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UNIVERSITY OF CAPE TOWN

Gender-based Violence and Gender Stereotyping in International Law

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BSHJUL005

10 February 2012

Research Dissertation – LLM in Human Rights Law

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Research dissertation/research paper presented for the approval of Senate in fulfilment of part of the requirements for the LLM Human Rights Law programme in approved courses and a minor dissertation/research paper. The other part of the requirement for this qualification was the completion of a programme of courses.

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I. INTRODUCTION

An old English proverb reads, “A woman, a dog, and a walnut tree/The more you beat the better they be.”¹ This is illustrative of how society has historically viewed inflicting violence on women. Unfortunately, this demeaning, degrading, and distorted view persists to this day. Violence perpetrated against women *because* they are women occurs in every country, in every context, and in every culture.² Gender-based violence (GBV) deprives women of their human rights, causes traumatic violations of their psychological and physical well-being, and contributes to the inequality that pervades our societies. Despite the fact that GBV affects women from all races, religions and walks of life, there has been little tangible progress in its eradication. Far from being eradicated, its ubiquity has been entrenched, validated, and ignored. Violence against women (VAW) that occurs in times of conflict and post-conflict has received wider attention in recent years, in settings such as the Democratic Republic of Congo and Kosovo; violence that is perpetrated in times of so-called peace, however, has, in many ways, fallen by the wayside in the public’s consciousness. Nevertheless, in countries and settings that are not categorized as being in conflict, women are subjected to abhorrent instances of violence, frequently at the hands of intimate partners. When we examine the rates at which GBV occurs in times of peace, this appellation appears to be a tragic misnomer – women as a group are subject to violence, deprivation of liberty, and their human rights are obfuscated in a manner that is characteristic of conflict situations. A war may not have been expressly declared on women, but they still experience the brutality of conflict on a daily basis.

Naomi Wolf, a political activist and leading feminist, recently wrote about the widespread consequences of gender inequality and VAW, commenting,

If you are not innumerate, you can start a business. If you are not living in mortal fear of rape and beatings at home, you can organize your community to dig a new well. If you are not subjecting your daughter to traumatic genital injury at

¹ As quoted in ‘Developments in the Law: Legal Responses to Domestic Violence’ (1992-1993) 106 *Harv. L. Rev.* 1498 at 1498 [Developments in the Law].

² World Health Organization ‘Violence against women: Intimate partner and sexual violence against women’ (Fact Sheet No 239, September 2011), available: <http://www.who.int/mediacentre/factsheets/fs239/en/index.html>, accessed 17 January 2012.

three and marrying her off at ten, she can go to school. And, when she does marry and has children of her own, they will benefit from two educated, employed parents, which means twice as much literate conversation in the home, twice the contacts, and twice the encouragement to succeed. Educated, pushy mothers make all the difference.³

This statement demonstrates how multi-generational the effects of discrimination can be, and how many different forms GBV can take. A seminal cause of this discrimination is that women enjoy a lower status than men in all countries (albeit, to different degrees), which is perpetuated and entrenched by inequality-spawning stereotypes and misperceptions of who women are, and what they are supposed to be.

During the 17th Session of the Human Rights Council in June 2011, Navi Pillay, the UN High Commissioner for Human Rights, stated that, “preventing violence from happening in the first place must be central to any strategy to eliminate violence against women.”⁴ Traditionally, the focus of responses to GBV (if they exist) has been after-the-fact, in the form of civil protection orders, shelters, and counselling.⁵ Rarely have the underlying causes of why this violence is occurring, and why it is occurring at such high rates, been addressed. A primary cause of violence based on gender, I argue, is stereotyping and ill-conceived misperceptions about gender roles. As Rashida Manjoo, the UN Special Rapporteur on violence against women, suggests, women who are empowered “understand that they are not destined to subordination and violence; they resist oppression; and they develop their capabilities as autonomous beings and they increasingly question the terms of their existence in both public and private spheres.”⁶ By altering stereotypes and empowering women, GBV could be prevented from occurring in the first place, and discrimination and inequality could be mitigated or, hopefully, eradicated.

³ Naomi Wolf 'A Gender Divided' (30 September 2011) Project Syndicate, available: <http://www.project-syndicate.org/commentary/wolf40/English>, accessed 10 October 2011 [Wolf].

⁴ Office of the High Commissioner of Human Rights 'Prevention is the key to ending violence against women' (5 July 2011), available: <http://www.ohchr.org/EN/NewsEvents/Pages/PreventionViolenceAgainstWomen.aspx>, accessed 22 November 2011.

⁵ Developments in the Law, *supra* note 1 at 1505.

⁶ *Ibid.*

Women's human rights, and women in general, have been consistently marginalized in international and regional binding documents. This, in many ways, is a product of the stereotype that women are less important than men, and that their rights should therefore be accorded less significance – a twisted logic that only leads to women being further marginalized. The hypothesis of this dissertation is that in order to eradicate GBV in times of so-called peace, it is essential that discriminatory stereotypes of women be altered. This dissertation will examine stereotyping as an underlying cause of GBV, and whether the international and regional normative frameworks provide sufficient protections for women in regards to GBV. There will also be discussion about whether or not States comply with the obligations that do exist, and how States have (or have not) altered the behaviours and attitudes which characterize a stereotyped view of gender roles.

II. RESEARCH METHODOLOGY

The purpose of this dissertation is to provide a comprehensive overview of GBV in times of so-called peace, with particular attention being paid to the causal role stereotyping plays in perpetuating GBV. The dissertation will also explore the relevant regional and international normative frameworks on this issue, as well as policy initiatives at the multi-national level. This essay will include both a primary and a secondary literature review. International and regional treaties are critiqued, as well as State reports to treaty bodies, and the treaty bodies' response to these State reports. Journal articles and relevant books will also play an important role in interpreting primary materials and in critically analysing their limitations and potential. The scope of the dissertation will therefore be quite broad, and is intended to provide an inclusive examination of the disconnect that exists between States' obligations under international law to eradicate GBV and alter the stereotypes which perpetuate violence against women, and the practical implementation of these laws and policies where they exist.

The dissertation begins with a consideration of the context of GBV from its early historical origins. The first chapter will also provide a discussion regarding how

stereotyping interacts with GBV and provide the foundation for the rest of the essay. The dissertation will then survey the forms and consequences of GBV, particularly vis-à-vis violence that occurs in intimate relationships. Attention will be paid to the psychological effects of GBV in particular. The subsequent chapter of the dissertation will provide a basis for the underlying argument of this thesis - that stereotyping needs to urgently be addressed in order to effectively combat, and hopefully eradicate, GBV.

Chapters VI and VII will survey the history and development of international and regional treaty body systems as they pertain to GBV. Here, consideration will be paid both to how normative frameworks address (or fail to address) GBV, as well as to the role the drafters of international and regional legislation see stereotyping as playing in perpetuating and entrenching GBV. The focus of the international legal framework discussion will be on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and its Committee. The regional human rights bodies that will be examined are the African system, the Inter-American system, the European system, the South-East Asian (ASEAN) system and, finally, the Middle Eastern system.

Chapter VIII provides an examination of the role the CEDAW Committee plays in the eradication of GBV and, in particular, how it has approached the issue of stereotyping under the Convention. The mandate of the Committee will be discussed as a basis for analysing its General Recommendations, Concluding Observations and the State Reports it receives. A detailed discussion will then follow regarding relevant CEDAW jurisprudence in the area of GBV and stereotyping. Chapter IX will focus on the nature of States' obligations to comply with international and regional law, with an emphasis being placed on the due diligence standard. This chapter will examine both the nature of the substantive obligations of States, as well as the due diligence standard when it comes to assessing the degree to which States have fulfilled their substantive responsibilities.

III. CONTEXT OF GENDER-BASED VIOLENCE

The privilege, ancient though it may be, to beat her with a stick, to pull her hair, choke her, spit in her face, or kick her about the floor, or to inflict upon her like indignities is not now acknowledged by our law.

– Fulgham v. State, 46 Ala. 143, 146-47 (1871)⁷

The historical origins of gender-based violence (GBV) can be traced as far back as is possible through recorded history. During the reign of Romulus in Rome, in the 700s B.C., men had absolute rights to physically discipline their wives under the Law of Chastisement. These laws included the “Rule of Thumb,” whereby a husband could beat his wife with a rod or switch as long as its circumference was no greater than the circumference of the base of the man’s rights thumb.⁸ In 1405, Christine de Pizan wrote *The Book of the City of Ladies*, in which she advocated for the better treatment of women in marriage.⁹ In the 1500s, the tradition of failing to recognize marital rape as an offence was entrenched in British jurisprudence. According to the jurist Lord Hale, when a man and woman married, the woman gave her perpetual consent to sex, which could only be terminated through divorce. Lord Hale wrote, “[t]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent a contract with wife [sic] hath given herself in this kind to her husband, which she cannot retract.”¹⁰ This sanctioning of marital rape, while since rejected in many jurisdictions, continues to exist in many countries to this day; in Yemen, for example, men are free to beat their wives without any legal recourse available to women.¹¹

Clearly, GBV has been occurring for millennia, and remains legally sanctioned in some instances to this day. Professor Vivian C. Fox writes that there are,

⁷ As quoted in *Developments in the Law*, supra note 1 at 1498.

