration on the Elimination of Violence Against Women	DEVAW
Human Rights Committee	HRC
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Human Rights Law	IHRL
Office of the High Commissioner for Human Rights	OHCHR
Optional Protocol to CEDAW	The Protocol
Vienna Convention on the Law of Treaties	VCLT
Universal Declaration of Human Rights	UDHR
United Nations	UN
United Nations General Assembly	UNGA
United Nations Guiding Principles	UNGP
United Nations Human Rights Council	UNHRC
World Health Organisation	WHO

CHAPTER 1: INTRODUCTION

1.1 INTRODUCTION AND PROBLEM STATEMENT

The sex robot or ‘gynoid’ is the next generation sex doll and will, according to some writers, by the year 2050, constitute a regular sexual ‘partner’ for most men and women.¹ While this prediction might be too farfetched, there is little doubt that sex robots are becoming increasingly prevalent in liberal societies.² Given the current pandemic, people worldwide are required to self-isolate, affecting some individuals substantially. Older people and people with disabilities are especially at risk from social isolation. Thus, it has been suggested that sex robots should be made available to people at risk to offer ways of interaction.³ Some companies selling these robots have reported a 50 per cent increase in sales during the pandemic, and most of these customers are males in their 50-60s.⁴

As opposed to general sex toys and pornography, the sex robot offers both a psychological and physical dimension.⁵ The psychological dimension is the programming of artificial intelligence (‘AI’), allowing sex robots to learn independently and self-improve. Furthermore, sex robots have a physical dimension, which is their humanoid form.⁶ Because of the combination of these two dimensions, which may

¹ Daniel Levy *Love and sex with robots: The evolution of human-robot relationships* (2009); Ian Pearson ‘The Future of Sex Report: The Rise of the Robosexuals. A Futurizon Report’ *Bondara* (2015) available at http://graphics.bondara.com/Future_sex_report.pdf, accessed 20 March 2020.

² Studies conducted in the US and Europe show a generally positive attitude towards sex robots. See Noel Sharkey et al ‘Our Sexual Future with Robots’ *Foundation for Responsible Robotics* (2017) 7-9; Richards, Riley et al ‘Exploration of Relational Factors and the Likelihood of a Sexual Robotic Experience’ in A. Cheok et al (eds) *Love and Sex with Robots* (2016) 97-103. Furthermore, sex doll brothels are becoming increasingly prevalent, with locations in Canada, the US, Russia, Japan and Europe. It is expected that sex robots will replace sex dolls as they become more advanced and economical. See also Amber Hicks ‘Sex robot brothel opens in Japan amid surge of men wanting bisexual threesomes’ *Mirror*, available at <https://www.mirror.co.uk/news/weird-news/sex-robot-brothel-opens-japan-14792161>, accessed 6 July 2020.

³ Tzach Yoked ‘The Moral Case for Sex Robots’ 26 November 2020, available at <https://www.haaretz.com/science-and-health/.premium.MAGAZINE-the-moral-case-for-sex-robots-1.9331032>, accessed on 22 December 2020.

⁴ Jeff Elder ‘AI-Powered Sex Robots Are Selling Well During Lockdown’ *Business Insider* 13 June 2020, available at <https://www.businessinsider.com/ai-sex-robots-are-selling-well-realdoll-regulated-2020-6?IR=T>, accessed 27 July 2020.

⁵ N. Döring & S. Pöschl ‘Sex toys, sex dolls, sex robots: Our under-researched bed-fellows’ (2018) 27 *Sexologies* 51-55.

⁶ Kate Devlin *Turned On: Science, Sex and Robots* (2018) 13.

become even more advanced in the future, sex robots raise several moral, ethical and legal questions that common sex toys do not.⁷

Presently, most sex robots are females and depict women in a stereotyped and narrow way, which might cause the user to dehumanise real women and thereby induce discriminatory behaviour, exacerbate harmful gender stereotypes and create an upsurge of rape and other kinds of sexual violence.⁸ One writer, in particular, Professor Kathleen Richardson, has actively campaigned for the precautionary prohibition on the creation of sex robots because of the effects these gynoids may have on society.⁹ However, other scholars argue that the opposite is true and sex robots might ultimately prove useful in preventing harm against women, increase human empathy,¹⁰ or provide therapeutic benefits for potential offenders.¹¹

Despite the above concerns, specific regulation on these types of gynoids is non-existent. Countries have, in general, resorted to using a soft-law approach when dealing with artificial intelligence and robotics.¹² Sex robots, in particular, are not explicitly regulated in any national or international laws or policies, except for sex robots that resemble children.¹³ The absence of definite rules derives from the fact that more research is necessary to understand precisely how these sex robots affect human behaviour. However, the potential risk of harm on women warrants a prompt

⁷ John Danaher & Neil McArthur *Robot Sex: Social and Ethical Implications* (2017) 17-18.

⁸ See article by Carlotta Rigotti 'Sex robots: a human rights discourse?' *OpenGlobalRights* 2 May 2019, available at <https://www.openglobalrights.org/sex-robots-a-human-rights-discourse/>, accessed on 20 April 2020; See also essay by Jeannie S. Gersen 'Sex Lex Machina: Intimacy and Artificial Intelligence' (2019) 119(7) *Columbia Law Review*.

⁹ Kathleen Richardson 'Campaign against Sex Robots', available online at: <https://campaign-againstsexrobots.org/about/>, accessed 22 December 2020.

¹⁰ Tanja Kubes 'New Materialist Perspectives on Sex Robots. A Feminist Dystopia/Utopia?' (2019) 8(8) *Social sciences* 224-238.

¹¹ John Danaher 'Regulating Child Sex Robots: Restriction or Experimentation?' (2019) 27(4) *Medical law review* 553-575.

¹² Carlotta Rigotti 'How to apply Asimov's first law to sex robots' (2020) 11 *Paladyn, Journal of Behavioral Robotics* 162.

¹³ In the US, the House of Representatives passed the Curbing Realistic Exploitative Electronic Paedophilic Robots (CREEPER) Act in 2018 H.R. 4655, 115 Congress (2017-2018). The Act was created to prohibit sex dolls and robots that resemble minors as it is believed that there is 'a correlation between possession of the obscene dolls, and robots, and possession of and participation in child pornography.' Also, it is argued that the use of such dolls and robots will lead to rape and make it easier for rapists to 'overcome resistance and subdue the victim,' and ultimately 'normalize sex between adults and minors.' The bill did not pass the Senate, but the CREEPER Act 2.0 was introduced in the House of Representatives on September 14, 2020 (H.R. 8236, 116 Congress (2019-2020)) and again on January 4, 2021 (H.R. 73, 117 Congress (2021-2022)).

investigation into the international human rights law ('IHRL') on the protection of women's rights to examine whether the existing instruments relate to these concerns.

The main treaty dealing with women's protection from discrimination is the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW').¹⁴ In addition to discriminatory harm, CEDAW also contain an express provision on member states' obligation to modify traditional attitudes where women are considered subordinate. Other key treaties on human rights are the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR').¹⁵ According to these treaties, member states are obligated to ensure that both men and women are able to enjoy all the listed rights without discrimination.

Unsurprisingly, as these treaties are from 1966 and 1979, they do not deal with new technological advances that may have a discriminatory impact on women today, like robotics and AI. However, the various UN treaty bodies dealing with the implementation of human rights treaties continue to address new stereotypes and forms of discrimination materialising in society today.¹⁶ These contributions by UN treaty bodies are soft law and thus not binding on states; however, they provide persuasive value for interpreting the content of the UN human rights treaties.¹⁷

As the potential harms in relation to sex robots are not caused by states but by non-state actors, it is uncertain whether states have a due diligence obligation to interfere with the manufacture, distribution and use of sex robots,¹⁸ and if so, what

¹⁴ UNGA, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180.

¹⁵ UNGA, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UNGA, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

¹⁶ See for example: UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, UN Doc CAT/C/GC/2, 24 January 2008, para 22; UN Committee on the Rights of the Child (CRC), General comment No. 12: The right of the child to be heard, UN Doc CRC/C/GC/12, 20 July 2009, para 77.

¹⁷ Rashida Manjoo & Jackie Jones (eds) *The Legal Protection of Women from Violence: Normative Gaps in International Law* (2018) 199.

¹⁸ Andrew C Byrnes et al 'State Obligation and the Convention on the Elimination of All Forms of Discrimination against Women' (2007) UNSW Law Research Paper No. 2007-48, para 130; CEDAW Committee, General Recommendation No. 19: Violence against women, UN Doc. A/47/38 at 1, 1992, para 9.

kind of response is required and will it affect other rights, including the rights to privacy and sexual health?

1.2 RESEARCH QUESTION AND OBJECTIVES

Against this backdrop, this dissertation will consider the IHRL instruments that deal with harmful gender stereotypes and discrimination against women. These instruments will be examined to determine how they relate to concerns raised by sex robots in relation to women. In particular, it will be considered whether the manufacture, distribution and use of sex robots are discriminatory against women or whether the existence of these gynoids is exacerbating harmful gender stereotypes or constituting wrongful gender stereotyping. Furthermore, it will be examined whether a State has a due diligence obligation to interfere with the manufacture, distribution and use of sex robots, carried out by private citizens and entities.

It should be noted from the outset that regulating the use of sex robots may affect other fundamental human rights, including the right to privacy and adequate health. Thus, if sex robots are classified as discriminatory against women or as wrongful gender stereotyping, it is questioned whether the obligation of states to protect women's rights will outweigh the State's responsibility to respect the rights of the users?

1.3 LITERATURE REVIEW

A number of writers have discussed sex robots and their legal implications on society. The following will give a short overview of these existing discussions. On one side of the debate, writers like Daniel Levy¹⁹ and Neil McArthur²⁰ have an optimistic view of sex robots and their effect on society. According to them, the development of sex robots should be encouraged and will result in happier and healthier people. Their use will especially benefit people suffering from sexual deprivation either

¹⁹ Daniel Levy is a private AI researcher from London and author of one of the first books on human relationship with robots 'Love and Sex with Robots: The Evolution of Human-Robot Relationships' (2009).

²⁰ Neil McArthur is an Associate Professor of Philosophy and Director of the Centre for Professional and Applied Ethics at the University of Manitoba.

because of physical or psychological disabilities.²¹ Levy even suggests that sex robots will be able to replace prostitutes in the future.²²

On the other end of the spectrum, professor Kathleen Richardson argues for precautionary legislation.²³ Richardson puts forward that the creation and use of sex robots perpetuate the idea that human bodies are objects that can be modified and sold.²⁴ She is concerned with Levy's notion that sex robots can substitute sex workers as this reveals a 'coercive attitude towards women's bodies as commodities, and promote a non-emphatic form of encounter.'²⁵

Some scholars are concerned that sex robots will diminish the notion of consent in human sexual relations, resulting in an increase in sexual violence.²⁶ Gutiu, for instance, claims that sex robots are created based on stereotypical ideas of how women should look and behave, which might exacerbate existing inequalities between the sexes. Furthermore, she argues that sex robots portray the direction that human relationships and intimacy are heading towards, where the perfect woman is submissive and controllable.²⁷ Frank and Nyholm agree with Richardson and Gutiu, stating that human-to-robot interaction may affect human-to-human interaction in an undesirable manner, thus arguing that the more human-like a robot is, the more reason there is to extend legal and moral categories to them.²⁸

Kate Darling broadly suggests granting legal protection to all types of social robots, similar to the protection granted to animals. She reasons that humans tend to project human emotions onto social robots like they do with animals, and laws protecting animals from mistreatment, are mostly based on 'popular sentiment rather

²¹ Danaher & McArthur op cit (n7) 110; Levy op cit (n1) 308-309.

²² Levy op cit (n1) 215.

²³ Kathleen Richardson is a Professor of Ethics and Culture of Robots and AI. See her campaign at <https://campaignagainstsexrobots.org>.

²⁴ Kathleen Richardson 'The asymmetrical "relationship": parallels between prostitution and the development of sex robots' (2016a) 290–293.

²⁵ Kathleen Richardson 'Sex Robot Matters: Slavery, the Prostituted, and the Rights of Machines' (2016b) 46–53.

²⁶ Sinziana M. Gutiu (2016) The Roboticization of Consent. In: R. Calo, A. Froomkin and I. Kerr, ed., *Robot Law*, 1st ed. Cheltenham: Edward Elgar Publishing Limited 186-212; Lily Frank & Sven Nyholm 'Robot sex and consent: Is consent to sex between a robot and a human conceivable, possible, and desirable?' (2017) 305–323.

²⁷ Gutiu op cit (n26) 191-193.

²⁸ Frank & Nyholm op cit (n26) 17.

than consistent biological criteria.²⁹ Thus, it is irrelevant that social robots do not feel physical pain when mistreated. What matters and what would lead to legal protection is that humans feel uncomfortable seeing a social robot mistreated. By protecting social robots, we are therefore essentially protecting ourselves.³⁰ Darling also suggests that certain behaviour towards social robots may traumatise or desensitise the user.³¹

Like Darling, John Danaher emphasises that social robots are not moral victims; however, robots created for sexual purposes are problematic in the manner they represent women and in the style of sexual encounters they encourage.³² Danaher suggests outlawing the manufacture of only specific sex robots, including those created to realise rape fantasies and paedophilic tendencies. Nevertheless, he also points out that the symbolic interpretation of these robots depends on the given society and culture. Thus, if sex robots bring about a positive development in society, their symbolic meaning may need to be reformed.³³

Carlotta Rigotti³⁴ argues that concerns raised by sex robots must be addressed through appropriate laws. Such laws must take account of human rights and ethical concerns. Rigotti does not find that an outright ban is suitable before enough ‘women-inclusive’ research has been done on whether sex robots offer advantages to the protection of real women, for example, by limiting human trafficking.³⁵

1.4 DELIMITATION

This dissertation focuses on the consequences of the manufacturing, distribution and use of sex robots on women’s human rights and will only deal with robots created for sexual purposes. Furthermore, the primary focus is on sex robots programmed with AI as these robots can process information and respond to the user, thus, offering a

²⁹ Kate Darling ‘Extending legal protection to social robots: The effects of anthropomorphism, empathy, and violent behavior towards robotic objects’ in Ryan Calo et al (eds) *Robot Law* (2016) 226.

³⁰ Darling op cit (n29) 227.

³¹ Darling op cit (n29) 224.

³² Danaher & McArthur op cit (n7) 263.

³³ Danaher & McArthur op cit (n7) 300.

³⁴ Carlotta Rigotti is a PhD candidate and a scientific researcher at the Vrije Universiteit in Brussel. She is currently researching sex robots’ legal and ethical implications.

³⁵ Rigotti (2019) op cit (n8).

psychological dimension. This extra dimension causes these robots to raise more ethical and legal questions than sex dolls, as they are more human-like in both appearance and behaviour.

The few sex robots designed with AI on the market mainly depict adult females.³⁶ Few companies have discussed the launch of male and transgender versions and none of these companies offers child sex robots.³⁷ Nevertheless, as both female, male and child sex dolls exist, it is expected that sex robots will eventually be created to depict all genders and ages unless all or certain sex robots become prohibited in the countries where they are designed and manufactured.

This dissertation will solely focus on sex robots or 'gynoids' that depict adult females to determine their potential effect on women's human rights. 'Effect' in this context relates to the indirect harms or benefits, which the manufacturing, distribution and use of such robots might have on women. The rights of the users, who are usually male, will only be discussed briefly to examine how international law deals with conflicting human rights, mainly women's right to non-discrimination versus users' rights to privacy and health.

It should be noted that male sex dolls and the few, if any, available male sex robots are, like their female counterparts, portrayed in a stereotyped fashion. If sex robots become increasingly prevalent in the future, it is likely that debates and discussions will consider the male perspective, namely whether male gynoids are discriminatory against men. However, such a discussion regarding male sex robots is beyond the scope of this dissertation, also because examining the topic through the lens of

³⁶ Companies manufacturing sex robots programmed with AI, include RealDoll from Realbotix, available at <https://www.realdoll.com>; Robotcompanion, available at <https://www.robotcompanion.ai>; and Smartdollworld, available at <https://www.smartdollworld.com>. The company True Companion launched its version of the sex robot 'Roxxy' back in 2010. The company went on to market other versions, including 'Mature Martha', 'Young Yoko' and 'Frigid Farrah'. The 'Frigid Farrah' robot especially gave rise to controversy as it was programmed to resist the user's advances, thus allowing the user to simulate rape. For unknown reasons, the company is no longer operating.

³⁷ Erin Griffith 'Henry the Sexbot Wants to Know All Your Hopes and Dreams' *Wired* 15 May 2018, available at <https://www.wired.com/story/henry-the-sexbot-wants-to-know-all-your-hopes-and-dreams/>, accessed 11 January 2021; Sean Keach "' Transgender' SEX ROBOTS are coming to a bedroom near you, as bosses reveal interest in love-droids for "any sexual preference"' *The Sun* 11 January 2018, available at <https://www.thesun.co.uk/tech/5316114/transgender-sex-robots-could-be-coming-to-a-bedroom-near-you-as-bosses-reveal-interest-in-love-droids-for-any-sexual-preference/>, accessed 15 December 2020.

women seems currently more pressing as most sex robots are depicted as females and because women continue to be the main victims of sex discrimination.³⁸

The scope of the thesis is furthermore limited in that it approaches questions raised by adult female-gendered sex robots through the lens of IHRL treaties concluded under the United Nations ('UN'), thus leaving out considerations of the right to non-discrimination in regional human rights instruments and national legislation. The main international instruments dealing with discrimination based on sex and gender include the Charter of the United Nations ('the UN Charter'),³⁹ the Universal Declaration of Human Rights ('UDHR'),⁴⁰ the ICCPR and ICESCR, and specifically in relation to women, the CEDAW.