⁸ Minnesota Center against Domestic Violence and Abuse ‘Herstory of Domestic Violence: A Timeline of the Battered Women’s Movement’ (September 1999), available: <http://www.mincava.umn.edu/documents/herstory/herstory.html>, accessed 1 November 2011.

⁹ *Ibid.*

¹⁰ As quoted in *ibid.*

¹¹ Wolf, supra note 3.

three bodies of thought [that] have influenced western society's views and treatment of women: Judeo-Christian religious ideas, Greek philosophy and the Common Law legal code. All three traditions have, by and large, assumed patriarchy as natural – that is male domination stemming from the view of male superiority. As part of the culture perpetuated by these ideologies, violence towards women was seen as a natural expression of male dominance.¹²

In other words, GBV has been entrenched as societally permissible through thousands of years of a fundamentally discriminatory assumption – that men are superior to women. The ultimate cause of GBV, therefore, is a societal perception – perpetuated by every outlet imaginable, whether it is within the family or community, by the state, through the media – that women are somehow *less than* men, in every way. Women are seen as weaker (both physically and mentally), less capable, less intelligent, and less worthy of respect than men. The biological differences that exist between men and women have been exploited to make merit judgements on our relative value as human beings, and the rights that we should therefore be accorded. This is done under the banner of culture, tradition, or necessity, all of which disguise the simple fact that women's human rights are being obfuscated merely because of the right-holder's gender.

In times of so-called peace, GBV is traditionally seen within the context of intimate-partner violence or violence which occurs with the home setting, although this is but one of many forms of GBV that exist. The appellation usually used in regards to this form of violence – domestic violence – speaks volumes as to how society perceives GBV in times of so-called peace: a *domestic* affair, something that occurs in the home, that is private and beyond the reach of the law. Qualifying the horrendous violence many women face at the hands of intimate partners as domestic minimizes the consequences, pervasiveness, and seriousness of that violence. It also makes it more difficult to conceive of violence that occurs in the home as an international human rights issue. Violence perpetrated in the home is still violence, and, as we shall see in chapters to follow, States still have an obligation to protect and promote women's rights, whether violations happen in public or in private.

¹² Vivian C. Fox 'Historical Perspectives on Violence against Women' (November 2002) 4 *Journal of International Women's Studies* 15 at 15.

So-called domestic violence is but one form of interpersonal violence. Interpersonal violence more broadly can take various forms of abuse, namely economic, psychological, sexual, emotional, physical and verbal threats and actions.¹³ There are also institutional and structural aspects to violence in this context, which is “any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community.”¹⁴ A recent report by the Special Rapporteur on violence against women, its causes and consequences, emphasizes that these two forms of violence – interpersonal and institutional/structural – invariably intersect.¹⁵

An example of this intersection between interpersonal and institutional/structural aspects of violence, in this case taking the form of economic, emotional and psychological abuse, comes from the *Jespersen v. Harrah's Operative Co.* case in the United States.¹⁶ Darlene Jespersen worked as a bartender at Harrah's casino in Reno, Nevada, for twenty years. Her performance was “exemplary,”¹⁷ with both customers and supervisors being content with her work. In 2000, Harrah's instituted a “Beverage Department Image Transformation” programme requiring that all bartenders – male or female - wear “a standard uniform and be well groomed, appealing to the eye, [and] be firm and body toned.”¹⁸ The requirements also contained gender-specific rules. For men, it was short hair and trimmed fingernails. For women, however, the regulations included that they had to have their hair “teased, curled, or styled every day and were also required to wear makeup – including foundation, blush, mascara, and lipstick –

¹³ Human Rights Council ‘Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo’ (2 May 2011) at ¶ 25, available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/22/PDF/G1113022.pdf?OpenElement>, accessed 20 October 2011.

¹⁴ *Ibid* at ¶ 24.

¹⁵ *Ibid*.

¹⁶ *Jespersen v. Harrah's Operating Co.* 444 F.3d 1104 (9th Circuit, 2006).

¹⁷ *Ibid*, as quoted in ‘Title VII – Gender Discrimination – Ninth Circuit Holds that Women can be Fired for Refusing to Wear Makeup’ (2006-2007) 120 *Harv. L. Rev.* 651 at 651 [Title VII].

¹⁸ *Ibid*.

every day.”¹⁹ Ms. Jespersen, who did not wear make up on or off the job, refused to comply with this regulation. She claimed that being forced to wear make-up would make her feel “very degraded and demeaned,”²⁰ and that doing so would affect her self-dignity as well as taking away “her credibility as an individual and as a person.”²¹ Ms. Jespersen was, as a result, fired from her job.

Ms. Jespersen sued Harrah’s for gender discrimination, “arguing that the appearance standards imposed unequal burdens on women and required women to conform to gender stereotypes.”²² The District Court of Nevada found that since men were also subject to appearance-based rules, women wearing make-up did not constitute an impermissible form of gender stereotyping.²³ This decision was upheld by the Ninth Circuit court on appeal by a 7-4 vote. The dissenting opinion at the appeal level, however, sheds some light on a deeper understanding of Ms. Jespersen’s case. A dissenting judge focused on the disproportionate economic and time burdens that would be placed on women subject to the appearance standards at Harrah’s casino; while keeping your hair short and cutting your nails is inexpensive and necessitates relatively infrequent upkeep, applying make-up is a quotidian affair, and one that can cost a great deal of money – for which the women employees at Harrah’s were not compensated.²⁴ Unfortunately, however, this was not the line of reasoning that prevailed.

While Ms. Jespersen’s case does not necessarily exemplify a form of violence in our typical understanding of the word, the emotional and psychological damage that it caused the plaintiff can be considered to constitute GBV, and cannot be minimized. As Naomi Woolf points out, “focus on trivial concerns like makeup can result in shame,

¹⁹Title VII, *supra* note 14 at 651.

²⁰ *Ibid* at 152.

²¹ *Ibid*.

²² As quoted in *ibid*.

²³ *Ibid*.

²⁴ *Ibid* at 654.

guilt, and denial in women.”²⁵ In a summary of the case, the Harvard Law Review commented,

[g]ender inequality continues to permeate American culture. Women are still underrepresented in positions of power. Harrah's is a company dominated by men. The makeup industry is similarly dominated by men. The federal judiciary is also dominated by men. Perhaps because of the gross inequalities that pervade so much of American culture, the burdens imposed by makeup are underappreciated by employers, the makeup industry, and the federal judiciary alike. Hopefully, as we continue to progress toward gender equality, the harms imposed on women will receive greater recognition, and the federal judiciary may just be the best place to start.²⁶

The institutional aspect of violence, and its intersection with an interpersonal aspect, is evident here. Not only was Ms. Jespersen's personhood and sense of self violated, but so was her ability to advance within the institutional framework – both of which were based on the immutable fact that Ms. Jespersen is a woman. What can be gleaned from cases such as these is the inextricable link between GBV and discrimination.

Conceptualizing GBV as a human rights violation requires us to take a more creative view of human rights instruments. Clearly, GBV is a violation of the right to life and security of the person but, given its broad definition that goes beyond physical violence, it is important to view GBV not only as an act of violence, but as a form of discrimination. This broadens the scope and substance of States' obligations vis-à-vis GBV because non-discrimination is a right under many human rights instruments. CEDAW, for example, does not contain any provisions that are specifically aimed at eradicating violence against women, but it does contain a non-discrimination clause. The CEDAW Committee has explicitly defined GBV as a form of discrimination, however, in its General Recommendation 19: “[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”²⁷

²⁵ As quoted in *ibid* at 657.

²⁶ Title VII, *supra* note 17 at 658.

²⁷ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 19 – Violence against women' (11th Session, 1992), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> [CEDAW GR 19].

The violent acts themselves are not the only sources of discrimination when it comes to the concept of GBV. National laws to punish the perpetrators of VAW are equally discriminatory. In Palestine, for example,

[m]en convicted of honour killings get a maximum sentence of six months imprisonment if caught and prosecuted. There are no specific domestic violence laws only general assault charges. A woman has to be hospitalised for at least 10 days to press serious assault charges and she requires the testimony of two witnesses who are not related. Furthermore, rape is not recognised as a crime within marriage.²⁸

The genesis of these and other discriminatory laws is the differentiated value accorded to women and men. Mashoor Basissy, director of the Palestinian Authority Ministry for Women's Affairs, explains,

As a Palestinian man I have to tell you that women are not regarded as equals in our society. The courts enable the male perpetrators of domestic violence and honour killings to get off very lightly if they are even brought to justice in the first place which is unlikely in most of the cases. It is also regarded as shameful to involve the authorities in what is considered a private family affair. Women are embarrassed to report the abuse because they know that nothing will happen. Even female relatives take the side of the male perpetrators in many instances. Furthermore, if the victim antagonises the family by getting the police involved, divorce often follows. Few Palestinian women are able to support themselves economically as only a minority of women here work and a woman living alone is subject to rumours about sexual fidelity which again could endanger her and make her a target for attacks.²⁹

This illustrates how women, as a result of an underlying societal assumption that they are inferior, face discrimination in all aspects of their lives. Mr. Basissy acknowledges that while legislative and policing reforms can assist in the protection of women suffering from GBV in the home, there "needs to be a sea-change in the attitude of people here [in Palestine]."³⁰

GBV, as we have seen, is a complex issue that exists in a context wherein women are not seen as being equal to men. As such, not only are women discriminated against in

²⁸ Mashoor Basissy 'Women are not equals in our society' (8 April 2009) *IPS News*, available: <http://www.ipsnews.net/news.asp?idnews=46436>, accessed 22 November 2011.

²⁹ *Ibid.*

³⁰ *Ibid.*

the form of punches, kicks, and verbal abuse, but they also face discrimination within the legal system. The socio-legal setting perpetuates cycles of violence against women and, in a way, condones these acts as being manifestations of the very stereotypes they are based on. Before we examine the issue of stereotyping further, however, let us first consider the forms and consequences of GBV in order to gain a broader of understanding of the topic at hand.

IV. CONSEQUENCES OF GENDER-BASED VIOLENCE

He always took great care to hit me on places where it would not show: on my torso or where my head was covered with hair, so that our friends and family would not see it and ask questions. [...] After the three years were over, I wanted to study and get a part-time job. That was when he also started to beat my face. I missed my oral entry exam, and I started to miss whole weeks from work because I could not have gone to work with black eyes, or a swollen nose. It would have been so shameful! Eventually I was fired, as the company could not afford to have an employee missing work week after week with no plausible explanation.

- Domestic violence victim, NANE Hotline, Hungary³¹

Article 1 of the Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as, “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”³² This definition comprises two important elements: firstly, that the violence must be gender-based, meaning that not every act of violence that a woman experiences qualifies as VAW, but rather that the violence in question must be related in some way to the victim’s gender; and, secondly, that the violence can include anything that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women.

³¹ Council of Europe ‘Gender Matters: Chapter II, Gender-based Violence,’ available: http://www.eycb.coe.int/gendermatters/chapter_2/1.html, accessed 19 December 2011.

³² Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993, available: <http://www2.ohchr.org/english/law/eliminationvaw.htm>, accessed 11 November 2011 [DEVAW].

The consequences of GBV range from social impacts to psychological and physical consequences to occupational effects. Many of these consequences are interrelated and interlinked, so it is important to remember that while the immediate effect of a violent act may be a certain set of conditions, others may ensue as a result. The effects of sexual violence, for example, include social consequences, such as rejection by one's husband/family/community and exclusion from school and jobs, psychological consequences, such as fear, depression, and feelings of shame and guilt, as well as physiological consequences, namely pain, sexual dysfunctions, conversion disorders, and somatic illnesses.³³ Other consequences include post-traumatic stress disorder, memory disorders, dissociation symptoms, confusion, behavioral changes, eating disorders and substance abuse disorders.³⁴ In addition to the social, psychological and physiological effects, GBV can, in its most severe forms, result in death and permanent disability. The World Health Organization (WHO) estimates that violence against women causes more death and disability among women aged fifteen to forty-four than cancer, malaria, traffic accidents, and war.³⁵ They also pointed out that sexual violence, including marital rape, is a major cause of the rapid spread of HIV/AIDS among women.³⁶

In her seminal 1979 text *The Battered Woman*, Leonore Walker describes the psychological manipulation that can occur in addition to physical abuse in the context of intimate partner violence, in order to explain why women do not always remove themselves from situations of intimate partner violence. This theory contains various phases, whereby there is a build-up to a violent attack,³⁷ followed by the violence itself,³⁸ and ending with a "kindness and contrite loving behaviour phase."³⁹

³³ Lisa Davis 'Still Trembling: State Obligation under International Law to End Post-Earthquake Rape in Haiti' (2010-2011) 65 *U. Miami L. Rev.* 867 at 884-885 [*Post-Earthquake Rape*].

³⁴ *Ibid.*

³⁵ As quoted by Human Rights Watch 'World Report 2000: Women's Human Rights,' available: <http://www.hrw.org/legacy/wr2k/Wrd.htm#TopOfPage>, accessed 29 October 2011.

³⁶ *Ibid.*

³⁷ Leonore Walker *The Battered Woman* (1979) at 56.

³⁸ *Ibid* at 64.

Walker's theory was exemplified when the former UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, visited Brazil in 1996 as part of her mandate. There, she met Cleonica, a 27-year-old domestic worker from Montes Claros, who lived with her unemployed husband and their three children. Accusing Cleonica of being unfaithful to him each time she left the house, the husband became physically and verbally abusive. Cleonica, who was reluctant to leave her husband despite his beatings, eventually lost her job when her employer noticed extensive bruising over her entire body, and asked her not to return to work.⁴⁰ According to Cleonica, her husband would cry and beg for forgiveness on his knees after each attack.⁴¹ Ms. Coomaraswamy writes, "Cleonica spoke of an almost cyclical pattern in her husband's behaviour: 3 days of violence, followed by 3 days of care; or 15 days of violence followed by 15 days of love and care."⁴²

In terms of the consequences of GBV from a rights-based perspective, the CEDAW Committee provides a non-exhaustive list of the human rights that are nullified or impaired by GBV: the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in times of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; and the right to just and favorable conditions of work.⁴³ Clearly, GBV can affect every aspect of a woman's life, from the psychological to the physical to her enjoyment of human rights. With such all-encompassing and traumatic consequences, it is shocking that VAW continues to be so pervasive around the world; there are, however, equally deeply entrenched causal factors that permit and perpetuate GBV.

³⁹ *Ibid* at 65.

⁴⁰ UN Economic and Social Council 'Report on the mission of the Special Rapporteur to Brazil on the issue of domestic violence' (15-26 July 1996) at ¶ 10, available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/102/46/PDF/G9710246.pdf?OpenElement>, accessed 12 November 2011.

⁴¹ *Ibid* at ¶ 11.

⁴² *Ibid*.

⁴³ CEDAW GR 19, *supra* note 27.

V. STEREOTYPING AS AN UNDERLYING CAUSE OF GENDER-BASED VIOLENCE

Our culture needs to change – teach people not to rape, not how not to be raped.

- Rhiannon Frame, Slutwalk London protester, 2011⁴⁴

The definition of a stereotype is difficult to ascertain in precise terms. The Oxford Dictionary defines ‘stereotype’ as, “a widely held but fixed and oversimplified image or idea of a particular type of person or thing.”⁴⁵ Stereotypes contain both descriptive and normative elements – in other words, what people *are* and what they supposedly *should* be.⁴⁶ Rebecca Cook and Simone Cusack explain, “a stereotype presumes that all members of a certain social group possess particular attributes (e.g., adolescents are irresponsible), or perform specified roles (e.g., women are caregivers).”⁴⁷ Stereotypes can be positive or negative in value, but are problematic in that they apply to all members of a particular group, and the normative element of stereotyping means that members of the group that do not conform to the stereotyped notion are seen as aberrations or deviant. For example, women are stereotypically seen as being mothers and carers; women who chose not to have children are perceived by some as being un-womanly, less feminine, or even less female. Having children does not make you a woman, however; a reproductive choice does not change one’s sex. And yet many cultures, which include members from every socio-economic group, religion, ethnicity and nationality, have constructed this notion that to be a woman is to be a mother.

Establishing a causal link between stereotyping and GBV is challenging for a number of reasons, and little academic attention has been paid specifically to this issue in the past. As Cook and Cusack point out, “because such violence has long been constructed as a “normal” part of gender relations, we have difficulty in identifying how gender

⁴⁴ As quoted by Sarah Bell ‘Slutwalk London: Yes means yes and no means no’ (11 June 2011) *BBC News*, available: <http://www.bbc.co.uk/news/uk-13739876>, accessed 20 January 2012 [Slutwalk].

⁴⁵ Angus Stevenson (ed) *Concise Oxford Dictionary of English* 12 ed (2011).

⁴⁶ Rebecca J. Cook and Simone Cusack *Gender Stereotyping: Transnational Legal Perspectives* (2010) at 9-38 [Cook and Cusack].

⁴⁷ *Ibid* at p. 9.

stereotypes contribute to its practice.”⁴⁸ In a Shadow Report to the CEDAW Committee in 2006 regarding Mexico’s State Report, NGOs argued that, “a big difficulty for the attention and prevention of violence against women is that it appears as culturally neutralized, as an intrinsic characteristic of the social relations and accepted gender model.”⁴⁹ In other words, these discriminatory perceptions are so entrenched in society’s view of women that they take on a quality that allows those who perpetuate the stereotypes to say that these are not stereotypes at all, but rather universal realities. This is why, in my view, it is so important to isolate precise stereotypes that are discriminatory towards women so that they can be addressed in such a way that they are seen as having no merit. We may not even be aware of the stereotypes that have shaped us and our view of gender roles, and only by parsing out those stereotypes can we truly see their discriminatory nature, and how they might have a causal link with GBV.

In 2011, protests were conducted all around the world after a Toronto policeman told a group of university students that they should “avoid dressing like sluts” in order to prevent being assaulted.⁵⁰ This is an example of how stereotypes and GBV share a causal link: the subtext to the policeman’s comments is that women should dress a certain way and that, if they do not, they are in some way consenting to being sexually assaulted. The stereotype being advanced is that ‘good women’ dress modestly and ‘bad women’ dress provocatively, and that the two should be, or will be, treated accordingly. Victim-blaming is one way that the stereotypes that allow GBV to occur in the first place at such high rates are entrenched.