1.5 METHODOLOGY

The methodology used to conduct the research is limited to an analysis of primary and secondary sources relevant to the topic. Primary sources include IHRL treaties such as the CEDAW, ICESCR and ICCPR and international case law. Secondary sources used comprise UN treaty body contributions, including General Recommendations and General Comments, reports by the UN and other international organisations. Furthermore, secondary sources encompass literature from various academic fields, including literature on sex robots or 'gynoids' from experts within the fields of philosophy, gender studies, psychology, sociology, computer science and law. It must be made clear that the literature employed to conduct the research may be biased and promoting a particular viewpoint, which can be due to inadequate research into the problem, use of illegitimate sources or personal feelings or opinions hindering the neutrality of the research.

The following section provides the background or 'foundation' for the following analysis of the research question.

³⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004, para 5.

³⁹ UN, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁴⁰ UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

1.5.1 Interpretation of International Human Rights treaties

Following the analysis of the different views on sex robots from the various fields, the existing human rights instrument on women's human rights will be interpreted following the general rule of interpretation in international law, contained in the Vienna Convention on the Law of Treaties ('VLC T') Article 31.⁴¹ VLC T Article 31(1) states that treaties 'shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose', which is to ensure that the interpretation of international treaties stays within the consent of member states.

The context includes the treaty's text, preamble and annexes as well as agreements and other instruments relating to the treaty made by the member states in connection with the conclusion of the treaty.⁴² Furthermore, subsequent agreements regarding the treaty's interpretation or application, subsequent practice in the application of the treaty and relevant rules of international law shall also be taken into account when interpreting a treaty.⁴³ VLC T article 32 contains supplementary means of interpretation if the interpretation in accordance with article 31 leaves the general meaning ambiguous or obscure. Thus, to determine the ordinary meaning of a treaty and its provisions, the preparatory works and the circumstances of the particular treaty's conclusion can be included in the interpretation.⁴⁴

While international human rights courts and treaty bodies tend to refer to the VLC T when interpreting provisions within human rights treaties, it is argued that relying on VLC T provisions alone is not sufficient to answer the questions that arise when interpreting human rights treaties.⁴⁵ The reason being that the VLC T 'is completely silent on the interpretative authority of a court, tribunal or treaty body established under a treaty...'⁴⁶ The VLC T was drafted as an interpretive tool in relation to treaties between states that do not have third-party beneficiaries, which is one of the

⁴¹ UN, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

⁴² VLC T, supra (n41) article 31(2)(a)-(b).

⁴³ VLC T, supra (n41) article 31(3)(a)-(c).

⁴⁴ VLC T, supra (n41) article 32.

⁴⁵ Martin Scheinin 'The art and science of interpretation in human rights law' in Bård A. Andreassen et al *Research Methods in Human Rights: A Handbook* (2017) 22.

⁴⁶ Ibid.

characteristics of human rights treaties.⁴⁷ Thus, in addition to the VCLT, it is argued that one must also consider new techniques for interpretation introduced by human rights courts and the various human rights treaty bodies when interpreting human rights treaties. For example, these courts and treaty bodies often emphasise the object and purpose of the treaties.⁴⁸

It is argued elsewhere that the interpretative techniques introduced by human rights courts and treaty bodies expand on the traditional methods within VCLT. The teleological and evolutive approach, often applied by human rights courts and treaty bodies, expand on the rights guaranteed by the treaties, thus jeopardising states' non-compliance.⁴⁹ In Kerstin Mechlem's analysis of the Committee on Economic, Social and Cultural Rights' interpretative technique of the rights in the Covenant, she argues that the Committee on occasion exceeds its mandate by departing from a textual reading of ICESCR in its General Comments, thus expanding on the rights in the treaty and not following the VCLT's prescribed way of interpretation.⁵⁰ However, Martin Scheinin argues that the VCLT is more of a 'toolbox' for interpreting treaties, which can be merged with the distinctive character of human rights treaties by the use of a flexible approach.⁵¹

The special characteristics that set human rights treaties apart from the 'ideal type' of international treaties for which the VCLT was written are as follows: Besides creating obligations for member states, human rights treaties also create legally binding obligations for individuals and groups. The interpretation of human rights treaties is also mainly conducted by international courts or treaty bodies as opposed to member states. Furthermore, human rights treaties' purpose and object to create effective rights carry more weight than textual interpretation and preparatory works. Because of the importance of purpose and object, human rights courts and treaty bodies' interpretations tend to be dynamic and evolutive.⁵²

⁴⁷ Ibid.

⁴⁸ Malgosia Fitzmaurice 'Interpretation of Human Rights Treaties' in Dinah Shelton (ed) *The Oxford handbook of international human rights law* (2016) 1, 13.

⁴⁹ Kerstin Mechlem 'Treaty Bodies and the Interpretation of Human Rights' (2009) 42(3) *Vanderbilt Journal of Transnational Law* 905.

⁵⁰ Mechlem op cit (n49) 931-941.

⁵¹ Scheinin op cit (n45)

⁵² Scheinin op cit (n45) 25-26.

The human rights treaties' characteristics should not lead one to depart from the VCLT framework. By rejecting a positivistic and dogmatic reading of the VCLT, it is possible to reconcile the four typical features of human rights treaties with the VCLT's provisions.⁵³ This reconciliation is essential because the VCLT does not explicitly refer to judgments or decisions from human rights courts or other outcome documents from treaty monitoring bodies to be relied upon when interpreting treaty provisions. Thus, in relation to CEDAW, one would not be able to rely on the CEDAW Committee's General Recommendations or outcomes of individual complaints when interpreting CEDAW's provisions.

Scheinin has identified competing doctrinal constructions to reconcile the VCLT with the special characteristic of human rights treaties. One considers decisions by human rights bodies and treaty bodies to only be authoritative if legally binding. As UN Human Rights treaty bodies' findings and decisions are not legally binding, they can be fended off as merely opinions without any legal consequences. This construction is problematic as it would lead to a fragmentation of human rights law. Member states of human rights treaties would have different legal obligations because they would apply their own interpretation of a particular treaty, which would differ from other states' interpretations. To avoid such fragmentation, another construction considers judicial and quasi-judicial bodies to contain *inherent powers* to interpret a treaty when they are created to monitor state compliance with that particular treaty.⁵⁴ On the interpretations by treaty bodies, Walter Kälin considers these 'legally non-binding' but finds that they 'possess considerable authority because they stem from a body entrusted and empowered by states parties to determine authoritatively whether human rights have been violated in specific cases.'⁵⁵

Additionally, decisions by treaty bodies could be considered 'subsequent practice' by states in accordance with VCLT article 31(3)(b). Thus, unless a member state contests a treaty body's decision, the decision will constitute subsequent state practice and may be included when interpreting a particular treaty.⁵⁶ It has been

⁵³ Scheinin op cit (n45) 26-27.

⁵⁴ Scheinin op cit (n45) 28-30.

⁵⁵ Walter Kälin & Jörg Künzli *The Law of International Human Rights Protection* (2019) 218.

⁵⁶ Mechlem op cit (n49) 919-920.

suggested that because treaty bodies have a unique role, their practice can also be considered ‘subsequent practice’.⁵⁷

Human Rights treaties are considered to be dynamic legal instruments; thus, despite not being legally binding, the progressive interpretations in treaty bodies’ Individual Communications, Concluding Observations, General Comments and Recommendations are highly influential because they provide an understanding of human rights in light of modern-day society.⁵⁸

Based on the above considerations, this dissertation will apply the provisions in VCLT for interpreting treaties. In addition, because of the special characteristics of human rights treaties and their dynamic nature, it is sensible to include UN treaty bodies’ various contributions when interpreting human rights treaties. The reason being that these contributions are determined by impartial and independent experts, authorised by member states, to provide guidance on the rights in the various human rights treaties.

1.6 STRUCTURE

This thesis is divided into five chapters. Following this introductory chapter, chapter two will provide general information on social robots and the concept of anthropomorphism, which deals with humans projecting human emotions onto non-human entities. Furthermore, the chapter will provide a definition and additional background on sex robots or ‘gynoids’ and describe the anticipated human rights benefits and concerns in relation to the user and society in general, especially women.

The third chapter will examine the IHRL framework, dealing with discrimination based on sex and gender. This examination will focus on CEDAW; however, ICCPR, ICESCR and other relevant human rights treaties will also be discussed, together with soft law concerning women’s rights. Furthermore, the concepts of gender stereotypes and gender stereotyping will be explained, and the IHRL instruments dealing with these concepts will be examined.

⁵⁷ International Law Association, ‘Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies’ (Berlin Conference, 2004) 25-26.

⁵⁸ Fitzmaurice *op cit* (n48) 15; CEDAW, General Recommendation no. 25, *op cit* (n38) para 3.

Based on the findings in chapters two and three, chapter four will analyse whether sex robots can be characterised as discriminatory against women or whether they exacerbate harmful gender stereotypes. Depending on the outcome of the analysis, it will be considered what obligations states have in relation to harmful gender stereotypes and discriminatory practices exacerbated and carried out by non-state actors. Furthermore, if member states are required to actively intervene in the manufacturing, distribution and use of sex robots, how will this affect other fundamental human rights, such as the rights to privacy and adequate health?

The fifth and final chapter will summarise the main findings of this thesis and then conclude.

CHAPTER 2: UNDERSTANDING SEX ROBOTS

2.1 SOME GENERAL REMARKS ABOUT SOCIAL ROBOTS

Firstly, it is necessary to understand what we are dealing with when referring to a sex robot. Sex robots are a subgroup of social robots, which are characterised as ‘a physically embodied, autonomous agent that communicates and interacts with humans on a social level.’⁵⁹ Social robots must be distinguished from other inanimate objects that are not designed to follow and mimic human feelings and social cues. These include inanimate computers, service robots and robots created for industrial use.

Humans have long been fascinated with the idea of granting intelligence to inanimate objects.⁶⁰ Thus, it is not surprising that with the emergence of AI, scientists started creating machines with the ability to communicate, learn from and mimic human behaviour through expressions and gestures. Social robots do not necessarily resemble humans but are increasingly taking on animaloid forms like Sony’s dog AIBO and the dinosaur Pleo from Innovo Lab.⁶¹

Humans tend to project human traits, emotions and intentions onto non-human entities. This includes inanimate objects, especially objects created for social purposes. Human attachment to social robots is, according to Darling, influenced by three factors. These are *physicality*, *perceived autonomous movement* and *social behaviour*.⁶² Humans and social robots are physical creatures; thus, we may react differently to these robots as opposed to virtual objects. Also, the unexpected movements and autonomous behaviour of social robots make us more inclined to project human emotions onto them. Darling reports on an extreme example - a military robot tested by the American military to defuse landmines. However, the military personnel conducting the tests found this distressing to watch and considered the exercise to be ‘inhumane’, as the robot had to drag itself after being blown up. These robots created for military purposes do not resemble humans in any way, yet they still

⁵⁹ Darling op cit (n29) 215.

⁶⁰ See the story of Pygmalion in *Metamorphoses* from 8AD, the tale of *Frankenstein* from 1818 and *Pinocchio* from 1883. Modern examples include *Ex Machina* by Alex Garland and *Her* by Spike Jonze; Ramesh Subramanian ‘Emergent AI, Social Robots and the Law: Security, Privacy and Policy Issues’ (2017) 26(3) *Journal of international technology and information management* 83.

⁶¹ AIBO by SONY, available at <https://us.aibo.com/>; And the dinosaur Pleo, available at <https://www.pleoworld.com>.

⁶² Darling op cit (n29) 217-218.

encourage an ‘accidental’ human projection of both intent and sentiments because of their autonomous behaviour. Thus, social robots intended to mimic human behaviour will naturally trigger feelings of affection and compassion in some individuals, despite knowing that these robots are not alive. The triggering of emotions in some individuals has been depicted by social robots created for therapeutic purposes, like the robotic seal *Paro*, which evokes very strong emotions and feelings of attachment from the people ‘nurturing’ the robot.⁶³

Robots that evoke such anthropomorphism do automatically raise some ethical issues. As social robots become more widespread in private homes and more advanced, people might become so attached that manufacturers will be able to manipulate users through the robot. An example could be the manufacturers of sex robots convincing users into believing that the robot has needs, which must be fulfilled by purchasing additional add-ons.⁶⁴ There are also privacy concerns as users might be more likely to reveal personal details to a social robot, which they have become attached to.⁶⁵ Furthermore, audio or video footage might be collected and used for illegal or unethical purposes.⁶⁶

Other concerns relate to the effects of replacing humans with social robots in certain areas, for example, in relation to childcare and care for the elderly. It remains to be seen, for instance, whether the lack of real human contact and interaction can have harmful repercussions for those involved. Furthermore, some people, especially children and people unfamiliar with modern technology might also eventually lose the ability to distinguish between a living entity and a robot. Children exposed to humanoid or animaloid social robots will not observe consequential harm or injury – other than possible breakage – when ‘abusing’ a robot, eg by pushing or throwing it. Without the occurrence of harm, children may become desensitised to this kind of behaviour, resulting in them harming animals or other children. Hence, there might be a point in protecting social robots in the same way that animals are protected to discourage harmful behaviour. The same goes for certain kinds of sexual behaviour towards social robots. Darling suggests that Western society’s views on sexual

⁶³ Darling op cit (n29) 218-219. See the robotic seal at <http://www.parorobots.com/>.

⁶⁴ Darling op cit (n29) 221.

⁶⁵ Ibid.

⁶⁶ Ibid.

practices like bestiality, rape and sexual acts with children and the regulation thereof might shape our view on sexual acts with social robots, resulting in laws prohibiting sexual ‘abuse’ of social robots.⁶⁷

By introducing laws protecting social robots from harmful behaviour, countries can reinforce and encourage behaviour, which those countries consider ‘morally correct’. The purpose of introducing such laws would not be to prevent cruelty towards the robots but to protect its citizens from traumatising events in the interaction with these robots or becoming desensitised to certain harmful behaviours.⁶⁸ However, such regulatory intervention does also raise several questions, including how to define a social robot. It would not be appropriate to implement laws that prohibit harmful behaviour towards all robots, although some of them evoke the attribution of human traits by accident, as the example with the military robot. Furthermore, it would need to be considered what characterises ‘harmful behaviour’, which would depend on what the robot is programmed to do. For example, it would not make sense to criminalise sexual acts with robots in general if it is still legal to create robots for sexual purposes.

2.2 SEX ROBOTS

As a subcategory of social robots, the same issues mentioned above are relevant concerning robots created for sexual purposes. These robots can move and are programmed with AI, making them able to sense and respond to their surroundings. However, whereas social robots are created for many different purposes, sex robots are created for mainly sexual purposes. Sex robots can be defined as:

‘... any artifact that is used for sexual stimulation and/or release with the following three properties: (i) a humanoid form; (ii) the ability to move; and (iii) some degree of artificial intelligence (i.e. some ability to sense, process and respond to signals in its surrounding environment).’⁶⁹

⁶⁷ Darling op cit (n29) 224.

⁶⁸ Ibid.

⁶⁹ Danaher, John ‘Robotic Rape and Robotic Child Sexual Abuse: Should They be Criminalised?’ (2014) 11 *Criminal Law and Philosophy* 71-95.

As opposed to pornography, which aims to create sexual arousal through the depiction of sexual activities and erotic behaviour, sex robots provide a physical dimension.⁷⁰ Furthermore, sex robots differ from sex toys representing human body parts as these are only intended to give the user a sexual experience, whereas sex robots also offer companionship. The similarities between the human body and the gynoid combined with AI-programming are meant to provide the user with a realistic sexual experience.⁷¹

The sex robots on the market currently offer human muscle movements, including the ability to blink, move their heads, and form expressions. Furthermore, they are programmed with synthetic voices and other AI capabilities.⁷² The physical appearance of the sex robots currently available is based on Western beauty standards and portray heteronormative sex- and gender-related stereotypes.⁷³ One of the leading gynoid companies, Realbotix, allows the customer to customise their sex robot to fit their preferences. Customisation includes eye colour, makeup, hairstyle and colour, breast size and vaginal style. The body is not animatronic, and the robot head can be paired with almost all the sex doll body types.⁷⁴ By using an app, customers can choose up to six personality components out of 20 as the basis for the AI. Customers can thereby create their ‘perfect’ woman that is shy, kind, funny, happy, intellectual, jealous and so forth. The robot is also programmed with a mood system, influenced by the user; for instance, making the robot react to insults. This system is not to ensure that the user treats the robot properly but to make the robot entertaining. Realbotix is planning to start manufacturing sex robots with full animatronic bodies that will be able to simulate orgasms.⁷⁵

Both creators of sex robots and the authors writing about them are convinced that the sophistication of the sex robots will improve, and eventually, the gynoid will look, feel and sound like a real woman.⁷⁶ Along the way, it will be intriguing to

⁷⁰ Gutiu op cit (n26) 197-198.

⁷¹ Rigotti (2020) op cit (n12) 163.

⁷² Ibid.

⁷³ Kubes op cit (n10).

⁷⁴ See op cit (n36).

⁷⁵ Jenny Kleeman ‘The race to build the world’s first sex robot’ (2017) *the Guardian*, available at <https://www.theguardian.com/technology/2017/apr/27/race-to-build-world-first-sex-robot>, accessed 5 April 2020.