A case heard by the Supreme Court of Canada illustrates how stereotyped perceptions of how women should or should not act can contribute to how allegations of rape, a form of GBV, are approached by the authorities. In the *R. v. Ewanchuck*,⁵¹ Steve Ewanchuck was accused of sexually assaulting a 17-year-old woman whom he was interviewing for

⁴⁸ Cook and Cusack, *supra* note 46 at 41-42.

⁴⁹ *Ibid* at 42.

⁵⁰ Slutwalk, *supra* note 44.

⁵¹ *R. v. Ewanchuck* [1999] 1 S.C.R. 330 (Supreme Court of Canada).

a job. She initially explicitly refused Mr. Ewanchuk's sexual advances, but did not take further action because she was afraid for her life.⁵² The Supreme Court of Canada castigated the lower court's decision to acquit Mr. Ewanchuk on the basis that the complainant's eventual failure to object to the accused's sexual advances constituted implied consent. The Court of Appeals judge held that, "the sum of the evidence indicates that Ewanchuk's advances to the complainant were far less criminal than hormonal"⁵³ and suggested that the fact that the complainant was not dressed particularly modestly was relevant to the case.⁵⁴ The Supreme Court overturned the acquittal, and used the opportunity to "[uncover] and name numerous sexual stereotypes."⁵⁵ Justice L'Heureux-Dubé enumerated various sexual stereotypes about women in her concurring opinion: that women are sexually passive and, therefore, they are disposed submissively to surrender to men's sexual advances; women should physically resist sexual assault and, therefore, failure to resist on the part of a female complainant signals consent to sexual activities; women should dress modestly and, therefore, an immodestly dressed woman is responsible for her own sexual assault; and, finally, that women are in a state of perpetual consent to sexual activity and, therefore, when a woman says 'no' to sexual activities she does not really mean it.⁵⁶ This case was demonstrative of the stereotypes many people hold of women, and the Appeals Court decision is illustrative of the attitude many courts take towards women who allege that they are the victims of sexual assault.

Stereotypes of gender roles exist in many different forms, but are based on the notion that women are inferior to men by virtue of their gender. This misperception manifests itself in many different ways, both covert and overt, and is so deeply entrenched in every aspect of our social organization that they are difficult to identify at times. Cook and Cusack argue,

⁵² *Ibid* at headnote.

⁵³ As quoted in *ibid* at ¶192.

⁵⁴ As quoted in *ibid* at ¶188.

⁵⁵ Cook and Cusack, *supra* note 46 at 52.

⁵⁶ *Ibid* at 52-53.

the structure and organization of society is built on gender stereotypes, hence ensuring that existing unequal power relations between sexes are sustained. Subordination and exclusion of women takes place through the uncritical application of stereotyped (often traditional and implicit) ideas, symbols, and roles.⁵⁷

This notion was elucidated upon in an article by Cecilia Ridgeway and Shelley Correll, who argue that,

gender is an institutionalized system of social practices for constituting people as two significantly different categories, men and women, and organizing social relations of inequality on the basis of that difference.⁵⁸

Social psychologists have opined that, “[m]en are viewed as more status worthy and competent overall at the things that “count most” [...]. Women are seen as less competent in general but “nicer” and better at communal tasks even though these tasks themselves are less valued.”⁵⁹ In other words, while the stereotyped roles and behaviours accorded to women are not necessarily *negative* – women are, after all, seen as warmer than men⁶⁰ - the underlying theme is one of comparative inferiority and incompetence at tasks that hold social and economic value.

One expression of this power imbalance is patriarchy, a form of social organization where a male is, “the supreme authority in the family, clan, or tribe, and descent is reckoned in the male line, with the children belonging to the father’s clan or tribe.”⁶¹ This is the notion behind children having their father’s last name, or nationality being bestowed based on the father’s citizenship. Patriarchy, while not the sole manifestation of gender stereotypes based on unequal power, is an important contributing factor to GBV, particularly in the domestic setting. Gloria Steinem wrote that, “patriarchy requires violence or the subliminal threat of violence in order to maintain itself. [...] The

⁵⁷ Cook and Cusack, *supra* note 46 at 2.

⁵⁸ Cecilia L. Ridgeway and Shelley J. Correll ‘Unpacking the Gender System: A Theoretical Perspective on Gender Beliefs and Social Relations’ (August 2004) 18:4 *Gender and Society* 510 at 510.

⁵⁹ *Ibid* at 513.

⁶⁰ Susan T. Fiske et al. ‘A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition’ (June 2002) 82:6 *Journal of Personality and Social Psychology* 878 at 880.

⁶¹ Charles E. Corry ‘The Role of Patriarchy in Domestic Violence’ (2002) *Equal Justice Foundation*, available: <http://www.ejfi.org/DV/dv-77.htm>, accessed 30 November 2011.

most dangerous situation for a woman is not an unknown man in the street, or even the enemy in wartime, but a husband or lover in the isolation of their own home.”⁶² The stereotypes that fuel patriarchy, and allow it to fester, are at the heart of the reason why GBV continues to be prevalent in every country in the world.

In his ground-breaking cross-cultural study of domestic violence, David Levinson recorded incidences of GBV in each of the cultures he examined. Nevertheless, he discovered that patterns of domestic violence, both low and high, had a correlational relationship with patterns of dominance between husbands and wives. Levinson reported that societies that had lower incidences of family violence were generally characterized by shared decision making, wives’ control of at least some of the family’s resources, equal access to divorce for men and women, no premarital sex double standard, monogamous marriage, marital cohabitation, peaceful conflict resolution within and outside the home, and immediate social responses to domestic violence.⁶³ He notes that, “shared decision making in the household predicts the absence of wife beating [and that] we already know that male dominance in decision making predicts wife beating.”⁶⁴ While patriarchal and matriarchal societies are difficult to define in precise terms, Levinson’s study shows that domestic violence occurs at much lower levels in societies with a more egalitarian power-sharing structure between the genders, and would suggest that if stereotypes of women’s role in marriages were challenged, that there would be a corresponding decrease in the levels of GBV in the home.

The relationship between GBV and stereotyping is multi-faceted and complex. On the one hand, stereotypes can be used as a reason for committing GBV - as was the case with Cleonica, whose husband accused her of being unfaithful, which is not in keeping with the stereotype of the dutiful wife, and used this belief as a reason to physically and verbally assault his wife. Stereotypes can be a reason why women do not report their abusers to the police - women are supposed to be docile, deferential and subservient to their male partners. Stereotypes can also be why women who *do* report incidents of

⁶² *Ibid.*

⁶³ David Levinson *Family Violence in Cross-cultural Perspective* (1989) at 103.

⁶⁴ *Ibid.*

GBV do not find solace through the judicial system; many so-called legal protections are rife with stereotype. Legislation, therefore, plays an important role in the perpetuation of stereotypes. As Cook and Cusack argue,

a law, policy or practice that applies, enforces or perpetuates a gender stereotype might burden women when it restricts them to culturally acceptable roles or behaviour, such as motherhood, or, for example, when it stigmatizes or punishes women for their failure to conform to such roles or behaviours.⁶⁵

The most glaring example is the law surrounding sexual assault in many countries. In countries as diverse as Mongolia, Botswana, and Morocco, a man is free to force sex on a woman, provided that she is his wife. In Tanzania, so-called spousal or marital rape is only outlawed if the couple is legally separated. In Saudi Arabia, described by some as being in a state of gender apartheid,⁶⁶ a 19-year woman was recently sentenced to 200 lashes and six months in prison after being gang-raped by seven men, who recorded the attack on their mobile phones.⁶⁷ The woman was charged for violating the “illegal mingling” law, as she was riding in a car with an unrelated male acquaintance before the attack occurred.⁶⁸

These laws and sentences illustrate deep underlying (mis)perceptions about how women ‘should’ behave. They contravene a foundational tenet of the supreme instrument of international law, the UN Charter, which stands for the promotion of, and respect for, “human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁶⁹ At the international level, non-discrimination and equality clauses have been included in the relevant instruments and, more recently, regional instruments have also begun to take prominence in this area, as well as in the

⁶⁵ Cook and Cusack, *supra* note 46 at 63.

⁶⁶ Mona Eltahawy ‘Punished for being Raped’ (29 November 2007) *The New York Times*, available: <http://www.nytimes.com/2007/11/29/opinion/29iht-edeltahawy.1.8528543.html>, accessed 22 November 2011.

⁶⁷ The woman was later pardoned by King Abdullah after mass international public outcry. See ‘Saudi Courts – Women’s Rights – General Court of Qatif Sentences Gang-Rape Victim to Prison and Lashings for Violating “Illegal Mingling” Law’ (2007-2008) 121 *Harv. L. Rev.* 2254 at 2254.

⁶⁸ *Ibid.*

⁶⁹ United Nations Charter (1945), available: <http://www.un.org/en/documents/charter/chapter1.shtml>, accessed 11 November 2011 [UN Charter].

areas of stereotyping and GBV more specifically. The following chapter will examine regional normative frameworks from a variety of different geographical regions.