⁷⁶ Levy op cit (n1) 303; Gutiu op cit (n26) 187.

discover whether sex robots will become socially acceptable or whether Japanese roboticist Mashiro Mori's hypothesis on the 'uncanny valley' is accurate. Mori argues that as robots become more life-like in behaviour and appearance, humans are more likely to empathise with them until they reach a certain point where the robots are so human-like – while still obviously being artificial - that people will consider them creepy.⁷⁷ If the hypothesis is accurate, the expected acceptability of sex robots will reach an end-point where their human-like appearance and behaviour will put people off. However, others argue that Mori's theory is unlikely to be realised or can be overcome by continued exposure to sex robots or social robots in general.⁷⁸

Regardless, it is necessary to consider the benefits and concerns which several scholars have linked to the proliferation of sex robots.

2.3 THE CONCERNS WITH AND BENEFITS OF ADULT FEMALE SEX ROBOTS

The following section will consider the concerns and benefits for users and society at large resulting from the increased utilisation of 'adult' female gynoids.

2.3.1 Benefits of adult female sex robots

Sex robots are meant to be used for sexual purposes and as a companion. Studies have shown that people are generally happier when they have frequent sexual intercourse.⁷⁹ A sex robot that can offer a realistic sexual experience might result in increased happiness and satisfaction for the user. The feeling of happiness has been linked to weight loss, lower stress levels and better heart and sleep. Furthermore, sex with a partner also offers psychological benefits that masturbation does not.⁸⁰

Whether a sex robot will offer the same benefits as a human partner is not yet clear. However, if the user projects human emotions onto the sex robot, they will most likely feel like they are having sex with a partner, thus resulting in similar benefits.

⁷⁷ Mashiro Mori 'The Uncanny Valley' (2012).

⁷⁸ See various articles on the Uncanny Valley at Marcus Cheetham (ed) 'The Uncanny Valley Hypothesis and Beyond' (2018) available at <https://www.frontiersin.org/research-topics/2385/the-uncanny-valley-hypothesis-and-beyond#articles>.

⁷⁹ Danaher & McArthur op cit (n7) 86-87.

⁸⁰ Ibid.

Sex robots could offer sexual satisfaction for people with social anxieties or other mental and physical disabilities suffering from sexual deprivation. Sex robots could also be beneficial for gays, lesbians and other LGBTQ+ individuals living in societies where there is stigma associated with finding a partner of the same sex. Furthermore, where people are forced to live in same-sex environments, like in prisons or the military, sex robots could allow for easier access to sexual satisfaction.⁸¹ People who have transitioned from one sex to another might also find it easier to start with a sex robot before having sexual relations with others.⁸² Also, according to some studies, young men suffering from sexual deprivation are more likely to commit crimes, become depressed and dependent on social services.⁸³ Therefore, the use of a sex robot might reduce aggression and provide a happier and healthier life for these young men.

Some have argued that sex robots will replace sex-workers.⁸⁴ Instead of people paying for every encounter with a sex-worker and becoming reminded repeatedly of the connection between sex and money, the sex robot will offer unlimited attention, satisfaction and affection for the user. Furthermore, there will not be the same medical risks involved when using a sex robot as opposed to paying for the services of a human sex worker.⁸⁵ Levy, for instance, argues that the moral stigma connected with paying for sex will not be present when an individual rents a sex robot.⁸⁶ Also, he finds that the common perception is that prostitution is a degrading and damaging profession with high risks of contracting sexually transmitted diseases and getting exposed to hard drugs, thus making the substitution of sex workers with sex robots a positive development. However, he also stresses issues that will arise for individuals in the sex industry who may not have other ways to make ends meet.⁸⁷

⁸¹ Danaher & McArthur op cit (n7) 101-103.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Levy op cit (n1).

⁸⁵ John Eggleton ‘Comment on “I, Sex Robot: the health implications of the sex robot industry”’ (2019) 45 *BMJ Sexual & Reprod Health* 73.

⁸⁶ Levy, D. (2007) *Robot Prostitutes as Alternatives to Human Sex Workers*. [online] Roboethics.org. Available at: <<http://www.roboethics.org/icra2007/contributions/LEVY%20Robot%20Prostitutes%20as%20Alternatives%20to%20Human%20Sex%20Workers.pdf>> [Accessed 7 July 2020]. Levy does however stress that that there might be a different sort of stigma present concerning the use of a sex robot for sexual gratification.

⁸⁷ Ibid.

Another potential benefit, which can be found in robots like the RealDoll from Realbotix, is the option to change the personality and appearance of the sex robot depending on the user's preference on the day. The variety offered by sex robots can similarly benefit couples struggling with monogamy, desire discrepancy or a repetitive sex life.⁸⁸ Furthermore, a sex robot could be used as an educational tool for individuals and couples to increase satisfaction in human to human sexual interactions.⁸⁹

2.3.2 Concerns with adult female sex robots

The concerns regarding sex robots are diverse; however, to stay within the limitations of this dissertation, emphasis here will be on the concerns that relate to sex robots as being symbolically problematic. Sex robots do not have moral status in the form of consciousness and intelligence; therefore, they cannot be moral victims. Thus, the focus is on the symbolic meaning of the creation of sex robots and acts with sex robots, and what consequences such acts may have for the user and society in general.

As sex robots are primarily created to depict women, specifically a hypersexualised and stereotypical version of women, it is relevant to discuss what consequences sex robots might have for women's enjoyment of their fundamental human rights to non-discrimination and the right to be free from violence. Today, women and girls are exorbitantly suffering from domestic abuse, sexual violence, discrimination in the workplaces and within the field of education, human trafficking, forced prostitution and stereotypical notions of how they must look and behave, depending on the culture and society within they are raised.⁹⁰ Considering the reality for millions of women and girls worldwide, society should, in general, protect and encourage respect for women's autonomy.⁹¹ Thus, a key concern regarding the creation and promotion of sex robots as companions and sex partners is that it further propagates the idea that women are objects, which can be used, sold and modified. According to

⁸⁸ Levy op cit (n1) 208.

⁸⁹ Gersen op cit (n8) 1807-1808.

⁹⁰ See the Report from UN Women on 'Progress on the Sustainable Development Goals: The Gender Snapshot 2020' (2020).

⁹¹ Danaher & McArthur op cit (n7) 150.

Gutiu, the fact that the user has full control over the robot results in eroticisation of ‘female sexual slavery.’⁹²

She further argues that the notion of consent may become disregarded. A sexual relationship is ordinarily subject to societal and cultural requirements, but when interacting with a robot, these requirements do not exist, and consent is no longer necessary. These concerns are similar to those raised in relation to pornography, namely the depiction of women as submissive objects, an instrument for fulfilling male pleasure, and in a constant state of consent.⁹³ However, the positive aspects of pornography, including the promotion of female sexuality and eradication of stigmas, are not found in relation to sex robots as they create:

‘...a skewed version of female sexuality that is constructed according to male users’ sexual desires and that reduces male rationality to sexual encounters with entities that reinforce the message that consent is irrelevant.’⁹⁴

Globally, millions of women and girls are affected by sexual violence to the point where it is being compared to an epidemic.⁹⁵ Some even suggest that society embodies a rape culture where rape and sexual assaults are tolerated and condoned.⁹⁶ This position is not surprising considering the number of countries that maintain a coercion-based definition of rape in their penal codes and countries allowing marital rape or rapists to marry their victims to avoid prosecution.⁹⁷ Places, like college campuses, are reporting high numbers of sexual assaults on female students, suggesting that many young men either disregard the boundaries for acceptable sexual conduct or are confused about these boundaries.⁹⁸ Determining whether consent to sexual acts is present often requires consideration of more than the factual circumstances and a person’s expressive behaviour. It also requires attention to attitudinal and implied

⁹² Gutiu op cit (n26) 197.

⁹³ Gutiu op cit (n26) 205.

⁹⁴ Gutiu op cit (n26) 201-202.

⁹⁵ Equality Now ‘The World’s Shame - The Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence’ (2017) *Equality Now Report*, available at <https://www.equalitynow.org/publications>, accessed 10 October 2020.

⁹⁶ Danaher (2014) op cit (n69) 84.

⁹⁷ Equality Now Report op cit (n95).

⁹⁸ Frank & Nyholm op cit (n26) 17.

cues.⁹⁹ Individuals initiating a sexual act must pay attention to words, actions and inactions as unwillingness to sexual acts can take many forms.¹⁰⁰

The Committee on the Elimination of Discrimination against Women has repeatedly stated that the necessary element to constitute rape is the lack of consent and has encouraged states to change their definition of rape in their penal codes to become consent-based.¹⁰¹ A consent-based definition is also preferred by the European Court of Human Rights.¹⁰² Furthermore, the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘the Istanbul Convention’) article 36 affirms that sexual acts of non-consensual nature constitute rape and sexual violence, including when such acts are committed against a current or former partner.¹⁰³

The creation of sex robots diminishes the substantial effort by feminist scholars and human rights groups to change the view on what constitutes rape and emphasise the notion of consent, as continuous sexual interaction with a sex robot ‘risks distorting the user’s understanding of consent between individuals by communicating that submission, or the lack of a negative response to sexual advances, is the same as consent.’¹⁰⁴

Thus, the question has been raised whether sex robots should be programmed to enable them to give or withhold consent to a sexual act.¹⁰⁵ Current technologies are not advanced enough for programming sex robots to make conscious-based decisions regarding consent. However, it is not implausible that future technologies will possess inbuilt value-systems allowing sex robots (and other social robots) to make value-based decisions. Even without being sentient, a robot programmed with a value-system with a set of priorities will be able to consider external information, compare it to its set of values and priorities and from that, select an

⁹⁹ Gutiu op cit (n26) 187-188.

¹⁰⁰ Gutiu op cit (n26) 204.

¹⁰¹ Vertido v Philippines, Communication No 18/2008, UN Doc CEDAW/C/46/D/18/2008, UN Committee on the Elimination of Discrimination against Women (CEDAW), 16 July 2010, para 8.7.

¹⁰² M.C. v. Bulgaria, Appl. No. 39272/98, Council of Europe: European Court of Human Rights, 3 December 2003.

¹⁰³ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 2014.

¹⁰⁴ Gutiu op cit (n26) 204.

¹⁰⁵ Frank & Nyholm op cit (n26); Gutiu op cit (n26); Danaher & McArthur op cit (n7);

appropriate course of action.¹⁰⁶ Such programming would allow a robot to give or withhold consent in relation to various acts. However, this will only make sense when AI becomes more advanced and the robots become more human-like as ‘the more human-like robots – including sex robots – are, the more it becomes desirable to extend legal and moral categories to them.’¹⁰⁷ The reason being that the more human-like a robot becomes, the more likely it is that people will start treating them like humans, resulting in the lines between human and robot becoming blurred.

Another concern is that instead of leading to a decline in sex work, the continuous development of technology contributes to the growth of industries that consider sex a commodity.¹⁰⁸ Kathleen Richardson argues that the sex work industry is based on a distorted relationship where the buyer is considered a subject and the seller is considered an object. The conversion of the body into an object or tool to be traded with rationalises the exploitation of human beings. She claims that people do not buy sex, but the exploitation of another human being and sex robots are built on the idea that it is possible to have sex without personhood; thus, justifying the exploitation of humans.¹⁰⁹

¹⁰⁶ Frank & Nyholm op cit (n26) 13.

¹⁰⁷ Frank & Nyholm op cit (n26) 17.

¹⁰⁸ Richardson (2016b) op cit (n25) 48.

¹⁰⁹ Richardson (2016a) op cit (n24) 292.

CHAPTER 3: WOMEN'S RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW

3.1 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS ON THE PROTECTION OF WOMEN FROM DISCRIMINATION

3.1.1 The right to equality and non-discrimination on the basis of sex in International Human Rights Law

The right to non-discrimination and equal treatment is a fundamental principle in IHRL. The UN Charter from 1945 and the UDHR from 1948 promote the idea that everyone is born free and equal and that everyone is subject to the same inherent rights without distinction of any kind.¹¹⁰ This fundamental right to equality and non-discrimination is further developed in the ICCPR and the ICESCR from 1966. Member states are obligated to ensure the rights of these Covenants without distinction or discrimination of any kind.¹¹¹ Furthermore, the Covenants each contain a specific provision on gender equality, which affirms that member states must ensure that both men and women can enjoy all the rights listed in the Conventions.¹¹² The ICCPR further provides that all individuals are equal before the law and must be able to enjoy non-discriminatory protection of the law.¹¹³ This provision is interpreted broadly to protect in all areas of law, including in relation to economic, social and cultural rights.¹¹⁴

Provisions on non-discrimination based on sex are present in the Convention on the Rights of the Child ('CRC'),¹¹⁵ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,¹¹⁶ and the Convention on the Rights of Persons with Disabilities ('CRPD').¹¹⁷ Noticeably, neither the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') or the UN Convention against Torture and Other Cruel, Inhuman and

¹¹⁰ UN Charter supra (n39) art 1(3); UDHR, supra (n40) art 1-2.

¹¹¹ ICCPR, supra (n15) art 2(1); ICESCR, supra (n15) art 2(2).

¹¹² ICCPR, supra (n15) art 3; ICESCR, supra (n15) art 3.

¹¹³ ICCPR, supra (n15) art 26.

¹¹⁴ Alice Edwards *Violence against women under international human rights law* (2011) 153.

¹¹⁵ UNGA, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, art 2(1)-(2).

¹¹⁶ UNGA, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158, art 7.

¹¹⁷ UNGA, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex I, art 6.

Degrading Treatment or Punishment ('CAT')¹¹⁸ contain provisions prohibiting discrimination based on sex, which is especially surprising considering the ICERD was the first treaty to specifically deal with discrimination, namely discrimination based on race.

The Human Rights Committee ('HRC'), which monitor implementation of ICCPR and the Committee on Economic, Social and Cultural Rights which monitors the implementation of ICESCR ('CESCR Committee'), have on several occasions adopted General Comments on the Covenants' provisions on equality and non-discrimination, including between men and women.¹¹⁹ As neither of the Covenants defines the term 'discrimination' or what amounts to it, both monitoring bodies have in their General Comments based their definition on the definitions in the ICERD and CEDAW. Accordingly, discrimination is defined as:

'any distinction, exclusion, restriction or preference [or other differential treatment that is directly or indirectly] based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status which has the purpose [intention] or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.'¹²⁰

This definition includes direct and indirect discrimination. Direct discrimination occurs when individuals in similar situations are treated differently, thus an individual or group of individuals are treated less favourable in relation to employment, educational institutions, membership in trade unions. Whereas, indirect discrimination is when a seemingly neutral policy or practice treats everyone equally, however, with the effect of disproportionate impact on certain individuals or groups of individuals

¹¹⁸ UNGA, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660; UNGA, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

¹¹⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 4: Article 3 (Equal Right of Men and Women to the Enjoyment of All Civil and Political Rights) UN Doc HRI/GEN/1/Rev.1, 30 July 1981; UN Human Rights Committee (HRC), CCPR General Comment No. 18: Article 26 (Non-discrimination) UN Doc. HRI/GEN/1/Rev.1, 10 November 1989; UN Human Rights Committee (HRC), CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women) UN Doc CCPR/C/21/Rev.1/Add.10, 29 March 2000.

¹²⁰ HRC, General Comment No. 18, *supra* (n119) para 6; CESCR committee, General Comment No. 20: Article 2(2) (Non-discrimination in economic, social and cultural rights), UN Doc. E/C.12/GC/20, 2 July 2009, para 7.

exercise of basic human rights.¹²¹ In this regard, it is not necessary to prove discriminatory intent or purpose.¹²²

HRC's General Comment no. 4 from 1981 on article 3 ('Equal right of men and women to the enjoyment of all civil and political rights') was replaced in 2000 with General Comment no. 28, which mentions that member states must adopt measures to protect women from discrimination in their domestic legislation together with positive measures to secure women's 'effective and equal empowerment' in both public and the private sector.¹²³ In other words, states must ensure that women enjoy both formal and substantive equality. This view is also expressed by the CESCR Committee in its General Comments no. 16 and 20.¹²⁴ Formal equality refers to equality before the law and equal rights. The problem is that the concept of formal equality does not consider inherently unequal situations. In other words, it expects that everyone starts in the same place under similar circumstances, thus, providing everyone with equality of opportunity. The concept of substantive equality does recognise that in some cases, special measures are necessary to elevate everyone to the same starting point and include taking affirmative action to provide an equal outcome for everyone.¹²⁵

This focus on ensuring both formal and substantive equality between men and women was especially characterising of the period between 1975 to 1985, referred to as the 'UN Decade for Women'.¹²⁶ In this period, three UN conferences on women were held in Mexico City in 1975, Copenhagen in 1980 and Nairobi in 1985. The CEDAW was adopted in 1979, focusing specifically on discrimination against women and transcending 'the traditional divide between political rights and economic, social and cultural rights.'¹²⁷ However, it was not clear at this stage how CEDAW was to work together with the general human rights treaties. Clarity was provided at the Vienna Conference on Human Rights in 1993, where women's rights

¹²¹ CESCR, General Comment No. 20, op cit (n120) para 10.

¹²² Edwards op cit (n114) 157, 159.

¹²³ HRC, General Comment No. 28, op cit (n119) paras 3-4.