VI. REGIONAL NORMATIVE FRAMEWORKS

From a humanistic standpoint, the European, Inter-American and African human rights regimes hold out great promise. However favorably or unfavorably they may compare to some ideal human rights system or to each other, the rights they recognize, the institutions they establish and the procedures they prescribe add up to an assault on the global state sovereignty that is of truly historical proportions.⁷⁰

-Burns H. Weston et al., 1987

In recent years, regional human rights treaty bodies have assumed an important role in the protection and promotion of human rights. The European system, first established in the aftermath of World War II, is the oldest system; the sub-regional system for South East Asian states is the newest system. The African and Inter-American systems have also made valuable contributions to the furtherance of human rights for all, both in terms of jurisprudence and in terms of the substantive provisions in their normative frameworks. I will also consider the nascent human rights system that exists in the Middle East, as well as a brief discussion regarding those States which are not a party to any relevant regional human rights instruments.

i. AFRICA

The principal regional human rights instrument in the African region is the African Charter on Human and Peoples' Rights (the Banjul Charter),⁷¹ which was drafted by members of the Organisation of African Unity (now known as the African Union). The Charter was unanimously approved in 1981, and entered into effect on 21 October 1986. The Charter was originally overseen and adjudicated by the African Commission

⁷⁰ Burns H. Weston, Robin Ann Lukes & Kelly M. Hnatt 'Regional Human Rights Regimes: A Comparison and Appraisal' (1987) 20:4 *Vanderbilt Journal of Transnational Law* 585 at 614 [Weston et al.]

⁷¹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), available: http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf, accessed 27 October 2011 [Banjul Charter].

on Human and People's Rights in Banjul, and currently has fifty-three States Parties.⁷² In 1998, the African Court on Human and Peoples' Rights (ACHPR) was created, but was subsequently incorporated into the African Court of Justice (ACJ). The relationship between the Court and the Commission is not entirely clear as of yet - the Africa Court of Justice and Human Rights Protocol simply provides that, "the Court shall bear in mind the complementarity it maintains with the African Commission."⁷³ The logistical opacity regarding the respective mandates of the Court and the Commission do not alter the significance or provisions of the Banjul Charter, although it may lead to duplication or confusion, particularly on the part of complainants. Furthermore, the Banjul Charter does not imbue the ACHPR with the power to grant remedies to redress the violations nor to enforce its orders.⁷⁴ It can receive communications from States, but also considers communications from non-State entities, although through a slightly different procedure.⁷⁵ The Court, however, might have the latitude to go further than receiving communications, and actually grant remedies and enforce its rulings.

At first glance, the Banjul Charter looks like a hopeful step forward in ensuring equal rights for men and women in Africa. Article 2 of the Charter states, "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."⁷⁶ When we examine the Charter more closely, however, it becomes clear that it has several shortfalls. In the Preamble, for example, there is a clause that states that "the virtues of historical tradition and the values of African

⁷² African Union 'List of Countries which have Signed, Ratified/Acceded to the African Union Convention on African Charter on Human and People's Rights,' available: http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf, accessed 28 November 2011.

⁷³ Protocol on the Statute of the African Court of Justice and Human Rights (1 July 2008), at article 27, available: <http://www.africa-union.org/root/au/Documents/Treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf>, accessed 27 October 2011.

⁷⁴ Danwood Chirwa 'African Regional Human Rights System: The Promise of Recent Jurisprudence on Social Rights' in Malcolm Langford (ed) *Social Rights jurisprudence: Emerging trends in international and comparative law* (2008) at 335.

⁷⁵ Banjul Charter, *supra* note 71 at art. 55.

⁷⁶ *Ibid* at article 2.

civilization” must be taken into consideration when interpreting the Charter. Historical traditions and values are, however, some of the very things that have contributed to a usurpation of women’s rights in Africa and elsewhere for centuries by promulgating gendered stereotypes. As one commentator put it, “when the Charter is compared with the other regional human rights instruments, it clearly fails to measure up in terms of enforcement capabilities as a protector of the human rights of African men and women alike.”⁷⁷

One of the most significant clauses relevant to GBV is article 55, which stipulates that, “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”⁷⁸ This is important in two regards; firstly, article 55 provides that every discrimination must be eliminated, therefore including GBV, and, secondly, that international declarations are made binding by proxy. This, however, is where the positive aspects of the Banjul Charter in regard to the eradication of GBV and in the altering of the stereotypes which perpetuate this violent form of discrimination end.

Article 27 of the Charter provides that, “[e]very individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.” Article 29(1) goes on to say that, “[t]he individual shall also have the duty [- to] preserve the harmonious development of the family and to work for the cohesion and respect of the family.”⁷⁹ These articles seemingly imply that the cohesion and harmony of a family is paramount to other considerations. This could be interpreted in such a manner that reporting or pursuing a perpetrator of GBV could be seen as a violation of articles 27 and 29(1) as it would be disruptive to the cohesion and harmony of a family. These Charter provisions go one step further by saying that every individual has a *duty* towards his or her family, and that a duty also exists to preserve

⁷⁷ Deborah A. Wean ‘Real Protection for African Women? The African Charter on Human and Peoples’ Rights’ (1998) 2 *Emory J. Int’l Disp. Resol.* 426 at 455 [Wean].

⁷⁸ Banjul Charter, *supra* note 71 at art. 18.

⁷⁹ *Ibid* at Chapter II: Duties.

the harmonious development and cohesiveness of the family – thus, a woman who reported a violent husband, for example, would be acting contrary to human rights law, as provided for in the Banjul Charter. Conversely, an argument could be made that GBV that occurs within a family context could be a violation of articles 27 and 29(1) insofar as the violence women suffer is highly disruptive to the harmony of the family. My concern, however, is that while a strong argument could be made in support of women’s rights by relying on articles 27 and 29(1), in practice I believe that the first scenario I outlined would take precedence. As one scholar astutely points out, “while specific rights of women are protected under the [Banjul] Charter, their inclusion with the protection of the family provisions may result in problems when individual women come in conflict with local community standards or the desires of their more traditional husbands.”⁸⁰

There is no mention made in the Banjul Charter about altering stereotypes. In fact, article 29(7) seems to entrench pre-existing values, to which faulty gender stereotypes are linked: “[t]he individual shall also have the duty [- to] preserve and strengthen positive African cultural values in his relations to other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society.”⁸¹ The issue with this provision is not that it expressly allows for GBV to occur in the spirit of culture, but rather that it could be used to further entrench gender role stereotypes, namely of women being subservient and domestically-bound. The phrase ‘moral well being of society’ is particularly troublesome, since the notion of morality differs between people and is often constructed in its most tangible sense by men – a woman who chose not to have children, or who was a lesbian, for example, might be seen as denigrating positive African cultural values, and leading a life that was contrary to the moral well-being of society.

In 1995, under pressure from civil society, the African Union began drafting the Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa.

⁸⁰ Wean, *supra* note 77 at 450.

⁸¹ Banjul Charter, *supra* note 71 at art. 29(7).

This Protocol, otherwise known as the Maputo Protocol, entered into effect in November 2005, and is much more progressive than the Banjul Charter when it comes to women's rights. At present, out of the fifty three states of the African Union, only twenty eight states have actually ratified the Protocol. This is illustrative of the lack of political will and commitment that the Protocol – and, by extension, women's human rights – has attracted. Nevertheless, the Maputo Protocol represents an important step forward in the protection and promotion of women's human rights in Africa, and its provisions offer a glimpse of what could be for the female citizens of African Union member states.

The Maputo Protocol imposes positive obligations on States to adopt and enforce laws and other measures that prohibit all forms of VAW.⁸² Articles 3(4) and 4(2) integrally link the rights to life, integrity and security of the person, as well as the right to dignity, with the eradication of GBV, whether the acts in question occur in private or in public. The Maputo Protocol is also progressive in the manner in which it acknowledges and addresses the issue of stereotyping, and goes so far as to offer specific ways to deal with this issue. Under the Protocol, States Parties have an obligation to,

[c]ommit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.⁸³

This is important because it goes to the very heart of ultimate cause of GBV - the systemic structures and attitudes enshrined from birth in a diversity of cultures and settings.

The Maputo Protocol also offers specific ways in which to address the issue of stereotyping. Article 4, which deals with the rights to life, integrity and security of the person, stipulates that States,

⁸² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (entered into force 25 November 2005), at articles 3(4) and 4(2), available: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>, accessed 22 November 2011 [Maputo Protocol].

⁸³ Maputo Protocol, supra note 82 at art. 2.

shall take appropriate and effective measures to [...] actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women. [...]⁸⁴

Furthermore, States Parties must “eliminate all stereotypes in textbooks, syllabuses and the media that perpetuate such discrimination.”⁸⁵

Education has been selected, it seems, as the most appropriate way for States to address the stereotypes which contribute to societies that are willfully blind to the consequences of GBV. This is undoubtedly an important tool, and one that governments could realistically enact, but the difficulty lies with its inability to be measured concretely – what constitutes an appropriate and effective measure? Moreover, if a child is not inculcated with stereotypes at school, but lives in a home or a community where gender stereotypes are insidious, then the neutrality of the child’s schooling on the issue of gender may be trumped by the relationships and stereotypes he or she faces outside of school. Nevertheless, the Maputo Protocol represents a valiant effort, and an express acknowledgement by the African region that in order to effectively tackle GBV, stereotyping must be addressed.

ii. THE AMERICAS

The Organization of American States (OAS) was established on 30 April 1948, with the adoption of the OAS Charter. In 1959, the Inter-American Commission on Human Rights (IACHR) was created and has, since its inception, been the primary body responsible for overseeing conformity with the OAS Charter, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights. In 1979, the IACHR was joined by the Inter-American Court of Human Rights (IACtHR), which is mandated to enforce and interpret the provisions of the American Convention on Human Rights, with both advisory and adjudicatory functions. The IACHR can, along with States Parties, refer cases to the IACtHR; its decision to do so is based on

⁸⁴ *Ibid* at art. 4(2)(d).

⁸⁵ *Ibid* at art. 12(1)(b).

the “the best interests of human rights in the Commission’s judgement.”⁸⁶ The IACtHR and IACHR also oversee the first treaty specifically focused on VAW, and the most widely-ratified human rights instrument in the Inter-American system, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, more commonly referred to as the Convention of Belém do Pará.

The IACHR contains provisions for non-discrimination (article 1) and equality (article 24), and specifically mentions sex as a basis for discrimination that is contrary to the Convention.⁸⁷ Interestingly, the Convention also contains one of the earliest mentions of equality within marriage in multi-national human rights documents. Article 17(4) reads,

The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.⁸⁸

While stereotyping is not specifically mentioned, this Article seeks to rectify inequality within intimate partnerships, and its reference to the adequate balancing of responsibilities between spouses is an implicit acknowledgement of the inequality that persists in gender relations. Article 17(4) only protects married couples, however, and the Convention itself makes no mention of GBV. Nevertheless, the Convention represents a step in the right direction.

The OAS took a further step forward – this time perhaps better characterized as a further leap forward – when it drafted the Convention of Belém do Pará. The Convention of Belém do Pará was the first multi-national treaty that directly and exclusively addressed GBV and was, until 2011, the only multi-national treaty to do so. Not only is the Convention of Belém do Pará progressive in its substance, but it, unlike the Maputo

⁸⁶ Organization of American States 'Inter-American Commission on Human Rights: What is the IACHR?' available: <http://www.cidh.oas.org/what.htm>, accessed 30 November 2011.

⁸⁷ American Convention on Human Rights (22 November 1969), available: <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>, accessed 30 November 2011.

⁸⁸ *Ibid.*

Protocol, received widespread political support from States Parties. The Convention of Belém do Pará provides that, “every woman has the right to be free from violence in both the public and private spheres” and that “every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments.”⁸⁹ The definition of VAW in the Convention of Belém do Pará is appropriately broad, and consists of physical, sexual and psychological violence, including violence which occurs within the family, the domestic unit or within any interpersonal relationship and within the community.⁹⁰ The Convention of Belém do Pará also identifies the state and its agents as potential perpetrators of VAW, whether they are the direct instigators of the violence, or merely condone it.⁹¹

The Convention has been applied in three significant cases recently, which are illustrative of the significance and scope of the treaty – *Fernandez Ortega et al. v. Mexico* and *Rosendo Cantu and other v. Mexico*, and *Gonzalez et al. v. Mexico* (the *Cotton Fields* case). These cases, “solidify legal principles advanced for years by the Inter-American Commission [...] over the gravity of the problems of discrimination and violence against women and the context of the State’s duties to act with due diligence toward these acts.”⁹² In the *Cotton Fields* case, the Court found that, while “not all human right[s] violation[s] committed against a woman [necessarily imply] a violation of the [Convention of Belém do Pará],”⁹³ the victims in this case had been targeted because of their gender, and that their murders therefore constituted GBV. The Court considered several factors in making this nuanced distinction and decision, including that the State had recognized before the Court both the gravity of the problem of violence against women and the influence of a culture of discrimination in the Ciudad Juárez, and reports

⁸⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994) at arts. 3 and 4, available: <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>, accessed 11 October 2011 [Convention of Belém do Pará].

⁹⁰ *Ibid* at art. 2.

⁹¹ *Ibid*.

⁹² Rosa M. Celorio ‘The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-Setting’ (2010-2011) 65 *U. Miami L. Rev.* 819 at 819 [Celorio].

⁹³ As quoted in Celorio, *ibid* at 841.

from international bodies and NGOs indicating that many of these murders were manifestations of gender-based violence.⁹⁴ Moreover, the Court found a violation under article 1(1) of the Convention of Belém do Pará, which stipulates a general obligation not to discriminate.

Lastly, the Convention of Belém do Pará contains provisions which directly address stereotyping. Article 8(b) contains a specific obligation for States to,

undertake progressively specific measures, including programs [...] to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women. [...]⁹⁵

In the Inter-American system, as in the African system, education seems to be the focus of measures to eradicate GBV by addressing gender stereotypes based on a power imbalance. Let us now examine another well-established regional normative framework, the European system.

iii. EUROPE

The European regional system is well-established and progressive in its handling of the issue of GBV. The system can be subcategorized into two branches: the European Union (EU) and the Council of Europe (CoE), and their respective adjudicatory arms, the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR). This creates a rather complex structure, with many different human rights instruments, as well large degree of latitude in terms of scope and substance. As Samantha Besson writes, “the sheer multiplicity of sources, scopes and contents of the guarantees of the non-discrimination principle in Europe is bewildering.”⁹⁶ The Charter of Fundamental Rights from the EU system is older than the CoE instruments, and

⁹⁴ *Ibid* at footnote 138.

⁹⁵ Convention of Belém do Pará, *supra* note 89.

⁹⁶ Samantha Besson ‘Gender Discrimination under EU and ECHR Law’ (2008) 8 *HRLR* 647 at 681.

contains broader provisions in regards to women's human rights. Namely, the Charter contains a chapter dedicated to equality, which contains both the principle of non-discrimination (article 21) and the principle of equality between men and women (article 23).⁹⁷ While explicit mention is not made of GBV, it could certainly be read into these provisions within the sphere of discrimination. The European Convention on Human Rights (ECHR), which is under the ambit of the CoE, entered into force in 1950, and, like the Charter of Fundamental Rights, does not provide any specific protections for women in regards to GBV. It does, however, contain a non-discrimination clause that enumerates sex as a basis for discrimination.⁹⁸

The Council recently developed the Convention on Preventing and Combating Violence against Women and Domestic Violence, which was opened to signatures on 11 May 2011.⁹⁹ The Convention applies in times of peace, as well as during armed conflict (article 2), and defines VAW as, "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹⁰⁰ The treaty defines GBV as, "violence that is directed against a woman because she is a woman or that affects women disproportionately,"¹⁰¹ which echoes the interpretation that the Inter-American Court gave in the *Cotton Fields* decision.

This Convention is particularly interesting in that it obliges States Parties to promote changes in the social and cultural patterns of behaviour of women and men in order to eradicate prejudices, customs and traditions based on stereotyped roles and the notion

⁹⁷ Charter of Fundamental Freedoms of the European Union (18 December 2000), available: http://www.europarl.europa.eu/charter/pdf/text_en.pdf, accessed 17 October 2011.

⁹⁸ European Convention on Human Rights (4 November 1950) at art. 14, available: <http://www.hri.org/docs/ECHR50.html>, accessed 17 October 2011.

⁹⁹ Seventeen countries have signed the treaty as of the end of 2011, but none have ratified.

¹⁰⁰ Convention on preventing and combating violence against women and domestic violence (11 May 2011) at art. 3(b), available: <http://conventions.coe.int/Treaty/EN/Summaries/Html/210.htm>, accessed 8 December 2011.

¹⁰¹ *Ibid* at art. 3(d).

of women being inferior to men.¹⁰² It is not clear how this is to be achieved, but it is an unambiguous admission that stereotyping must be addressed urgently in order for the fight to eradicate GBV to be successful. While the Convention represents an important step forward for members of the CoE in terms of the eradication of GBV, the practical significance of the Convention is difficult to determine since the instrument has not yet entered into force.

iv. ASIA

The Asian region has often been cited as lagging behind the rest of the world in terms of human rights frameworks, and did not, until recently, have any sort of regional mechanism that dealt specifically with human rights. One commentator suggested that this is because,

Asia is a conglomeration of countries with radically different social structures, and diverse religious, philosophical, and cultural traditions; their political ideologies, legal systems, and degrees of economic development vary greatly; and, above all, there is no shared historical past even from the times of colonialism. Most research on human rights problems in Asia has, therefore, been national rather than regional.¹⁰³

While Asia is certainly a very diverse continent with a variety of cultures, religions, and historical narratives, this can also be said for other regions which *do* have a regional system for the protection and promotion for human rights.

In 2007, a sub-regional organization, the Association of Southeast Asian Nations (ASEAN)¹⁰⁴ drafted the ASEAN Charter, which established a human rights body.¹⁰⁵ The ASEAN Charter's provisions are, however, fairly broad, vague, and do not directly tackle the issue of GBV. An NGO that represents a variety of civil society organizations in the region has stated that, "the ASEAN Charter does not specifically address the human

¹⁰² *Ibid* at arts. 12(1) and 12(2).

¹⁰³ Weston et al., *supra* note 70 at 586-587, footnote 2.