¹²⁴ CESCR committee, General Comment No. 16: Article 3 (The equal right of men and women to the enjoyment of all economic, social and cultural rights), UN Doc E/C.12/2005/4, 11 August 2005, paras 6-8; CESCR, General Comment No. 20, op cit (n120) paras 7-9.

¹²⁵ Edwards op cit (n114) 142-144.

¹²⁶ Rashida & Jones op cit (n17) 75.

¹²⁷ Hilary Charlesworth 'Two Steps Forward, One Step Back? The Field of Women's Human Rights' (2014) 561-562.

were for the first time acknowledged as ‘an inalienable, integral and indivisible part of universal human rights.’¹²⁸ Furthermore, eradication of sex discrimination was listed as one of the international communities’ priority objectives.¹²⁹

At the Fourth World Conference on Women, held in Beijing in 1995, focus was on the achievement of gender equality and women’s empowerment. The Beijing Declaration and Platform for Action was adopted unanimously by 189 countries. It lists twelve areas of concern in relation to women and the girl-child and what steps states must take to achieve gender equality in these twelve areas.¹³⁰ The Platform for action acknowledges that discrimination against women begins at the earliest stages of life by way of the practice of prenatal sex selection, higher mortality and lower rates of school enrolment compared to boys, less access to nutrition and proper health care. Furthermore, they are more often than boys subjected to sexual and economic exploitation, incest, violence and harmful practices. Girls are also subjected to harmful practices like female genital mutilation (‘FGM’), early marriages, dowry price and female infanticide.¹³¹

One of the areas of concern deals with violence against women, which is considered both a cause and consequence of discrimination against women.¹³² Governments are encouraged to take action to prevent and eliminate violence against women, including by implementing IHRL instruments relating to violence against women, promoting policies of gender equality, ensure access to justice for women subjected to violence, modify social and cultural prejudices and practices that are based on the inferiority of women and fund training programmes for personnel within the public sectors to avoid violence against women and sensitise personnel to the nature of gender-based violence.¹³³ The Platform for Action also deals with women and the media, stating that new technology allowing for global communication can contribute to the advancement of women or it can, through its continued

¹²⁸ UNGA, Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23 12 July 1993, para 18.

¹²⁹ Ibid.

¹³⁰ UN, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, UN Doc A/CONF.177/20, 15 September 1995 and UN Doc A/CONF.177/20/Add.1, 27 October 1995.

¹³¹ UN, Beijing Platform op cit (n130) paras 40-41.

¹³² UN, Beijing Platform op cit (n130) para 119.

¹³³ UN, Beijing Platform op cit (n130) para 125.

projection of degrading, violent and pornographic images of women, negatively affect women and their participation in society.¹³⁴

Having broadly sketched out the IHRL instruments dealing with discrimination based on sex, this dissertation will in the following section examine CEDAW, the Optional Protocol and the contributions from the CEDAW Committee in more detail.

3.1.2 CEDAW

The 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.’¹³⁵

Despite only explicitly mentioning differentiation based on sex, article 1 has been interpreted to include discrimination based on gender.¹³⁶ The CEDAW Committee has defined gender as ‘...an ideological and cultural construct but it is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices.’¹³⁷

CEDAW article 2 contains general obligations, which member states must adhere to ‘by all appropriate means and without delay...’¹³⁸ Member states are compelled to introduce national legislation and other measures to secure the rights within the Convention.¹³⁹ Also, member states, including all their public authorities are refrained from engaging in discriminatory practices.¹⁴⁰ Furthermore, the Convention

¹³⁴ UN, Beijing Platform op cit (n130) paras 234-236.

¹³⁵ CEDAW, supra (n14) art 1.

¹³⁶ See CEDAW, General Recommendation no. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW, UN Doc CEDAW/C/GC/28, 16 December 2010, para 5. Also, see Edwards op cit (n114) at 13, explaining that sex is based on the biological and genetic differences between men and women and gender is a social construct influenced by culture.

¹³⁷ UN, World Survey on the Role of Women in Development (New York: United Nations, 1999), ix, referred to in CEDAW, General Recommendation No. 25: Temporary Special Measures (2008) (no UN Doc.), n. 2.

¹³⁸ CEDAW, supra (n14) art 2.

¹³⁹ CEDAW, supra (n14) art 2(a)-(c).

¹⁴⁰ CEDAW, supra (n14) art 2(d).

obliges member states to act with due diligence to ‘take all appropriate measures’ to eliminate discrimination against women by private actors¹⁴¹ and modify discriminatory laws and practices.¹⁴²

The Convention includes provisions on temporary measures;¹⁴³ specific forms of discrimination, including sex role stereotyping,¹⁴⁴ trafficking and exploitation of women,¹⁴⁵ discrimination in the political and public life,¹⁴⁶ acquiring, changing or retaining nationality;¹⁴⁷ discrimination with regard to the access to education and employment;¹⁴⁸ access to healthcare;¹⁴⁹ rural women;¹⁵⁰ equality before the law,¹⁵¹ and marriage and family life.¹⁵² The Convention’s articles 17 to 30 concern procedural and administrative matters, including the establishment of the CEDAW Committee and the procedure for state reporting.¹⁵³

The CEDAW Committee consist of twenty-three experts from different member states. The experts serve in their personal capacity and must be of ‘high moral standing and competence in the field covered by the Convention.’¹⁵⁴ Member states must report to the Secretary-General on measures adopted in accordance with the Convention. Subsequently, these reports are considered by the Committee, which then, based on the reports, prepares a document called ‘concluding observations’ containing suggestions and General Recommendations directed at member states and other UN organs. The Committee’s General Recommendations contain the Committee’s interpretation of CEDAW’s provisions. As the General Recommendations are interpretative guidelines and are thus not subject to ratification by states, they are not

¹⁴¹ CEDAW, supra (n14) art 2(e).

¹⁴² CEDAW, supra (n14) art 2(f).

¹⁴³ CEDAW, supra (n14) art 4.

¹⁴⁴ CEDAW, supra (n14) art 5.

¹⁴⁵ CEDAW, supra (n14) art 6.

¹⁴⁶ CEDAW, supra (n14) art 7.

¹⁴⁷ CEDAW, supra (n14) art 9.

¹⁴⁸ CEDAW, supra (n14) art 10-11.

¹⁴⁹ CEDAW, supra (n14) art 12.

¹⁵⁰ CEDAW, supra (n14) art 14.

¹⁵¹ CEDAW, supra (n14) art 15.

¹⁵² CEDAW, supra (n14) art 16.

¹⁵³ CEDAW, supra (n14) art 17, 18.

¹⁵⁴ CEDAW, supra (n14) art 17(1).

legally binding. They are, however, of persuasive value.¹⁵⁵ To date, the Committee has adopted thirty-eight General Recommendations.¹⁵⁶

The Committee has in General Recommendation No. 25 on temporary special measures ('GR 25'), considered the concept of indirect discrimination and affirms that gender-neutral laws and policies may be modelled on male lifestyles, thus failing to take account of women's life experiences.¹⁵⁷ GR 25 emphasises the obligation on member states to ensure formal equality and substantive equality to improve women's position in society. Through General Recommendation No. 28 ('GR 28'), the Committee has further elaborated on the concept of indirect discrimination by specifying that:

'...identical or neutral treatment of women and men might constitute discrimination [...] if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.'¹⁵⁸

The Committee also underlines that member states must eliminate discrimination against women in all its forms as well as in all fields of life, including political, social and cultural. In this way, the Convention works pro-actively to encompass new forms of discrimination, not specifically referred to in the Convention.¹⁵⁹ Furthermore, the Committee stresses that member states must take steps to protect women from discrimination by private actors and eliminate practices that are based on stereotypical notions of inferiority or superiority of either men or women, which is necessary to secure women's enjoyment of *de facto* or substantive equality.¹⁶⁰

The Optional Protocol to CEDAW ('the Protocol')¹⁶¹ adopted by the Committee in 1999, allows for individuals or groups of individuals to lodge a complaint to the Committee in case a member state violates any of CEDAW's provisions.¹⁶²

¹⁵⁵ Manjoo & Jones op cit (n17).

¹⁵⁶ See all CEDAW's General Recommendations online, available at: <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>, accessed 12 March 2021.

¹⁵⁷ CEDAW, General Recommendation No. 25, supra (n38) para 7, note 1.

¹⁵⁸ CEDAW, General Recommendation No. 28, supra (n136) para 5.

¹⁵⁹ CEDAW, General Recommendation No. 28, supra (n136) para 8.

¹⁶⁰ CEDAW, General Recommendation No. 28, supra (n136) para 9.

¹⁶¹ UNGA, Optional Protocol to the CEDAW, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83.

¹⁶² CEDAW, Protocol, supra (n161) art 2.

The Protocol sets out some requirements that must be satisfied in order for an individual to submit a communication.

Firstly, the member state that has committed the alleged violation must be a member of both CEDAW and the Protocol.¹⁶³ Secondly, the author must have exhausted available domestic remedies before submitting the communication.¹⁶⁴ A communication can nevertheless be declared inadmissible by the Committee if the matter has been dealt with by the Committee or under another international procedure; the matter is incompatible with CEDAW's provisions, meaning that it must include an element of sex discrimination; the matter is manifestly unfounded or lacks sufficient evidence; the communication constitutes an abuse of the right to submit communications; or if the facts of the communication occurred prior to the Protocol's entry into force in the particular state and did not continue after the date of entry into force.¹⁶⁵ If the communication is deemed admissible, the Committee will review the communication and subsequently, deliver its views and recommendations to the involved parties.¹⁶⁶

Besides the communication procedure, the Protocol allows for the Committee to *ex officio* conduct an inquiry into a member state in cases where the Committee has received reliable information of grave or systematic violations of CEDAW in a member state.¹⁶⁷ The Protocol was adopted to further enhance monitoring of member states as the Committee beforehand had only been able to consider member states' own reports.¹⁶⁸ However, the effect of the Protocol's procedures is limited as the Committee cannot enforce its views or recommendations but relies on naming the countries that do not adhere to the Committee's recommendations in its annual reports, and pressure from other member states, non-governmental organisations and citizens. In relation to the inquiry procedure, member states have the option of opting-out of the inquiry procedure entirely.¹⁶⁹

¹⁶³ CEDAW, Protocol, supra (n161) art 3.

¹⁶⁴ CEDAW, Protocol, supra (n161) art 4, with the exception that 'the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.'

¹⁶⁵ CEDAW, Protocol, supra (n161) art 4(2)(a)-(e).

¹⁶⁶ CEDAW, Protocol, supra (n161) art 7.

¹⁶⁷ CEDAW, Protocol, supra (n161) art 8.

¹⁶⁸ Jim Murdoch 'Unfulfilled expectations: The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2010) 1 *European Human Rights Law Review* 26-46.

¹⁶⁹ CEDAW, Protocol, supra (n161) art 10.

Another limitation for the efficiency of CEDAW is the possibility for the States to make reservations or limiting declarations to particular provisions of the Convention, thus limiting their obligations and responsibilities.¹⁷⁰ These reservations and declarations must be precise and narrow and must not be incompatible with the objects and purpose of CEDAW.¹⁷¹ However, many of the reservations made by States to CEDAW are regarding the Convention's core provisions, including articles 2, 5, 16 and 29. Especially reservations towards article 2 is problematic as this provision affirms member states' main obligation to eliminate discrimination against women in all its forms and adopt a variety of policy actions. Unfortunately, no entity is put in place to judge whether reservations by member states are compatible with the object of the Convention, and member states cannot themselves 'objectively judge their own reservations.'¹⁷² Instead, it is up to member states to object in cases where other member states' reservations are incompatible with the object of CEDAW. Objections from member states do not have any legal repercussions but they do provide pressure on the reserving states.¹⁷³

The Committee has repeatedly in its General Recommendations, concluding observations and in the individual complaint procedures, expressed concern about the number of reservations made by member states and the reluctance of states to withdraw these reservations. The Committee has also made it clear that it considers reservations to article 2 and other core provisions to be incompatible with the object of the Convention and thus impermissible under CEDAW article 28(2). However, the Committee has yet to address the question of what consequences arises when a State's reservations are invalid.¹⁷⁴

¹⁷⁰ CEDAW, supra (n14) article 28 allows for member states to make reservations to CEDAW's provision when ratifying or acceding to the treaty. This allows time for States to remove obstacles to the implementation of the provisions, which the State has made reservations to. The understanding is that when obstacles have been removed, the State will then remove or modify its reservations in accordance with article 28(3).

¹⁷¹ CEDAW, supra (n14) art 28(2).

¹⁷² Michael L. Buenger 'Human Rights Conventions and Reservations: An examination of a critical deficit in the CEDAW' (2013-2014) 20 *Buffalo Human Rights Law Review* 83-84.

¹⁷³ Marijke Pauw 'Women's rights: from bad to worse? Assessing the evolution of incompatible reservations to the CEDAW Convention' (2013) 29(77) *Utrecht journal of international and European law* 62.

¹⁷⁴ Pauw op cit (n173) 58-60.

3.2 GENDER STEREOTYPES AND STEREOTYPING IN INTERNATIONAL HUMAN RIGHTS LAW

Harmful gender stereotypes and wrongful gender stereotyping have been considered one of the root causes of discrimination against women as well as a contributing factor in aggravating violence against women.¹⁷⁵ Thus, CEDAW and other human rights treaties contain obligations for member states to address harmful gender stereotypes and eliminate wrongful stereotyping. However, none of the relevant treaties offers definitions of the terms. Thus, Rebecca Cook and Simone Cusack's proposed definitions of the terms 'stereotypes' and 'stereotyping' have been widely used by the Office of the High Commissioner for Human Rights (OHCHR), UN Special Rapporteurs, UN Working Groups and human rights scholars.¹⁷⁶ Firstly, Cook and Cusack define stereotypes as 'a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group'.¹⁷⁷

A stereotype does not consider differences within a group but simply whether an individual possess characteristics to be a member of a particular group. The generalised view is not necessarily negative or correct. Furthermore, the use of stereotypes assists people with simplifying and predicting the surrounding environment by labelling other individuals. However, it is not uncommon to come across harmful stereotypes attributed to individuals belonging to a group, such as gender, sexual orientation or racial and ethnic origin.¹⁷⁸

Harmful gender stereotypes in relation to women often involve women being considered the inferior sex in need of protection. There are examples of early international instruments applying such a protectionist view regulating the employment of

¹⁷⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures (2004) para 7; *R.K.B. v Turkey*, Communication No 28/2010, UN Doc CEDAW/C/51/D/28/2010, UN Committee on the Elimination of Discrimination against Women (CEDAW), 13 April 2012, para 8.8. CEDAW, General Recommendation No. 25, supra (n38) para 7.

¹⁷⁶ UN OHCHR 'Gender Stereotyping as a Human Rights Violation' (2013) 8.

¹⁷⁷ Rebecca J. Cook & Simone Cusack *Gender Stereotyping: Transnational Legal Perspectives* (2010) 9.

¹⁷⁸ Cook & Cusack op cit (n177) 10-12.

women, the trafficking of white women for the purpose of prostitution and protection of family ‘honour’ during armed conflict.¹⁷⁹

Stereotypes also impact how one is expected to behave when belonging to a certain group. In that regard, stereotypes script identities.¹⁸⁰ Women’s roles and how they are expected to look and behave is often impacted by the specific culture they belong to. In Western society, there is an expectation that women should conform to a specific beauty ideal, often involving large breasts, a slender waist, small noses, shaved bodies, make-up and even ‘non-hanging’ and equally sized labia,¹⁸¹ whereas Eastern beauty standards involve fair skin and small noses.¹⁸²

Gender stereotypes are especially harmful when they deny women ‘their basic human rights and fundamental freedoms, and when it creates gender hierarchies.’¹⁸³ Gender stereotypes are pervasive and persistent and are found in legislation and policies across cultures and have numerous times been cited by governments as an obstacle in achieving gender equality.¹⁸⁴

Whereas gender stereotypes are generalised views or preconceptions, which causes people to make assumptions about the attributes, characteristics and roles of women and men, gender stereotyping is the practice of ascribing these views or preconceptions to an individual or a group of people belonging to either of these groups.¹⁸⁵ Cook and Cusack address four different forms of gender stereotyping. The first form is sex stereotyping, which involves generalized ideas about women and men’s physical and biological characteristics.¹⁸⁶ The second form is sexual stereotyping, which concerns generalized characteristics regarding sexual intimacy, intercourse, attraction, sexual assault, traded sex and sexual objectification. In some

¹⁷⁹ Edwards op cit (n114) 72. Examples of these instruments include: International Labor Organization, Convention Concerning the Employment of Women on Underground Work in Mines of All Kinds 1935 (ILO Convention No. 45), International Agreement for the Suppression of the White Slave Traffic 1904 and with regards to armed conflict, see the Hague Convention II on respecting ‘family honor and rights...’

¹⁸⁰ Cook & Cusack op cit (n177) 18.

¹⁸¹ Sheila Jeffreys *Beauty and misogyny: harmful cultural practices in the West* (2005) 5-45.

¹⁸² Napat Chaipraditkul ‘Thailand: Beauty and globalized self-identity through cosmetic therapy and skin lightening’ (2013) 13(1) *Ethics in science and environmental politics* ESEP 32.

¹⁸³ Cook & Cusack op cit (n177) 20.

¹⁸⁴ Yakin Ertürk ‘Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues’ (2004) 78 *Feminist Review* 7.

¹⁸⁵ Cook & Cusack op cit (n177) 9-38.

¹⁸⁶ Cook & Cusack op cit (n177) 25.

countries, women are stereotyped as men's property. An example includes several Asian and Middle Eastern countries that do not criminalize marital rape and consider sexual access a part of the marriage contract.¹⁸⁷ In general, sexual stereotypes give privilege to heterosexuality as the most acceptable form of sexual behaviour and orientation, thus, stigmatizing homosexuality and other forms of sexual orientation.¹⁸⁸

Thirdly, sex role stereotyping concerns ideas about what roles and behaviour men and women ought to be conforming to. A typical view is that men should be the breadwinners of the family and women should act as the primary caregiver, staying at home and taking care of the house and children.¹⁸⁹ Lastly, compounded stereotypes relate to instances where stereotypes intersect, for example, a black female could risk discrimination based on stereotypical ideas regarding gender and race as was the case in the *Yilmaz-Dogan v. The Netherlands* case from 1988 regarding the dismissal of the complainant who was pregnant at the time. The dismissal was based on the stereotypical belief that foreign workers repeatedly go on sick leave after giving birth. In that case, the Committee on the Elimination of Racial Discrimination stated that the Netherlands had violated its obligation under article 5(e)(i) of the Convention because the judge 'failed to protect the petitioner against unemployment, although the request for her dismissal was, allegedly, based on racially discriminatory grounds.'¹⁹⁰

3.2.1 Gender stereotypes in CEDAW

CEDAW is the first international binding treaty to establish human rights obligations in relation to stereotyping and specifically gender stereotyping.¹⁹¹ The Committee has previously expressed that gender stereotypes constitute both 'a root cause and consequence of discrimination against women.'¹⁹² CEDAW's article 5(a) explicitly deals with gender stereotyping, and obliges member states to modify 'social and cultural patterns of conduct of men and women' and to eliminate practices '...which are

¹⁸⁷ Ellen Wulforst 'UN Urges Countries to End Marital Rape and Close Legal Loopholes' Global Citizen 26 June 2019, available at <https://www.globalcitizen.org/en/content/un-women-marital-rape-laws/>, accessed 20 July 2020.

¹⁸⁸ Cook & Cusack op cit (n177) 27.

¹⁸⁹ Cook & Cusack op cit (n177) 29.

¹⁹⁰ *Yilmaz-Dogan v. Netherlands*, Communication No 1/1984, UN Doc CERD/C/36/1/1984, UN Committee on the Elimination of Racial Discrimination (CERD), 10 August 1988, para 8.1.

¹⁹¹ OHCHR, Report on Gender stereotyping, op cit (n176) 23.

¹⁹² *R.K.B. v Turkey*, supra (n175) para 8.8.

based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’¹⁹³ This obligation on member states is a necessary prerequisite to achieving full equality between men and women.¹⁹⁴ With this article, the Convention does not only look backwards but attempts to prevent future discrimination by bringing about structural change.¹⁹⁵ The provision is based upon the Declaration on the Elimination of Discrimination Against Women (‘DEDAW’) article 3, which reads that:

‘All 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.’¹⁹⁶

Article 5(a) of CEDAW goes beyond the provision in DEDAW, as it not only obliges member states to educate the public, it also requires member states to explicitly ‘modify the social and cultural patterns’ in all aspects of society. The provision allows for cases to be brought before the Committee if it can be shown that a prejudice or practice is based on a stereotype concerning ‘the inferiority or superiority of either of the sexes’ or on ‘stereotyped roles for men and women.’¹⁹⁷

As mentioned earlier in this chapter, article 2 is one of the core provisions of CEDAW, laying down the basic obligations of the member states to abolish all forms of discrimination against women, including by introducing legislation to alter existing laws, regulations and practices that differentiate between women and men because of a gender stereotype.¹⁹⁸¹⁹⁹ Thus, if a law, policy or practice is differentiating between women and men because of a gender stereotype with ‘the purpose or effect of impairing or nullifying women’s equal rights and fundamental freedoms’, that law, policy or practice is discriminatory, and member states are required to abolish

¹⁹³ CEDAW, *supra* (n14) art 5(a).

¹⁹⁴ CEDAW, *supra* (n14) preamble, consideration 14.

¹⁹⁵ Rikki Holtmaat ‘Towards Different Law and Public Policy; The significance of Article 5a CEDAW for the elimination of structural gender discrimination (2004) xii.

¹⁹⁶ UNGA, Declaration on the Elimination of Discrimination against Women, UN Doc A/RES/2263(XXII), 7 November 1967, art 3.

¹⁹⁷ Cook & Cusack *op cit* (n177) 5.

¹⁹⁸ CEDAW, *supra* (n14) art 2(f).

¹⁹⁹ It must be noted that CEDAW art 2(f) extend beyond differentiation based on gender stereotypes. See OHCHR, Report on Gender stereotyping, *op cit* (n176) 22.

it.²⁰⁰ Thus, the threshold for article 2(f) is higher than for article 5(a), as the practice of gender stereotyping must result in discrimination. Hence, treatment based on gender stereotypes that do not amount to discrimination does not violate article 2(f). However, member states might still be obligated to react in accordance with CEDAW article 5(a).²⁰¹

CEDAW also addresses the stereotypical notions that only women are carers by requiring member states to ensure recognition of women and men's common responsibilities in relation to the upbringing and development of their children.²⁰² And specifically within the field of education, member states are obligated to eliminate stereotypical notions of the roles of women and men by revising textbooks, school programmes and teaching methods.²⁰³

The Committee has on several occasions in its General Recommendations, individual communications and concluding observations referred to the harm, gender stereotypes can have on women's enjoyment of their basic human rights. The Committee has in connection to violence against women in its General Recommendation No. 19 ('GR 19'), commented on the provisions article 2(f), 5 and 10(c), stating that harmful stereotypes where women are considered to hold subordinate roles in society perpetuate violence against women. The GR 19 further links traditional attitudes of women as being subordinate to men to the proliferation of pornography and 'other commercial exploitation of women as sexual objects', which then subsequently contributes to gender-based violence.²⁰⁴ The Committee's recommendations include for member states to take 'effective measures' to ensure that the media promotes respect for women. Furthermore, member states are to include in their reports what existing attitudes, customs and practices in the state are perpetuating violence, and what measures are taken to eliminate such violence, including the effect of those measures. Also, the Committee recommends that member states take 'effective measures' in the form of education or public information programmes to eliminate wrongful attitudes and practices.²⁰⁵

²⁰⁰ Cook & Cusack op cit (n177) 72.

²⁰¹ Ibid.

²⁰² CEDAW, supra (n14) art 5(b).

²⁰³ CEDAW, supra (n14) art 10(c).

²⁰⁴ CEDAW, General Recommendation No. 19, supra (n18) paras 11-12.

²⁰⁵ CEDAW, General Recommendation No. 19, supra (n18) para 24(d)-(f).

In GR 25, the Committee stated that addressing gender stereotypes are one of the member states' three central obligations. This includes gender stereotypes in law, public and private institutions and acts by individuals.²⁰⁶ Thus, member states are encouraged to implement temporary measures to modify and eliminate such practices, attitudes and behaviours.²⁰⁷ It is further recognised in GR 25 that not only is gender stereotyping one of the root causes of discrimination against women, it is also a consequence of such discrimination.²⁰⁸

In GR 28, the Committee elaborated on article 2, stating that the provision should be read in conjunction with articles 1, 3, 4, 5 and 24 and that it is linked to the other substantive obligations in the Convention, thus member states have an implied obligation to address gender stereotypes and gender stereotyping in relation to areas like employment, health and marriage and family life.²⁰⁹ This obligation extends beyond the rights and freedoms explicitly mentioned in CEDAW to encompass rights and freedoms in relation to discrimination against women covered by other treaties and customary law.²¹⁰ Furthermore, the Committee considers that one of the key prerequisites for all human beings to be treated equally, is that:

‘...all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.’²¹¹

The Committee has considered the negative effect of gender stereotypes on women's rights in the case of *Vertido v. The Philippines* from 2010.²¹² This was the first case before the CEDAW Committee that primarily dealt with wrongful gender stereotyping. Vertido had allegedly been raped by a superior and had reported the incident to the police, which then instigated a trial against the accused. The trial lasted eight years and ultimately, the accused was acquitted. Vertido argued to the Committee that the Philippines had violated her right to non-discrimination by failing to

²⁰⁶ CEDAW, General Recommendation No. 25, op cit (n38) para 7.

²⁰⁷ CEDAW, General Recommendation No. 25, op cit (n38) para 38.

²⁰⁸ Ibid. This view was re-emphasised in *R.K.B. v Turkey*, supra (n175) para 8.8.

²⁰⁹ CEDAW, General Recommendation No. 28, op cit (n136) para 6.

²¹⁰ CEDAW, General Recommendation No. 28, op cit (n136) para 7.

²¹¹ CEDAW, General Recommendation No. 28, op cit (n136) para 22.

²¹² *Vertido v Philippines*, supra (n101).

‘respect, protect, promote and fulfil that right.’²¹³ Furthermore, the Philippines had failed to protect women from discrimination by public authorities. Vertido maintained that the decision by the female judge had been based on ‘gender-based myths and misconceptions about rape and rape victims’²¹⁴ and thus, in violation of CEDAW article 5(a). Also, she argued that her case was not an isolated incident and that the Philippine coercion-based law on rape combined with the prevalent discriminatory beliefs regarding rape victims denies Filipino women access to equal protection under the law and violating their basic human rights.²¹⁵

The CEDAW Committee found that the Philippines had violated its obligations under the Convention’s article 2(c) and (f) and article 5(a) in conjunction with article 1 and GR 19.²¹⁶ The Committee stated that for a member state to fulfil its obligations under article 2(c), it must ensure that ‘adjudication of a case involving rape and sexual offenses claims [is] dealt with in a fair, impartial, timely and expeditious manner.’²¹⁷ Concerning the alleged violations of articles 2(f) and 5(a), the Committee stressed 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.’²¹⁸

The Committee found that the judge undoubtedly had based her decision on stereotypical notions and myths regarding the behaviour of rape victims.²¹⁹ Thus, the Committee stressed that the fact that a woman has not physically resisted sexual abuse does not mean that consent has been given and that the central element which constitutes rape is the lack of consent.²²⁰

²¹³ Vertido v Philippines, supra (n101) para 3.1.

²¹⁴ Vertido v Philippines, supra (n101) paras 3.3-3.4.

²¹⁵ Vertido v Philippines, supra (n101) para 3.8-9.

²¹⁶ Vertido v Philippines, supra (n101) para 8.9.

²¹⁷ Vertido v Philippines, supra (n101) para 8.3.

²¹⁸ Vertido v Philippines, supra (n101) para 8.4.

²¹⁹ Vertido v Philippines, supra (n101) para 8.5.

²²⁰ Vertido v Philippines, supra (n101) para 8.7.

3.2.2 Gender stereotypes in other international instruments

Besides CEDAW, the only other human rights treaty with an express provision on gender stereotypes and stereotyping is CRPD, which addresses compounded stereotypes and places a direct obligation upon member states 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.’²²¹

This provision recognises that women and girls with disabilities experience harm because of gender stereotypes as well as stereotypes of persons with disabilities, thus, the harmful effects are exacerbated. Where such compounded stereotypes in laws, regulations, customs and practices result in discrimination against people with disabilities, member states must ‘take all appropriate measures’ to change or eliminate such laws or practices.²²²

Other IHRL treaties without express provisions on gender stereotypes and stereotyping have been interpreted to include discrimination rooted in gender stereotypes. These human rights treaties include the CAT, CRC, ICCPR and ICESCR. The Committee against Torture has linked non-conformity with socially determined gender roles to gender-based violence in violation of CAT, especially in relation to women and girls. Thus, member states have an obligation to identify gender stereotypes and how it results in violations of CAT and take measures punish and prevent such violations.²²³ The Committee on the Rights of the Child has urged member states to protect the girl-child from gender stereotypes and patriarchal values so that she is not limited from forming and expressing her own views in accordance with CRC article 12.²²⁴

The HRC has affirmed that attitudes in tradition, history, religion and culture of women as subordinate to men result in violations of women’s enjoyment of their basic human rights, which is illustrated in some countries through prenatal sex

²²¹ CRPD, *supra* (n117) art 8(1)(b).

²²² CRPD, *supra* (n117) art 4(1)(b). The provision imposes obligations on member states, both in relation to discrimination based on stereotypes and discrimination not based on stereotypes.

²²³ CAT, General Comment No. 2, *supra* (n16) paras 22-23.

²²⁴ CRC, General Comment No. 12, *supra* (n16) para 77.

selection and abortion of female fetuses. Member states have an obligation in accordance with articles 2(1), 3 and 26 to address and modify these traditional views and practices, which violates or may violate these provisions.²²⁵ The HRC has read the obligation to address gender stereotypes into other substantive provisions of IC-CPR, specifically in relation to privacy, public life, and equality before the law. Furthermore, the HRC has recognised the link between the existence of gender stereotyping and gender-based violence against women. The HRC has also stated that the right to freedom of expression can in some instances be restricted when it is necessary to protect women and girls and secure equal treatment, which is especially necessary in relation to ‘obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls [...]’²²⁶ Thus, in such instances, member states have an obligation to restrict publication and distribution of such material when it is considered necessary for the protection of women and girls.

The CESCR Committee has also recognised that gender stereotypes hinder women’s enjoyment of the rights secured in ICESCR. Therefore, member states must take measures to eliminate prejudices and practices that ‘perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women,’ to ensure equal rights for women and men.²²⁷ This can be done by promoting a non-stereotypical portrayal of women through legislative reforms, education and awareness-raising.²²⁸

The Beijing Platform for Action also addresses gender stereotypes and their implications for women’s enjoyment of their basic human rights. In relation to education, it is emphasised that educational resources should promote ‘non-stereotypes images of women and men’ as this will contribute to eliminating the causes of discrimination against women.²²⁹ Increased focus on promoting non-stereotypical depictions of men and women in the educational sphere is also essential to eliminate violence against women.²³⁰ The Platform for Action also affirms that gender

²²⁵ HRC, General Comment No. 28, op cit (n119) para 5.

²²⁶ HRC, General Comment No. 28, op cit (n119) para 22.

²²⁷ CESCR, General Comments No. 16, op cit (n124) para 22.

²²⁸ OHCHR, Report on Gender Stereotyping, op cit (n176) 38.

²²⁹ UN, Beijing Platform op cit (n130) para 74.

²³⁰ UN, Beijing Platform op cit (n130) para 125(k).

stereotypes often are perpetuated in the healthcare industry; thus, governments are encouraged to design and implement gender-sensitive health policies- and programmes that consider the holistic experience of women throughout their lives.²³¹

There is a concern regarding the depiction of women in the media as ‘global communication networks have been used to spread stereotyped and demeaning images of women for narrow commercial and consumerist purposes.’²³² Depiction of rape and sexual slavery, as well as women as sex objects in the media and pornography, contributes to the prevalence of sexual violence against women.²³³ In that regard, the public and private sector, including the mass media and private companies are encouraged to eg ‘[r]aise awareness of the responsibility of the media in promoting non-stereotyped images of women and men...’²³⁴

As the leading UN entity dealing with human rights, OHCHR also considers the impact of gender stereotyping on women’s human rights.²³⁵ In 2013, the OHCHR commissioned a report examining states’ IHRL obligations related to gender stereotyping. The report provides that IHRL only deals with ‘harmful gender stereotypes’ and ‘wrongful gender stereotyping’. However, it is not yet clear what makes a gender stereotype harmful or gender stereotyping wrongful.²³⁶ The report calls on UN human rights bodies to ‘identify and highlight the existence, content and scope of IHRL obligations related to stereotypes/stereotyping, including gender stereotypes/stereotyping’ as such can undermine women’s enjoyment of their basic rights and freedoms.²³⁷ According to the report, there is a need for further guidance on states’ obligations to ‘modify or transform harmful gender stereotypes and eliminate wrongful gender stereotyping.’²³⁸ The report also highlights the importance of examining how to balance the right to be free from harmful gender stereotypes and wrongful stereotyping against conflicting human rights.²³⁹

²³¹ UN, Beijing Platform op cit (n130) paras 92, 107(c).

²³² UN, Beijing Platform op cit (n130) para 35.

²³³ UN, Beijing Platform op cit (n130) para 119.

²³⁴ UN, Beijing Platform op cit (n130) para 126(j).

²³⁵ See online about OHCHR, available at <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>, accessed 12 March 2021.

²³⁶ OHCHR, Report on Gender stereotyping, op cit (n176) 18.

²³⁷ OHCHR, Report on Gender stereotyping, op cit (n176) 41.

²³⁸ OHCHR, Report on Gender stereotyping, op cit (n176) 67.

²³⁹ Ibid.

Against this backdrop, it is clear that existing IHRL treaties do not deal explicitly with modern phenomena, like AI and robotics. However, treaty body contributions, like General Recommendations by the CEDAW Committee and General Comments by the HRC and CESCR assist with an evolutive interpretation of the existing human rights treaties. The CEDAW Committee have in GR 28 affirmed that CEDAW encompasses rights not explicitly mentioned in the Convention as well as new forms of discrimination not identified at the time of drafting.²⁴⁰ Thus, member states are required to address emerging forms of discrimination and the development of new harmful gender stereotypes.²⁴¹ Thus, if the concerns raised regarding sex robots can be encompassed by the IHRL framework, specific obligations of member states will be triggered, meaning that states can no longer let the manufacture, distribution or use of sex robots be left unaddressed and unregulated. These questions and considerations will be further examined below in chapter 4.