¹⁰⁴ The Member States of ASEAN: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

¹⁰⁵ ASEAN Charter (December 2007) at art. 14, available: <http://www.kemlu.go.id/Documents/ASEAN-Charter.pdf>, accessed 13 October 2011 [ASEAN Charter].

rights of women, children or other marginalized communities.”¹⁰⁶ The Charter provides that ASEAN should, “promote and protect human rights and fundamental freedoms” (article 1), and act in accordance with “respect for fundamental freedoms, in the promotion and protection of human rights [as well as] upholding the United Nations Charter and International law.”¹⁰⁷ The human rights body which the Charter established has also been met with some concern from women’s groups. The Women’s Caucus also noted with concern that the ASEAN Human Rights Body does not specify women’s participation in the body. The Caucus asserted that, “[i]t is clear that the basic principle of gender equality, provisions to ensure gender parity in the members of the [Human Rights Body], and women in decision-making positions in the Secretariat, which will support the work of the said body, are not expressly addressed in the [terms of reference].”¹⁰⁸

The paucity of the ASEAN Charter in regards to women’s human rights was indirectly recognized with the drafting of the Declaration on the Elimination of Violence against Women in the ASEAN Region, which acknowledges that more needs to be done in order to move towards the elimination of VAW in the region. The Declaration, which is not binding, does nevertheless recognize that, “violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities, and impedes the full development of their potential.”¹⁰⁹ The eight-point Declaration does not, however, make a substantial effort to progressively assist in the protection and promotion of women’s human rights. The provisions are broad – for example, clause 5 states that “all necessary measures” must be taken to eliminate all forms of discrimination against women, but does not expand on any examples of what those measures might entail. Furthermore, no mention is made of stereotyping as a root cause of the discrimination women face and that can, in turn,

¹⁰⁶ Women’s Caucus for the ASEAN Human Rights Body, as quoted by Veronica Uy ‘Women’s Group Says ASEAN Charter not pro-women, pro-kids’ (3 April 2009) Inquirer.net, available: <http://globalnation.inquirer.net/news/news/view/20090304-192280/ASEAN-charter-not-pro-women-pro-kids>, accessed 9 December 2011 [Women’s Caucus].

¹⁰⁷ ASEAN Charter, supra note 105 at art. 1.

¹⁰⁸ Women’s Caucus, supra note 106.

¹⁰⁹ Declaration on the Elimination of Violence against Women in the ASEAN Region (13 June 2004), available: <http://www.asean.org/16189.htm>, accessed 9 December 2011.

manifest itself as GBV. Few commentators have paid any attention to the Declaration, which is reflective of its weakness.

The ASEAN Declaration on the Elimination of Violence against Women did, however, provide for “the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.”¹¹⁰ In April 2010, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was inaugurated in accordance with the Declaration, with VAW being one of the thematic areas of concern for the Commission.¹¹¹ While still in its embryonic stages – the First and Second Meetings of the ACWC were held in February 2011 and June 2011, respectively – the Commission offers a glimmer of hope for the advancement of women’s human rights in the South East Asia region. The terms of reference of the ACWC are slightly problematic, however.¹¹² There are no provisions for gender parity on the Commission or for women’s involvement in general in the decision-making processes, which mirrors the concerns voiced over the ASEAN Human Rights Body. A definitive assessment of how the ACWC will function in practice is, however, premature. Moreover, the drafting of a declaration that precisely deals with VAW, and the establishment of a specialized Commission, is indicative of at least a modicum of political will on the issue, and perhaps it will lay the foundation for more substantive and binding instruments to be created in the future, as well as increased oversight on the issue of GBV in South East Asia.

v. THE MIDDLE EAST

The Middle East is an anomaly in terms of regional human rights structures. It does not have a regional human rights instrument *per se*, but the Arab States in the Middle East region have drafted a Charter on human rights. Approximately half of the Member

¹¹⁰ As quoted by Amnesty International ‘The ASEAN Charter and Human Rights: A Window of Opportunity or Window Dressing?’ (July 2008), available: <http://www.amnesty.org/en/library/asset/ASA03/003/2008/en/384b86ba-4393-11dd-a1d1-2fa8cc41ebbd/asa030032008eng.pdf>, accessed 23 November 2011.

¹¹¹ ASEAN ‘First Press Release of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)’ (16 June 2011), available: <http://www.aseansec.org/26409.htm>, accessed 9 December 2011.

¹¹² ASEAN ‘Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)’ (2010), available: <http://www.asean.org/documents/TOR-ACWC.pdf>, accessed 9 December 2011.

States of the League of Arab States, which drafted the Arab Charter on Human Rights, are actually located in Africa, however, and it is unclear how those states which are members of both the African Union and the League of Arab States will implement different sets of human rights obligations. It could therefore be argued that the Charter is more of an ethnic instrument, rather than a regional one, but with the large population it contains, it nevertheless merits an examination in the context of this dissertation on the basis of its multi-national character.

The Arab Charter on Human Rights¹¹³ entered into force in 2008, and with it, a treaty body was established to supervise its implementation, the Arab Human Rights Committee.¹¹⁴ Article 33(2) of the Arab Charter does prohibit “all forms of violence or abuse in the [family relations], and particularly against women and children,”¹¹⁵ and provides that, “men and women are equal in respect of human dignity, rights and obligations within the framework of positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments.” No mention is made of stereotypes, however, and the tone of the Charter is patronizing towards women in the sense that women are classified along with children, the mentally disabled, and the elderly, as needing special protection measures.¹¹⁶

The ability of the Arab Human Rights Committee to effectively oversee the implementation of the Arab Charter has been called into question, however, as have the substantive provisions of the Charter itself. The Committee has not released any public documents recording its outcomes since its first session in April 2009, for example.¹¹⁷ Moreover, while the Committee is comprised of seven independent experts elected by secret ballot, “a number, if not all, of the current Committee members hold government

¹¹³ Arab Charter on Human Rights (15 March 2008), available: <http://www1.umn.edu/humanrts/instreet/loas2005.html>, accessed 7 December 2011 [Arab Charter].

¹¹⁴ Mervat Rishmawi ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10:1 *Human Rights Law Review* 169 at 170 [Rishmawi].

¹¹⁵ Arab Charter, supra note 113.

¹¹⁶ *Ibid* at art. 33.

¹¹⁷ Rishmawi, supra note 114 at 172.

positions.”¹¹⁸ There are also no provisions for individual or State complaints, so the Committee is mainly a monitoring body.¹¹⁹ The transparency and independence of the Committee is therefore rather questionable, and without public records of its proceedings, it is difficult to hold its members accountable.

In terms of the substance of the Charter, there are several concerns that have been raised. Firstly, the Charter refers to Zionism as “an impediment to human dignity and a major barrier to the exercise of the fundamental rights of all peoples.”¹²⁰ Article 8 of the Charter prohibits torture or cruel, degrading, humiliating or inhuman treatment, but omits a prohibition regarding punishment.¹²¹ The Charter contains a few socio-economic rights, such as the rights to work, to free basic health care, and the right to free education at the primary level, but these only apply to citizens of the States’ Parties, not to all people within the jurisdiction of the State.¹²² It remains to be seen how the Charter and the Commission will contribute to the protection and promotion of human rights in the Arab world.

vi. OTHER COUNTRIES

An examination of regional frameworks for the protection of women’s human rights would not be complete without mentioning those nations that are not a Party to any regional instruments. As we have seen, regional treaty bodies provide an invaluable locus for the protection, promotion and adjudication of human rights. Nevertheless, many countries have opted not to become States Parties to the regional instruments available to them, while some regions do not have a system to begin with. Examples of the former – countries who have not signed onto regional instruments that do exist – include Canada and the United States, who, while members of OAS, have neither

¹¹⁸ *Ibid* at 173.

¹¹⁹ *Ibid*.

¹²⁰ Arab Charter, *supra* note 113 at art. 2.

¹²¹ *Ibid* at art. 8.

¹²² Rishmawi, *supra* note 114 at 171.

signed nor ratified the Convention of Belém do Pará.¹²³ Asia is a glaring example of the lack of a regional human rights treaty system – ASEAN remains a sub-regional group, and does not include states such as India, China or Japan.

While states in these regions do have the option to be part of international instruments, namely CEDAW, the absence of a regional system, particularly one with adjudicatory functions, leaves the citizens of those countries at a disadvantage. Not having a regional human rights treaty system means that local and regional issues are not necessarily represented at the international level, and the barriers to access for complainants are multiplied.¹²⁴ In the case of countries that *do* have regional normative frameworks at their disposal that deal specifically and solely with the issue of GBV, and who have simply refused to sign these important documents, it is reflective of the lack of political will surrounding the issue of GBV. The following chapter will provide an overview of the international normative framework surrounding women's human rights, specifically in regards to the Convention on the Elimination of All Forms of Discrimination against Women and its Committee.

VII. INTERNATIONAL NORMATIVE FRAMEWORK

The international human rights movement against violence to women provides a valuable site for understanding how new categories of meaning emerge and are applied to social practices around the world.

– Sally Engle Merry, 2007¹²⁵

In order to properly address the various protections offered at the international level, I will examine the international normative framework in two parts, beginning with the provisions relating to GBV, and then moving onto a consideration of how stereotyping has been dealt with by relevant treaty bodies.

¹²³ Organization of American States 'Signatories and Ratification: Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women' (2011), available: <http://www.cidh.org/Basicos/English/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm>, accessed 7 December 2011.