²⁴⁰ CEDAW, General Recommendation No. 28, *supra* (n136) paras 7-8.

²⁴¹ Rachel Adams & Nóra Ní Loideáin 'Addressing indirect discrimination and gender stereotypes in AI virtual personal assistants: the role of international human rights law' (2019) 8(2) *CILJ* 248.

CHAPTER 4: SEX ROBOTS' INTERFERENCE WITH WOMEN'S RIGHTS AND STATE OBLIGATIONS

In this chapter, the dissertation will attempt to determine whether states, according to IHRL, as outlined in the previous chapter, have an obligation to respond to the manufacture, distribution, and use of adult female-gendered sex robots by private individuals and entities. Furthermore, if states have such an obligation, the dissertation will consider what kind of responses are required, encouraged and feasible.

Firstly, in section 4.1, the extent to which the manufacture, distribution and use of sex robots perpetuate harmful gender stereotypes or constitute wrongful gender stereotyping will be determined in accordance with the principles summarised in chapter 3. Subsequently, in sections 4.2, the dissertation will consider whether the manufacture, distribution and use of sex robots are discriminatory against women. Depending on the result of section 4.1 and 4.2, section 4.3 will consider the state's obligations in relation to the non-state actors who manufacture, distribute and use sex robots. It will also be considered what private companies can do themselves to ensure that they respect human rights. Lastly, in section 4.4, women's rights to be free from discrimination and harmful gender stereotypes will be weighed against the manufacturers and distributors right to freedom of enterprise and the users' rights to privacy and health.

4.1 SEX ROBOTS AND GENDER STEREOTYPING

4.1.1 Sex robots and gender stereotypes

Gender stereotypes in relation to women is a set of beliefs about the personal attributes of women. Such beliefs can relate to women's behaviour, appearance, roles and sexual orientation. Some stereotypes about women are pervasive and persistent, like the idea that women should be mothers and housewives.²⁴² Gender stereotypes come in different forms, including sex stereotypes, sex-role stereotypes, sexual stereotypes

²⁴² Cook & Cusack op cit (n177) 22.

and compounded stereotypes.²⁴³ Arguably, all the above forms of gender stereotypes are relevant in relation to the sex robots available on the market today.

The available sex robots' appearance portrays a hypersexualised and unrealistic beauty ideal. Similar to images in the media and pornography, they depict the 'perfect woman' as eternally youthful, slender and without abnormalities or flaws. Furthermore, there is a disregard for the diversity of women in relation to age, disabilities, race or sexual orientations. Sex robots are not moral beings but objects depicting women, thus encouraging the attitude that women are men's sexual property, and their purpose is to provide men with sexual gratification. The robots are programmed with AI, where the user can choose a voice and shape the personality based on different traits, including 'sexual' and 'shy'. The creators of sex robots' market them as companions always available to fulfil the user's sexual needs.²⁴⁴

Thus, sex robots in their current form are based on gender stereotypes in relation to their purpose, appearance, programming and lack of diversity. The gender stereotypes identified includes:

- ◆ *Women are sexually passive and in a state of perpetual consent to sexual activity.*²⁴⁵
- ◆ *Women's bodies are a commodity to be bought and sold.*²⁴⁶
- ◆ *The 'perfect' woman is shaped by Western beauty ideals.*

The first identified stereotype takes the form of a sexual stereotype relating to women's sexual characteristics, the second one is a sex-role stereotype concerning the appropriate role of women, and the third one is a sex stereotype, as it refers to women's biological attributes. These stereotypes are not only perpetuated by sex robots. The Western media culture, including social media, Hollywood movies, pornography, sugar-dating and prostitution, are examples of practices perpetuating these stereotypes regarding women. This perpetuation may be caused by the fact that these gender stereotypes are socially ingrained in Western society or because of the need to maximise simplicity and predictability. Another reason for perpetuating these

²⁴³ See chapter 3.2.

²⁴⁴ Sharkey et al op cit (n2) 31-33.

²⁴⁵ Gutiu op cit (n26) 205; Robert Sparrow 'Robots, Rape, and Representation' (2017) 9(4) *International journal of social robotics* 474-475.

²⁴⁶ Richardson (2016b) op cit (n25)

gender stereotypes may be insecurities caused by women's rejection of traditional norms, resulting in some individuals wanting women that are submissive and controllable. Similar to the perpetuation of sexual stereotypes through the media and pornography, gender stereotyping through the production, distribution and use of sex robots is currently enabled by states' inaction to introduce legislation, policies or guidelines on the possible human rights violations resulting from the proliferation of sex robots.²⁴⁷

4.1.2 Harms

A key question here is whether it harms women when a State allows the perpetuation of problematic gender stereotypes by non-state actors through the manufacture, distribution and use of sex robots. Cook and Cusack find that stereotyping can result in different kinds of harm:

‘Harms can be understood in terms of their denial of recognition of individual dignity and worth (“recognition effects”), and in terms of their denial of the fair allocation of public goods (“distribution effects”).’²⁴⁸

When considering the harms of gender stereotyping, it is necessary to keep in mind that harms can vary depending on the community or country. The individuals buying sex robots are mostly from the US, Canada, Japan and Europe, geographical regions characterised as relatively progressive and liberal.²⁴⁹ Thus, it must be considered how women in these societies are affected by gender stereotypes perpetuated by sex robots.

When discussing harmful cultural practices, it is usually non-western practices like FGM, early marriages, dowry price and female infanticide that are emphasised.²⁵⁰ Western practices are not considered as obvious or severe. Such practices include cosmetic surgery, beauty pageants and pornography.²⁵¹ The proliferation of pornography and sexualised images of women in the media has resulted in new

²⁴⁷ Cook & Cusack op cit (n177) 57.

²⁴⁸ Cook & Cusack op cit (n177) 59 (footnotes omitted).

²⁴⁹ Sharkey et al op cit (n2) 11, 35.

²⁵⁰ UN Office of the High Commissioner for Human Rights ‘Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children’ August 1995, 3-12.

²⁵¹ Sheila Jeffreys *Beauty and misogyny: harmful cultural practices in the West* (2005) 30.

beauty practices, where women are having painful procedures, like labiaplasty, liposuctions and breast implants. Andrea Dworkin already commented on the Western beauty practices in her 1974 book ‘Woman Hating’, arguing that those practices are extremely harmful and damaging to women and their self-esteem.²⁵²

Cook and Cusack list the following questions for determining whether a gender stereotype causes harm. Two of the questions relate to ‘distribution effects’ and involves examining whether a gender stereotype denies women a benefit or imposes a burden upon them. Another question concerns the ‘recognition effects’ and involves examining whether a gender stereotype ‘degrade women, diminish their dignity, or otherwise marginalize them?’²⁵³

A way in which stereotypes can burden women is by enabling or justifying violence against them. Several writers have expressed their concern that the perpetuation of gender stereotypes by sex robots enables violence against women, including sexual violence.²⁵⁴ The sexual stereotype that women are in a perpetual state of consent is especially harmful, as it may result in the disregard for the need for consent, resulting in rape and other forms of sexual violence. The Platform for Action links the portrayal of violence against women in the media and pornography, including portrayals of rape, sexual slavery and women and girls as sex objects, to the prevalence of such violence.²⁵⁵ The CEDAW Committee has previously linked traditional attitudes of women as subordinate to men or having stereotyped roles to the propagation of pornography and the depiction of women as sexual objects in the media. The Committee has further linked such depiction of women as contributing to violence against women.²⁵⁶ The Committee has also on some occasions, addressed the link in relation to member states’ reports. Responding to Norway’s ninth periodic report, the Committee noted the increasing objectification of women and girls in the Norwegian culture and invited the state to provide information on how the state was working with the media to counteract such objectification. Norway was also asked to provide information on research undertaken to explore any connections between pornography

²⁵² Andrea Dworkin *Woman Hating* (1974) 112.

²⁵³ Cook & Cusack op cit (n177) 60.

²⁵⁴ Gutiu op cit (n26) 206; Rigotti (2020) op cit (n12) 164; Sparrow op cit (n245) 474.

²⁵⁵ UN, Beijing Platform op cit (n130) para 119.

²⁵⁶ CEDAW, General Recommendation No. 19, supra (n18) paras 11-12.

and sexual violence as sexual assaults are prevalent in ‘pornography-influenced’ cultures.²⁵⁷

Studies have been conducted examining whether there is a plausible link between the consumption of pornography and attitudes supporting violence against women. Some argue that if young individuals are frequently exposed to pornography that depicts aggressive and/or degrading images of women, it may contribute to them becoming violent against women.²⁵⁸ However, other studies show that higher consumption of pornography may be an indicator of negative and aggressive attitudes towards women and not a cause.²⁵⁹ Furthermore, some studies have shown a correlation between the consumption of pornography and more progressive attitudes towards women.²⁶⁰

Yet, it remains difficult to prove a correlation between pornography and negative attitudes towards women, including whether it increases violent behaviour towards women. Because of the lack of evidence to suggest that pornography is indeed harmful to women, pornography has not been criminalised in liberal societies except in instances where other offences are present, like in the case of child porn, rape and other kinds of physical abuse.²⁶¹ However, in relation to sex robots, it must be recalled that the use of such robots differs from viewing pornography in that there is no psychological distance between the user and the sex robot. Instead, the user is directly interacting with the gynoid.²⁶² Where a sex robot is designed to mimic signals of non-consent, Danaher argues that by applying a version of legal moralism that covers conduct that is morally wrong but does not have an extrinsically harmful effect

²⁵⁷ See CEDAW Committee, List of issues and questions in relation to the ninth periodic report of Norway, UN Doc CEDAW/C/NOR/Q/9, 13 March 2017, para 6.

²⁵⁸ Gert M Hald et al ‘Pornography and attitudes supporting violence against women: revisiting the relationship in nonexperimental studies’ (2010) 36(1) *Aggressive behavior* 17-19.

²⁵⁹ Malamuth, Neil M. et al ‘Pornography, Individual Differences in Risk and Men’s Acceptance of Violence Against Women in a Representative Sample’ (2012) 66(7-8) *Sex Roles* 435-437.

²⁶⁰ Taylor Kohut et al ‘Is Pornography Really about “Making Hate to Women”? Pornography Users Hold More Gender Egalitarian Attitudes Than Nonusers in a Representative American Sample’ (2016) 53(1) *The Journal of sex research* 7-10.

²⁶¹ Some countries have banned pornography; not because of the possible stereotypical depiction of women but because of religious beliefs or to employ censorship. See eg Alise Shishkina & Leonid Issaev ‘Internet censorship in Arab countries: Religious and moral aspects’ (2018) 9(11) *Religions* 358-372; and Emmanuel Paul ‘These African countries have various forms of Internet censorship’ *Techpoint Africa* 21 May 2020, available at <https://techpoint.africa/2020/05/21/african-countries-censor-internet/>, accessed 5 March 2021.

²⁶² Danaher & McArthur op cit (n7) 306.

on others, then it is possible to prohibit pure acts of robotic rape. According to the school of legal moralism, laws can be used to prohibit conduct that ‘conflicts with society’s collective moral judgments even when those behaviours do not result in physical or psychological harm to others.’²⁶³ Danaher does not promote the prudish version of legal moralism linked to legislation against same-sex sexual relations and other private acts. Instead, he argues that basically, legal moralism requires ‘wrongfulness’ for criminalisation but does not argue that ‘wrongfulness’ alone is enough. By utilising the views of Steven Wall and Anthony Duff, Danaher argues that robotic rape can be criminalised despite no extrinsic harm to others. The criminalisation of robotic rape can either be argued on the basis of the harm it causes to the moral character of an individual or because it is a ‘public wrong’ (similar to hate speech and extreme pornography).²⁶⁴

In relation to sex robots that are not specifically created to mimic signals of non-consent to sexual acts, Danaher argues against criminalisation. Instead, he calls for the application of a more experimental approach. When businesses launch new technology with unknown effects or a significant impact on society, it is important to follow the technology and gather data about its social effects throughout the technology’s lifetime. The collection of data through ongoing monitoring will have to be guided by ethical principles so that users are not harmed, and their autonomy respected. By using an experimental approach, it is ensured that harmful effects are addressed as soon as possible.²⁶⁵

Except for the highly criticised sex robot ‘Frigid Farrah’ and a few other robots by True Companion (a now defunct company), no other sex robots are specifically created to mimic non-consent. Despite this, some authors will still argue that sex robots, in general, promote the sexual objectification of women as well as women as ‘mere instruments for the fulfilment of male pleasures’,²⁶⁶ thus resulting in harassment and violence against women.²⁶⁷ However, similar to pornography, it has

²⁶³ Kenneth E Himma ‘Philosophy of Law’ *The Internet Encyclopedia of Philosophy*, available at <https://iep.utm.edu/law-phil/#SSH2a.iii>, accessed 20 October 2020.

²⁶⁴ Danaher (2014) op cit (n69).

²⁶⁵ Danaher & McArthur op cit (n7).

²⁶⁶ Gutiu op cit (n26) 205.

²⁶⁷ Rigotti (2020) op cit (n12) 164-165.

not been possible to uncover any definitive evidence of a causal link between the manufacture, distribution and use of sex robots and violence against women.

Returning to whether sex robots impose a burden on women in the form of enabling or justifying violence against women, it is impossible to say for certain before more data is collected and examined.

Another way, sex robots can harm women is in relation to women's image and self-worth.²⁶⁸ The perpetuation of gender stereotypes by sex robots is harmful as it diminishes women's dignity in society. Furthermore, the hypersexualised manner in which women are depicted can be considered degrading to women as it 'interferes with their ability to shape, or carve out, their own identities [...] or negatively impacts their sense of self...'.²⁶⁹ The same reasoning was fundamental for the 2019 decision by the UK's Advertising Standards Authority (ASA) to ban all harmful gender stereotypes in broadcast and non-broadcast adverts, including online and social media. In the ASA 2017 report on gender stereotypes in advertising, Ella Smillie emphasised that:

'Making assumptions about how people should look and behave might negatively restrict how they see themselves and how others see them, and limit choices they make in life.'²⁷⁰

Other countries, like France, Belgium, Norway, India and South Africa, have implemented similar rules, banning or restricting harmful gender stereotypes in advertising.²⁷¹ In 2017, UN Women launched their 'Unstereotype Alliance', an industry-led initiative working towards ending gender bias in advertising. The Alliance stresses that stereotypes hold people back, affects how people see themselves and divides society. If such harmful stereotypes depicted in advertising and media culture are not modified or eradicated, a truly equal world cannot be achieved. Companies and organisations are encouraged to reflect more diversity in their marketing content and

²⁶⁸ Gutiu op cit (n26) 205.

²⁶⁹ Cook & Cusack op cit (n177) 64.

²⁷⁰ The Advertising Standards Authority *Depictions, Perceptions and Harm – A report on gender stereotypes in advertising* (2017) Summary Report 2.

²⁷¹ Bonnie Chiu 'What Advertisers Should Consider as U.K. Bans Harmful Gender Stereotypes in Adverts' *Forbes* 17 June 2019, available at <https://www.forbes.com/sites/bonniechiu/2019/06/17/what-advertisers-should-consider-as-u-k-bans-harmful-gender-stereotypes-in-adverts/?sh=3ce0af8a4db6>, accessed 6 October 2020.

depict people as empowered and progressive individuals. Members of the initiative include major companies, like Unilever, Facebook, Google, Microsoft and Vodafone.²⁷²

Furthermore, based on the manner in which sex robots are programmed and their perpetual sexual availability, they diminish women's dignity as human beings and marginalises them in society.²⁷³ Gutiu argues that sex robots commercialise 'female sexual slavery' and violates social norms like women's dignity.²⁷⁴ The perpetuation of such ideas fails to recognise the intrinsic and equal worth of women. Furthermore, it can result in women being viewed as second-class citizens.²⁷⁵

The degrading and diminishing effects on women are characterised as moral harm or 'existential damage', which involves the victim self-determining or interacting on the basis of the suffered harm.²⁷⁶ If sex robots become more widespread while still portraying a very sexualised and westernised body image, it may exacerbate the idea, which is also aggravated by the movie industry, the media and pornography, that this is the standard of beauty to which young girls throughout the world should hold themselves to. However, where movies, social media and pornography portray images through a medium with a psychological distance, sex robots offer 'a direct and immediate interaction', which may have a more substantial causal effect on the user.²⁷⁷

Also, young girls might start to believe that they must be constantly available for sexual activities for them to be the 'perfect' woman. Based on objectification theory, exposure to constant objectification, portrayed through media, pornography and now sex robots, results in self-objectification.²⁷⁸ Thus, women will embrace society's perspective on the female body as their own view, turn it against themselves and monitor and compare their body or body parts to society's ideal, which can result

²⁷² See about the UNstereotype Alliance, available at <https://www.unstereotypealliance.org/en>.

²⁷³ Rigotti (2020) op cit (n12) 169; Gutiu op cit (n26) 203.

²⁷⁴ Gutiu op cit (n26) 205.

²⁷⁵ Cook & Cusack op cit (n177) 65-66.

²⁷⁶ Rigotti (2020) op cit (n12) 164.

²⁷⁷ Danaher & McArthur op cit (n7) 306.

²⁷⁸ Emma Rooney 'The effects of sexual objectification on women's mental health' (Spring 2016) *Applied Psychology Opus* 33-35.

in mental health problems, including depression, anxiety, reduced productivity and eating disorders.²⁷⁹

Based on the above discussion, it is argued that sex robots are harmful because of their current advertised purpose, appearance and programming. They perpetuate an image of how a woman ‘should’ look to be ‘ideal’, which is problematic as it can affect the way, women and girls perceive themselves. Some sex robots are programmed with a family mode and users have introduced them to their children.²⁸⁰ Thus, some girls and boys will grow up thinking that this is how a woman is supposed to look. The Platform for Action recognises that girls may receive various messages regarding gender roles from their parents, teachers and the media; thus, adults have an obligation to break down ‘persistent gender stereotypes.’²⁸¹ Parents and legal guardians are to provide ‘appropriate direction and guidance in the exercise of the child...’²⁸² Furthermore, it is stated that:

‘Support should be given to integral sexual education for young people with parental support and guidance that stresses the responsibility of males for their own sexuality and fertility and that help them exercise their responsibilities.’²⁸³

Similar to harmful gender stereotypes portrayed by the media, the continued manufacture of sex robots as mainly female and portraying a hypersexualised image of women, combined with increased distribution and use, may result in women and girls feeling increasingly inadequate because they are not able to compete with a sex robot representing the ‘ideal’ woman in both appearance and behaviour.

The steps taken on national and international levels to combat stereotypes in advertising and encourage diversity show that the problematic effect of harmful gender stereotypes is recognised, and states and non-state actors are prepared to consider ways to modify or eradicate such stereotypes. However, within the small niche of sex

²⁷⁹ Ibid.

²⁸⁰ Natalie Corner ‘Father unveils the sex robot he lets sit on the sofa with his children’ *Mail Online* 12 September 2017, available at <https://www.dailymail.co.uk/femail/article-4876014/Man-created-3-500-lifelike-sex-doll-that.html>, accessed 13 July 2020.

²⁸¹ UN, Beijing Platform op cit (n130) para 262.

²⁸² UN, Beijing Platform op cit (n130) para 267.

²⁸³ Ibid.

robots, not enough steps have been taken to avoid degrading and diminishing effects on women and their dignity.

4.2 SEX ROBOTS AS DISCRIMINATION AGAINST WOMEN

The next step of this dissertation is to examine whether the manufacture, distribution and use of sex robots constitute discrimination against women. In that regard, CEDAW article 1 will be used as this provision goes beyond the concept of discrimination in other international standards and focuses specifically on discrimination against women. Furthermore, this provision deals with discrimination both in public and private life. Manufacturers, distributors and users of sex robots are non-state actors, however, a state can become responsible for failing to act with due diligence to protect women from harms by non-state actors.²⁸⁴ If sex robots constitute discrimination against women, it triggers member states' obligations in accordance with CEDAW articles 2(e) and 2(f) to '[t]ake all appropriate measures' to eliminate discrimination against women by non-state actors²⁸⁵ and to 'modify or abolish existing laws, regulations, customs and practices constituting discrimination against women.'²⁸⁶

Three conditions must be met for a practice to constitute discrimination against women. Firstly, the practice must differentiate based on sex; secondly, the differentiation must have the effect of impairing or nullifying the rights of women; and thirdly the harm must be significant enough to warrant legal protection.²⁸⁷

4.2.1 Difference in treatment

According to CEDAW article 1, any difference in treatment includes any 'distinction' on the basis of sex/gender, any 'exclusion' on the basis of sex/gender or any 'restriction' on the basis of sex/gender. A 'distinction' refers to a law, policy or practice that fails to treat similar interests of women and men in the same way or treat different interests in a way that respects the differences. An 'exclusion' refers to a law, policy or practice that seek to exclude women and a 'restriction' relates to a law,

²⁸⁴ Byrnes et al op cit (n18) paras 129-130

²⁸⁵ CEDAW, supra (n14) art 2(e).

²⁸⁶ CEDAW, supra (n14) art 2(f).

²⁸⁷ CEDAW, supra (n14) art 1; Cook & Cusack, op cit (n177) 104-106.

policy or practice that restricts women's enjoyment of their basic human rights and fundamental freedoms but do not restrict men's rights.²⁸⁸

Sex robots are mainly female-gendered built to pleasure a predominantly male audience. They are built and moulded from the perspective of men of how women should look and behave, thus imposing a 'social meaning on women as a group'. This objectification of women through the proliferation of sex robots do not affect or restrict men in the same way, as men have not generally been victims of oppression and inequality based on their sex/gender. The way current sex robots depict women perpetuates harmful gender stereotypes about women, potentially causing both physical and mental harm. Thus, arguably, sex robots restrict women's enjoyment of their basic human rights and fundamental freedoms, including the rights to equality, dignity and not to be treated in an inhuman or degrading way. Letetia van der Poll argued in relation to pornography, which is also relevant when dealing with sex robots, that:

'By imposing a social meaning on women, pornography serves to diminish the reputation of women as a group, to deprive women of their credibility, social and self-worth and to undermine women's access to the enjoyment of other [...] rights.'²⁸⁹

4.2.2 Impairing or nullifying the rights of women

The next question is whether the differentiation between men and women in relation to sex robots has the purpose or effect of impairing or nullifying the rights of women. When examining this question, it is important to apply an expansive approach, as the elimination of gender stereotyping is one of the central obligations to realise substantive equality for women.²⁹⁰ Furthermore, the purpose of CEDAW, to eliminate all forms of discrimination against women and ensure *de facto* and *de jure* equality, must also be considered.²⁹¹ An impairment or nullification of women's fundamental

²⁸⁸ Cook & Cusack, op cit (n177) 110.

²⁸⁹ Letetia van der Poll 'Pornography as Sex Discrimination - A Critical Reflection on the Constitutional Court's Interpretation of Gender Politics, Differentiation and (Unfair) Discrimination' (2010) 21(3) Stellenbosch Law Review 381-413 (footnote omitted).

²⁹⁰ Cook & Cusack op cit (n177) 117-118.

²⁹¹ Ibid.

rights is usually found where, based on a gender stereotype, women are disadvantaged or treated as men's inferior or subordinates.²⁹²

Similar to determining whether sex robots perpetuate harmful stereotypes, the question one must ask here is whether women are denied a benefit, imposed a burden or whether it is degrading, diminishing and marginalising that states are not regulating sex robots.²⁹³ Elements that can be included when making such consideration, is whether 'women have been historically disadvantaged vis-à-vis a particular right or freedom, or that they are vulnerable on account of past discrimination...'²⁹⁴

As determined above under sections 4.1.2 and 4.2.1, women have historically been victims of sexual objectification and degrading treatment both in the public and private sphere. In the public sphere, women's bodies have been and are still being used as commodities through trafficking, prostitution and certain kinds of pornography. In the private sphere, women in many cultures and religions are considered the property of their husbands, thus allowing for marital rape and domestic violence.²⁹⁵ Practices such as FGM, early marriages, dowry price, child marriages and forced virginity testing contribute to the perception of women and girls as commodities.²⁹⁶

Sex robots in their current form is another way of objectifying women and promoting an appearance and behaviour decided by men. They might not lead to an increase in trafficking or violence against real women; however, they promote a stereotypical and degrading depiction of females. Keeping in mind the harmful practices women and girls are subjected to every day, it is arguably offensive and counterproductive to utilise technological advances in our society to create 'women' that are perpetually available for sexual purposes.²⁹⁷ Thus, as argued above, and considering that women historically have been considered objects of men, current sex robots are degrading to women, and the harm caused is not 'too insignificant to warrant

²⁹² Ibid.

²⁹³ Cook & Cusack op cit (n177) 119.

²⁹⁴ Cook & Cusack op cit (n177) 120.

²⁹⁵ Equality Now Report op cit (n95).

²⁹⁶ Sev'er Aysan 'Patriarchal Pressures on Women's Freedom, Sexuality, Reproductive Health & Women's Co-Optation into Their Own Subjugation' (2005) 4(1) *Women's Health and Urban Life* 32-35.

²⁹⁷ Sparrow op cit (n145) 475.

legal protection'²⁹⁸ as harms caused by discriminatory practices that 'impair or nullify the recognition, enjoyment or exercise by women, on a basis of equality of men and women, of human rights and fundamental freedoms, cannot be justified under articles 1 and 2(f).'²⁹⁹

4.3 STATES' OBLIGATIONS IN RELATION TO SEX ROBOTS' EFFECT ON WOMEN?

In accordance with CEDAW articles 2(f) and 5(a), member states must take 'all appropriate measures' to eliminate discriminatory laws, policies and practices against women and modify social and cultural patterns based on wrongful gender stereotypes. These measures are required for full implementation of CEDAW.³⁰⁰ The CEDAW Committee has, on several occasions, emphasised that discriminatory practices that perpetuate gender stereotypes are delaying the advancement of women and preventing substantive equality between men and women.³⁰¹ Thus, member states must, in accordance with CEDAW articles 2(e), 2(f) and 5(a), intervene in discriminatory practices by both state- and non-state actors. Also, member states must take steps to address discriminatory attitudes and gender stereotypes in general. Member states can take different measures to fulfil their obligations in accordance with CEDAW. Such measures include criminalisation of discriminatory practices and non-legal approaches, like the adoption of awareness-programmes that challenge stereotypical attitudes. In that regard, member states are encouraged to cooperate with non-governmental organisations, the media, women organisations and intellectuals.³⁰²

In relation to sex robots, violations are caused by non-state actors; thus, member states have an obligation to adopt positive measures to address such violations. Such measures may include awareness-raising regarding the harmful gender stereotypes that current sex robots perpetuate. Furthermore, member states may choose to introduce appropriate legislation, policies and programmes regulating the

²⁹⁸ Cook & Cusack op cit (n177) 123.

²⁹⁹ Cook & Cusack op cit (n177) 129-130.

³⁰⁰ R.K.B. v. Turkey, supra (n175) para 8.8.

³⁰¹ Byrnes et al op cit (n18) paras 132-134.

³⁰² Ibid.

creation, distribution and use of sex robots. Member states need to act in relation to non-state actors as these often create, perpetuate and institutionalizes wrongful gender stereotypes.³⁰³ Like sex robots, pornography and the media have been considered to portray negative stereotypes regarding women; thus, member states must intervene in such social relations.³⁰⁴ In that regard, the Committee encourages member states to develop and implement effective policies, ensure that the media respect, protect and promote respect for women and other appropriate measures, like the criminalisation of certain kinds of pornography that are particularly damaging for women.³⁰⁵ Member states should also report on the nature and extent of attitudes and practices that perpetuate violence against women, what kind of violence it incites, and what measures the state takes to overcome this violence.³⁰⁶

The same must apply to the current sex robots on the market as they perpetuate harmful stereotypes. Member states of CEDAW have an obligation to implement appropriate measures, like legislation or policies that address the concerns raised by sex robots, especially their degrading effect on women by virtue of their appearance and programming. However, such measures must be weighed up against other rights, like the right to freedom of expression.³⁰⁷

If a member state fails to take such measures to ‘restrain, condemn and remedy’ violations by non-state actors, such as private companies creating and distributing sex robots, the state may be considered responsible for its failure to act. State responsibility for a violation by a non-state actor depends on whether there is a legal link between the state’s failure to act and the perpetuation of a harmful gender stereotype by a non-state actor.³⁰⁸ Thus, a State’s failure to act with due diligence to identify the stereotypical harms perpetuated by sex robots and ensure that these harms are remedied may result in state responsibility.³⁰⁹

States have general and particular obligations to eliminate the discriminatory practices and wrongful gender stereotyping triggered by sex robots. Countries that

³⁰³ Cook & Cusack op cit (n177) 90.

³⁰⁴ Holtmaat op cit (n195) 76.

³⁰⁵ Holtmaat op cit (n195) 77.

³⁰⁶ CEDAW, General Recommendation No. 19, supra (n18) para 24(d)-(e).

³⁰⁷ Cook & Cusack op cit (n177) 90.

³⁰⁸ Cook & Cusack op cit (n177) 84.

³⁰⁹ Byrnes et al op cit (n18) paras 129-130.

have sex robot companies may want to identify the stereotypes that operate within the technology sector and the sex industry. Furthermore, they must consider what measures should be adopted to correct such prevalent and harmful stereotypes. One of the problems in the tech industry is that women are continuously underrepresented, especially within professions dealing with data and AI, engineering and cloud computing. Also, professions within the tech industry that requires very distinctive skills, like Robotics and Automation Engineers and Android Developers, exhibit a significant gender gap.³¹⁰

To close the gender gap, governments must take affirmative action to encourage more women to go into the tech sector to combat prevailing gender stereotypes. Such action requires cooperation with the private sector to increase the female labour force in the tech industry, including in leadership positions and positions requiring very specialised skills. Also, by closing wage gaps between women and men in similar positions, governments and the private sector are encouraging women and girls to invest in a future within professions like tech, as they are ‘assured that this investment can be realized in a future career trajectory’.³¹¹ Also, women are disadvantaged compared to their male counterparts in accessing credit or financial investments to start companies; thus, governments must ensure to reduce or eliminate such barriers that prevent women from accessing capital.³¹²

Particular obligations relate to understanding, naming, eliminating and remedying wrongful gender stereotypes in relation to CEDAW’s specific articles, including employment, education and the fundamental freedoms in CEDAW articles 1 and 3. Thus, where sex robots have a harmful impact on women’s enjoyment of their fundamental freedoms, member states must either prohibit the manufacture, distribution and use of sex robots, introduce restrictive legislation or adopt policies and programmes encouraging change within the technology sector and sex industry.

An example could be to introduce legislation or policies in the tech industry, requiring companies to consult with human rights organisations when introducing a new product that might have an effect on women’s rights, and human rights in

³¹⁰ World Economic Forum ‘*Global Gender Gap Report 2020*’ (2019) 37-38.

³¹¹ WEF, Gender Report op cit (n310) 34, 42.

³¹² WEF, Gender Report op cit (n310) 11.

general. Another idea is to encourage companies to consult with women when creating a product for women or that is supposed to depict women. Also, policies should encourage the inclusion of women of colour, women with disabilities, older women and women with different sexual orientations. A complete ban on sex robots does not appear to be the right approach to deal with these underlying gender stereotypes because even when the robots are gone, the stereotypes still exist and are perpetuated through other means. Countries could also encourage private actors to consider the UN Guiding Principles (UNGP)³¹³ when developing new technologies such as sex robots. These principles do not expressly deal with discrimination against women or gender stereotyping; however, they can help address harmful gender stereotypes and discrimination perpetuated by new technologies, including sex robots.³¹⁴

The UNGP, endorsed by the UN Human Rights Council, represent a non-binding and soft law set of principles. They rest on the three pillars of ‘Protect, Respect and Remedy’. These pillars comprise the obligation of states to protect their citizens from human rights violations by private corporations, the obligation of corporations to comply with relevant laws and respect human rights, and the access for victims of violations to effective remedies.

The UNGP recognises the adverse effects that businesses can have on human rights and encourages businesses to consider all IHRL instruments, and if necessary additional standards. With regards to particularly vulnerable groups, including women, indigenous people, children and people with disabilities, businesses should pay extra attention to the rights of these groups and avoid causing or contributing to human rights violations either through their own acts or omissions or through relationships with other non-state or state actors. Preferably, businesses should ensure that appropriate policies and processes are in place, including a human rights due diligence process. Such a process involves assessing what actual or potential risks to human rights are involved in relation to certain operations, products or services. This process needs to be initiated as early as possible when developing a new product or service, and furthermore, as impacts may change over time, the process needs to be

³¹³ OHCHR ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011).

³¹⁴ Adams & Loideáin op cit (n241) 250.

ongoing.³¹⁵ When considering its activities' actual or potential risks to human rights, businesses should:

‘[d]raw on internal and/or independent external human rights expertise; [and] involve meaningful consultation with potentially affected groups and other appropriate stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.’³¹⁶

Thus, when a business or enterprise identifies that a certain product or activity may have adverse effects on specific individuals or groups of individuals, the business or enterprise should consult with human rights experts and affected individuals in the process. In relation to sex robots, this would mean that the companies creating sex robots should consult with experts on women's human rights as well as women's organisations to determine how these gynoids may affect women's enjoyment of their basic rights. The findings of such consultations and human rights assessments should be integrated into the companies' functions, meaning that a sex robot company should take steps to avoid adverse impacts on human rights. This could be done by consulting with women and men from various backgrounds, ages, sexualities and cultures on how women are best represented to avoid the perpetuation of harmful gender stereotypes. This includes consideration of appearance but also the voice and AI programming.

The companies selling sex robots are mainly selling female-gendered robots; thus, another way for sex robot companies to address harmful stereotypes, is by introducing male and transgender sex robots. Realbotix was planning on releasing a male sex robot 'Henry' and have also considered the possibility of creating a transgender sex robot; however, these robots have yet to appear on their website.³¹⁷ This writer has not been able to find any other company selling or planning on selling male sex robots programmed with AI. If some companies decide on creating male and transgender sex robots, they must include male and transgender individuals

³¹⁵ OHCHR, UNGP, *supra* (n313) principle 17.

³¹⁶ OHCHR, UNGP, *supra* (n313) principle 18 (a)-(b).

³¹⁷ See *op cit* (n36).

from various backgrounds, ages and sexualities in the process in order to avoid perpetuating harmful stereotypes.

As discussed previously in this dissertation, as technology becomes increasingly advanced, sex robots may be created to include the ability to refuse or consent to sexual advances. In situations where a user disregards the robot's refusal, the sex robot could be manufactured to turn off for a fixed period. The sex robot could also be manufactured to direct information on the user's violence towards it to the manufacturing company, resulting in changes to the warranty. In this way, positive behaviour is encouraged, whereas harmful behaviour is penalised, similar to some online gaming platforms, where foul language or offensive behaviour results in restricted access in a certain timespan for the offender.

After addressing human rights impacts and integrating responses into the business functions, the company should be able to track the effectiveness of such responses by drawing on feedback from the users and women's organisations. The sex robot companies should conduct reports on the human rights risks that have been identified and what steps the company is taking to limit adverse effects on human rights, including finances allocated to addressing these risks.

Despite being soft law, the above steps still provide clarity for businesses in relation to their human rights responsibilities, which is sensible in a time with increasing public awareness of human rights violations by private corporations brought forward by advocacy campaigns and lawsuits.³¹⁸ By including vulnerable individuals, organisations and human rights experts and by making reports available to the public, private companies are taking responsibility and promoting human rights. Besides being morally right, businesses may also enjoy reputational and financial benefits when respecting human rights.³¹⁹

³¹⁸ UN Human Rights Council, Protect, Respect and Remedy: A framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, UN Doc A/HRC/8/57, April 2008, para 93. See also John Ruggie *Just Business: Multinational Corporations and Human Rights* (2013) 13.

³¹⁹ Business for Social Responsibility 'Human Rights Policy Engagement: The Role of Companies' (2019) 11-14.

4.4 CONFLICTING RIGHTS?

Introducing restrictive legislation in relation to the manufacture, distribution and use of sex robots would, in various ways, affect the rights of private companies and citizens. The implicated rights include the user's right to sexual freedom, which is contained in the rights to privacy, health and freedom of expression. As none of the IHRL treaties contains an explicit right to sexuality, the rights to privacy, freedom of expression and health in UDHR, ICCPR and ICESCR must be considered.

Sex robots will most likely be used in the privacy of people's homes, and individuals in liberal societies are protected by the right to privacy in UDHR article 12 and ICCPR article 17, which includes the right to engage in consensual sexual relationships and activities in private.³²⁰ The right to privacy ensures the protection of autonomy interests which are essential to human self-definition and dignity. The right is, however, not absolute and allows for non-arbitrary interference on a lawful basis. Such interference must be reasonable, meaning it must be necessary and proportional in relation to the end sought.³²¹ Unlike other basic rights in ICCPR, article 17 does not list permissible limitations. It was argued by Bertil Wennergren in an individual opinion on the case *Toonen v. Australia*, that member states:

‘...in principle [are] free to interfere by law with the privacy of individuals on any discretionary grounds, not just on grounds related to public safe, order, health, morals, or the fundamental rights and freedoms of others...’³²²

At the same time, member states must ensure not to interfere with any of ICCPR's rights to a greater extent than provided for in the Covenant.³²³ It is argued that the possible limitations to the right to privacy are similar to those limitations listed in relation to ICCPR article 19 on freedom of expression.³²⁴ These consider the rights or

³²⁰ *Toonen v Australia*, Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, para 8.2.

³²¹ *Toonen v Australia*, supra (n320) para 8.3; UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy) UN Doc HRI/GEN/1/Rev.9 (Vol. I), 8 April 1988, para 4.

³²² *Toonen v Australia*, supra (n320) (Appendix Individual Opinion) para 5.

³²³ ICCPR, supra (n15) art 5(1).

³²⁴ Sarah Joseph & Melissa Castan *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 3ed (2013) 538.

reputations of others and the protection of national security, public order or public health and morals to constitute restrictions on the right to freedom of expression.³²⁵

As mentioned, the right to privacy contains the right to sexual privacy; thus, introducing legislation regarding sexual behaviour, including sex with robots, will interfere with this right. In the case of *Hertzberg et al v Finland*, Torkel Opsahl in his individual opinion emphasised that the right to privacy encompasses the right to be different and live accordingly. Furthermore, in relation to the limitations on the right to freedom of speech in article 19, Opsahl stated that the conception of ‘public morals’ is everchanging, and member states should avoid applying restrictions that ‘perpetuate prejudice and promote intolerance.’ Thus, in his view, it is important to ‘...protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority.’³²⁶

Many countries have in the past, and some still do, criminalise certain sexual conduct, including homosexuality, prostitution and pornography, because it contravenes certain religions and harms public moral.³²⁷ Thus, one must be careful when regulating sexual behaviour as it can result in individuals being ostracised because of their sexual orientation or their profession.³²⁸ It is critical that harm to another being is exposed before interfering with the right to privacy.

In a case before the European Court of Human Rights, the Court considered a British law prohibiting sadomasochistic practices to be compatible with the right to privacy under the European Convention on Human Rights. The applicants argued that their acts had been consensual, and the UK had violated their right to privacy. However, the Court found that as the state has a certain margin of appreciation for deciding when it is necessary to interfere in the private lives of their citizens and considering the significant degree of injury and wounding, the UK had a right to intervene.³²⁹ This case shows that in some instances, the harm of a sexual act, even

³²⁵ ICCPR, supra (n15) art 19(3)(a)-(b).

³²⁶ *Hertzberg et al v Finland*, Communication No 61/1979, UN Doc CCPR/C/15/D/61/1979, UN Human Rights Committee (HRC), 2 April 1982 (Appendix Individual Opinion).

³²⁷ Shishkina & Issaev op cit (n261); See also ‘Map of Countries that Criminalise LGBT People’ (2021) *Human Dignity Trust*, available at <https://www.humandignitytrust.org>.

³²⁸ Danaher & McArthur op cit (n7) 154.

³²⁹ *Laskey et al v United Kingdom*, Application No. 21627/93; 21628/93; 21974/93, Council of Europe: European Court of Human Rights, 19 February 1997, paras 37-51.

between consensual adults, may result in such a degree of harm allowing the state to interfere in the right to privacy.

The difference in relation to sex robots is that no moral beings are harmed directly by the sexual activity. However, as concluded above, the manner sex robots represent women as sexual and ever-consenting objects is harmful to women's mental health. The CEDAW Committee has previously emphasised that '[w]omen's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.'³³⁰ Thus, member states may be allowed and even encouraged to interfere with some individuals' right to privacy by introducing restrictive regulation or completely prohibiting the buying and selling of sex robots that perpetuate harmful gender stereotypes about women. Member states could also prohibit certain kinds of behaviour, including violence towards a sex robot. However, such interference would be extensive, as it would require surveillance and monitoring. Danaher argues that considering the acceptance of surveillance and monitoring already in modern society, people might not care too much about privacy questions when acquiring new technology.³³¹

Nevertheless, restrictive regulation in relation to the use of sex robots may not be the most suitable approach.³³² Instead, it would make more sense to regulate the manufacturers and suppliers in relation to the creation and distribution of sex robots as these non-state actors are already heavily regulated. Several laws and regulations govern commercial transactions, even though these transactions involve products that are acquired to be used in the privacy of people's homes.³³³ In relation to companies, it can be argued that restricting the access to manufacture or sell certain kinds of sex robots, including the current versions, conflicts with the companies' freedom of enterprise. The European Union Charter of Fundamental Rights, in article 16, provides the freedom to conduct a business as it enables 'individual aspirations

³³⁰ See *A.T. v Hungary*, Communication No 2/2003, UN Doc CEDAW/C/36/D/2/2003, UN Committee on the Elimination of Discrimination against Women (CEDAW), 26 January 2005, para 9.3; See also *Goekce v Austria*, Communication No 5/2005, UN Doc CEDAW/C/39/D/5/2005, UN Committee on the Elimination of Discrimination against Women (CEDAW), 6 August 2007, para 12.1.5 and *Yildirim (deceased) v. Austria*, Communication No 6/2005, UN Doc CEDAW/C/39/D/6/2005, UN Committee on the Elimination of Discrimination against Women (CEDAW), 1 October 2007, para 12.1.5.

³³¹ Danaher (2014) op cit (n69) 94.

³³² Danaher & McArthur op cit (n7) 154

³³³ Danaher & McArthur op cit (n7) 83-84.

and expression to flourish, and to promote entrepreneurship and innovation, which in turn is indispensable for sustainable social and economic development.’³³⁴

The companies creating and selling sex robots in Europe can thus argue that sex robots enable social development for people with physical and mental disabilities. However, this right is not absolute, which can be shown by the regulatory restrictions on the manufacture and trade of drugs and sex work services. The freedom of enterprise may also then be limited for companies creating and selling sex robots because of the harms related to women’s dignity and right to equality.³³⁵ The European Court of Justice has previously, in the *Omega*, case upheld a national prohibition restricting the freedom to provide services and the movement of goods because of its impact on human dignity. The case concerned a German prohibition on the commercial exploitation of a game involving the simulation of acts of homicide. The Court found that such national prohibition is allowed when ‘adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity.’³³⁶ Such reasoning may be relevant in relation to the manufacture and distribution of harmful sex robots.

Several proponents of sex robots have also argued for the use of sex robots to improve physical and mental health.³³⁷ Eggleton argues on behalf of men who suffer from mental and physical disabilities and who have no prospects of having sexual relationships, except with sex workers. He reasons that by allowing sex robots, these men will avoid contracting sexually transmitted diseases.³³⁸ The same reasons are provided by Levy who also suggests that sex robots will replace sex workers in the future. In addition to individuals with disabilities, Di Nucci argues that sex robots will provide relief for elderly people who suffer from neurodegenerative diseases.³³⁹ These writers argue that sex robots can be utilised to improve the mental and physical health of some people without compromising the rights of others.

³³⁴ European Union Agency for Fundamental Rights ‘Freedom to conduct a business: exploring the dimensions of a fundamental right’ (2015) 7.

³³⁵ Rigotti (2020) op cit (n12) 167.

³³⁶ European Court of Justice, Case C-36/02, 14 October 2004, para 41.

³³⁷ Danaher & McArthur op cit (n7) 86-88; Devlin op cit (n6); Levy op cit (n1);

³³⁸ John Eggleton, op cit (n85) 73.

³³⁹ Di Nucci in Danaher & McArthur op cit (n7) 187.

The right to health is secured by UDHR article 25 and ICESCR article 12, which provides that everyone has the right to the ‘highest attainable standard of physical and mental health’.³⁴⁰ The CESCR Committee has emphasised that the right to health is essential for the enjoyment of other fundamental rights.³⁴¹ The right to health includes the right to control one’s health and body, including sexual freedom.³⁴² The World Health Organisation (WHO) has defined sexual health as:

‘...a state of physical, emotional, mental and social well-being in relation to sexuality; [...] Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.’³⁴³

The access to sex robots for some individuals could potentially have therapeutic value, as the robot could provide both sexual release and companionship. Furthermore, these individuals would avoid the risk of sexually transmitted diseases and the stigma connected with visiting sex workers. However, it must be emphasised that a right to the highest attainable standard of health does not mean that everyone has a human right to sex, especially not sexual relationships, which harm or risk harming other moral beings.³⁴⁴ Thus, it is understandable that some authors and health care professionals argue for access to sex robots as these are not (currently) moral beings capable of being harmed. Nevertheless, the above considerations regarding sex robots’ impact on women’s rights, show that the objectification, perpetuated by the current sex robots’ appearance and behaviour, affects women’s self-image, which can lead to mental health issues.

Furthermore, there might be a risk that the use of sex robots desensitises users to the need for consent from a sexual partner, resulting in an increase in sexual

³⁴⁰ ICESCR, supra (n15) art 12(1).

³⁴¹ CESCR, General Comment No. 14: Article 12 (The Right to the Highest Attainable Standard of Health) UN Doc E/C.12/2000/4, 11 August 2000, para 1.

³⁴² CESCR, General Comment No. 14, op cit (n341) para 8.

³⁴³ World Health Organisation ‘Sexual health, human rights and the law’ (2015) 5.

³⁴⁴ Amelia Hill ‘Court overturns “right to sex” ruling on man who cannot understand consent’ *the Guardian* 11 June 2020, available at <https://www.theguardian.com/law/2020/jun/11/court-overturns-right-to-sex-ruling-on-man-who-cannot-understand-consent>, accessed 12 October 2020.

violence. Writers like Danaher, Cox-George and Bewley argue for a precautionary and evidence-based approach to the use of sex robots to avoid an explosion of harmful effects and to determine whether they, in reality, do provide therapeutic benefits.³⁴⁵ Rigotti argues that other devices may provide the highest attainable standard of health without giving rise to the same ethical and human rights concerns as sex robots.³⁴⁶

³⁴⁵ Danaher & McArthur op cit (n7); Chantal Cox-George & Susan Bewley 'I, Sex Robot: the health implications of the sex robot industry' (2018) 44 *BMJ Sex Reprod Health* 161-164

³⁴⁶ Rigotti (2020) op cit (n12) 166.

CHAPTER 5: SUMMARY AND CONCLUSIONS

The current COVID-19 pandemic has resulted in lockdowns implemented by governments on a worldwide scale. Millions of young and old individuals struggle with the lack of social interaction and physical intimacy, where the sex robot may provide relief. The sex robot presents a physical and psychological dimension as opposed to its predecessor, the sex doll. As society changes and technology evolves, it is expected that sex robots will become increasingly more sophisticated as well as prevalent, especially in liberal societies. However, as with all new technology, it is vital to consider the possible drawbacks.

This dissertation has considered conflicting views regarding the effect of sex robots on individuals and society as a whole. Some writers argue that the production of sex robots should be encouraged, especially for therapeutic reasons, as sex robots may potentially help treat individuals with physical and psychological disabilities. Others promote a precautionary approach because of the belief that sex robots symbolise and encourage an unhealthy form of relationship. In relation to women, writers have raised concerns that sex robots will exacerbate existing and harmful gender stereotypes, including that women are in a perpetual state of consent to sexual relationships or women are property to be bought and sold. Some writers even go as far as suggesting that sex robots will increase violence against women.

Given the potential harm on women associated with sex robots, this dissertation reflected on the human rights dimension of the debate and examined IHRL instruments, such as CEDAW, ICCPR and ICESCR, as well as non-binding instruments to determine whether IHRL relate to concerns raised in relation to women. Especially CEDAW is relevant because it is the main treaty dealing with the protection of women's human rights. Both CEDAW and other human rights instruments, both binding and non-binding, obligate or encourages states to address harmful gender stereotypes and eliminate wrongful gender stereotyping and discrimination against women. CEDAW expressly affirms that member states must take positive actions to protect women from harms caused by non-state actors, such as private individuals and companies.

The next step was to examine whether sex robots could be encompassed by the protection provided by these IHRL instruments. By applying the 'checklist'

provided by Cook and Cusack, it is clear that sex robots in the current form, as mainly female and depicting a very sexualised image of women, is exacerbating harmful gender stereotypes and results in the practice of wrongful gender stereotyping. The full extent of harm is not yet clear; however, studies have shown that the sexual objectification of women promoted by the media, pornography and now sex robots can result in female mental health problems. This dissertation has also argued that because sex robots are primarily female, men are not affected by this harm, resulting in differentiation between men and women. With this in mind and considering the history of degrading and marginalising treatment of women, and the current prevalence of violence against women, sexual harassment, rape, and other harmful treatment, this dissertation concludes that sex robots in their current form are discriminatory against women.

The conclusion that sex robots exacerbate harmful gender stereotypes and constitute wrongful gender stereotyping and discrimination against women means that states have specific obligations depending on the human rights treaties by which they are bound. CEDAW articles 2(f) and 5(a), in particular, obligate member states to eliminate discriminatory practices and modify harmful gender stereotypes. Thus, member states are required to introduce measures, such as legislation or policies dealing with the manufacturing, distribution and use of sex robots. Member states can introduce restrictive legislation, which eg only allows the manufacturing, distribution and use of particular types of sex robots, or they can ban sex robots in all forms completely. Less far-reaching measures include awareness campaigns encouraging more women to seek employment in the tech industry in the expectation that it would result in sex robots portraying a more diverse image of female appearance and behaviour, as well as reduce the reproduction of women's sexuality constructed according to male users' sexual desires.

Furthermore, member states can introduce legislation or policies that obligates tech companies to consult with human rights organisations when creating and marketing new products. In relation to sex robots, companies creating and distributing these robots should be obligated to consult with women's rights organisations to avoid harm such as degrading treatment and objectification. If member states fail to identify the harms caused and perpetuated by sex robots and do not introduce necessary measures, they may become responsible for their failure to act.

Despite being non-binding, the UNGP presents guidance for private companies on conducting their business while still respecting human rights. Sex robot companies can draw on internal or external human rights experts' expertise or consult with affected groups, such as women's rights groups, thereby showing social responsibility, which is of increasing importance to investors and consumers.

Finally, the dissertation also briefly considered whether it would conflict with the sex robot users' fundamental rights to privacy and health if states introduced restrictive legislation on the use of sex robots. The international human right to privacy, which includes the right to sexual privacy, protects individuals' autonomy, which is essential to the enjoyment of human dignity. However, the right is not absolute, and states can legally interfere with the right, including to protect other's fundamental rights. Despite the fact that states can lawfully interfere in sex robot user's privacy, it is suggested that states regulate the manufacturing and distribution of sex robots instead of the user, as regulating sexual conduct, in the past, has resulted in the stigma of specific individuals. Furthermore, it would require the allocation of immense resources to enforce such regulation.

In relation to the right to health, several writers argue that sex robots would be beneficial, both for improving mental and physical health. However, the health of one individual should not compromise the health of another. Because of the harm, which sex robots can have on women's mental health, as shown in this thesis, it is advised that other devices are considered for providing therapeutic benefits for individuals suffering from mental and physical disabilities. At the very least, sex robots should not be prescribed by healthcare professionals before the assumed benefits are verified.

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