¹²⁴ Weston et al., *supra* note 70 at 615.

¹²⁵ Sally Engle Merry *Human Rights & Gender Violence: Translating International Law into Local Justice* (2007) at 1.

i. International Law and Gender-based Violence

At an international level, the scope and significance of instruments which can be interpreted to incorporate protections against GBV depends on how we interpret the causes, consequences and context of GBV. CEDAW, the only legally binding international human rights instrument dedicated to women, does not contain any explicit references to VAW. Instead, we rely on its first article, which provides that,

"discrimination against women" shall mean 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.¹²⁶

As such, in order to rely on CEDAW in regards to VAW, we must see GBV as an act of discrimination. In CEDAW's General Recommendation 19 on violence against women, the Committee makes this link explicit: "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."¹²⁷ Moreover, General Recommendation 19 states that, "full implementation of the Convention required states to take positive measures to eliminate all forms of violence against women."¹²⁸

By placing GBV correctly and explicitly within the context of discrimination, CEDAW unambiguously links GBV and discrimination, and thus broadens the number of binding international instruments which can be interpreted to incorporate provisions on the eradication of GBV - article 1 of the UN Charter, for instance, provides that one of the four principal purposes of the UN is to be achieved by, "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."¹²⁹ The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the

¹²⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entry into force 3 September 1981), available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#part1>, accessed 11 November 2011 [CEDAW Convention].

¹²⁷ CEDAW GR 19, supra note 27.

¹²⁸ *Ibid* at ¶4.

¹²⁹ UN Charter, supra note 69.

Convention on the Rights of the Child are all binding international instruments which contain non-discrimination and equality clauses. Moreover, the Universal Declaration of Human Rights, which some argue has reached customary international law status and is therefore also binding, protects the rights and freedoms of all, irrespective of sex.¹³⁰

In regards to policy, the Beijing Declaration and the Declaration on the Elimination of Violence against Women (DEVAW) provide another layer of international guiding principles in regards to GBV. The Beijing Declaration reaffirms States' determination to, "prevent and eliminate all forms of violence against women and girls"¹³¹ and contains an entire section dedicated to VAW. The strategic objectives developed in Beijing include steps to integrate measures to prevent and eliminate violence against women, to study the causes and consequences of VAW and the effectiveness of preventative measures, and to eliminate trafficking in women and assist victims of violence due to prostitution and trafficking.¹³² DEVAW, as its name suggests, deals explicitly and extensively with the issue at hand.¹³³ Eradication of violence against women is the objective of this Declaration, and the role States must play is crucial in this endeavour – this is an important development, because it shatters the notion that violence against women, particularly in times of so-called peace, is beyond the reach of the State and should be considered a private matter.

Another relevant international instrument is the Convention against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).¹³⁴ Although CAT does not specifically equate GBV with torture, GBV could conceivably fall under CAT's definition of torture in article 1(1).¹³⁵ In *Ali v. Reno*,¹³⁶ for example, a US Court found

¹³⁰ Universal Declaration of Human Rights (1948) at art. 2, available: <http://www.un.org/en/documents/udhr/index.shtml#a2>, accessed 11 November 2011.

¹³¹ United Nations 'Report of the Fourth World Conference on Women – Beijing, 4-15 September 1995', available: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, accessed 11 November 2011 [Beijing Declaration].

¹³² *Ibid* at pp. 48-55.

¹³³ DEVAW, *supra* note 32.

¹³⁴ Convention against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987), available: <http://www2.ohchr.org/english/law/cat.htm>, accessed 12 November 2011.

¹³⁵ *Ibid* at art. 1(1): "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a

that, “[in] a situation in which the authorities ignore or consent to severe domestic violence, the [CAT] appears to compel protection for a victim.”¹³⁷ Moreover, article 3 of CAT, which states that risk of torture is grounds for *non-refoulement*, has been interpreted by domestic jurisdictions as providing a basis for not returning a woman to her country of origin if she is at grave risk of enduring GBV were she to return.

ii. Provisions Relating to Stereotyping at the International Level

The introduction to CEDAW, provided by the CEDAW Committee, contains explicit reference to the centrality of gender stereotypes to the discrimination experienced by women. While it does not expressly link GBV and stereotyping, the causal connection between women’s enjoyment of human rights (or lack thereof) and stereotypes is made clearly evident, and the need to address entrenched misperceptions of women is highlighted:

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (article 5). And Article 10 (c) mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the

confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

¹³⁶ *Ali v. Reno* 2001 FED App. 0010P (6th Cir.), available: http://www.unhcr.org/refworld/country,,USA_CA_6,,IRQ,,4152e0f418_0.html, accessed 14 October 2011 [*Ali v. Reno*].

¹³⁷ *Ibid.*

equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.¹³⁸

While this text is not binding, it is indicative of the intention of the drafters of CEDAW, as well as how the CEDAW Committee believes the Convention should be interpreted.

In regards to binding provisions, CEDAW contains two articles which specifically address stereotyping. Article 5 of CEDAW provides that,

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; [...]¹³⁹

Article 10(c), furthermore, provides that,

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: [...]

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; [...]¹⁴⁰

These are important clauses that recognize stereotyping as an underlying cause discrimination against women, as well as stereotyping's role in perpetuating the denial of women's equal enjoyment of their rights. Again, there is no specific connection made between GBV and stereotypes but, as we have seen earlier, if we conceptualize GBV as a visible form of discrimination, then the link becomes clearer. It is important to note that States Parties to CEDAW are legally bound to proactively modify the stereotyped

¹³⁸ Committee on the Elimination of All Forms of Discrimination against Women 'Convention on the Elimination of All Forms of Discrimination against Women: Introduction' (18 December 1979), available: <http://www2.ohchr.org/english/law/cedaw.htm>.

¹³⁹ CEDAW Convention, supra note 126.

¹⁴⁰ CEDAW Convention, supra note 126.

roles of men and women, although no specific examples or recommendations of how to do this it provided.

The Beijing Declaration contains a comprehensive acknowledgement of the significance of stereotyping to subsequent discrimination. The Declaration notes with concern that “global communication networks have been used to spread stereotyped and demeaning images of women for narrow commercial and consumerist purposes,”¹⁴¹ and urges governments to,

encourage the media to examine the impact of gender role stereotypes, including those perpetuated by commercial advertisements which foster gender-based violence and inequalities, and how they are transmitted during the life cycle, and take measures to eliminate these negative images with a view to promoting a violence-free society.¹⁴²

This is a clear recognition that gender stereotypes, particularly those perpetuated by the media, share an important causal link with GBV and the effectiveness of preventative measures.

The Beijing Declaration also contains policy recommendations when it comes to education and health, and their relationship to stereotyping. In regards to education, the drafters of the Declaration suggested that governments, the private sector, NGOs, the UN, and trade unions, “design and provide educational programmes through innovative media campaigns and school and community education programmes to raise awareness on gender equality and non-stereotyped gender roles of women and men within the family.”¹⁴³ This also would include “curricula, textbooks and teaching aids free from gender-based stereotypes for all levels of education.”¹⁴⁴ In regards to women’s health, the Beijing Declaration asserts that,

[h]ealth policies and programmes often perpetuate gender stereotypes and fail to consider socio-economic disparities and other differences among women and may not fully take account of the lack of autonomy of women regarding their

¹⁴¹ Beijing Declaration, *supra* note 131 at ¶33.

¹⁴² *Ibid* at ¶129(d).

¹⁴³ *Ibid* at ¶180(b).

¹⁴⁴ *Ibid* at ¶83(a).

health. Women's health is also affected by gender bias in the health system and by the provision of inadequate and inappropriate medical services to women.¹⁴⁵ By targeting two pillars of society – education and health – the Beijing Declaration seeks to prevent the attitudes and biases which make GBV permissible and which perpetuate its existence.

The Declaration on the Elimination of Violence against Women (DEVAW) places equal emphasis on the role of education in addressing the stereotyped roles of men and women in regards to combating VAW. Article 4(j) reads,

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women; [...]¹⁴⁶

These non-binding, but highly persuasive, policy recommendations represent the first instances at the international level where the link between stereotypes and discrimination, including GBV, has been elaborated upon. The practical recommendations – such as the educational and media initiatives – are crucial aspects that governments can, and should, address. The CEDAW Committee's role is instrumental in ensuring that States abide by their obligations and take into account relevant policy initiatives. In the following Chapter, I will expand upon CEDAW's role, taking into account its mandate, as well as critically examining the jurisprudence that is a product of the Committee's work.

VIII. THE CEDAW COMMITTEE, GENDER-BASED VIOLENCE AND GENDER STEREOTYPING

Although the [periodic state reports] have come from States with different levels of development, they present features in varying degrees showing the existence of stereotyped conceptions of women, owing to socio-cultural

¹⁴⁵Beijing Declaration, supra note 131 at ¶190.

¹⁴⁶ DEVAW, supra note 32.

factors, that perpetuate discrimination based on sex and hinder the implementation of article 5 of the Convention.

- CEDAW Committee, General Recommendation No. 3, 1987¹⁴⁷

Now that we have critically examined the international and regional normative frameworks that exist, it is important to analyse the role the CEDAW Committee plays in the oversight of the implementation of the Convention's provisions at a domestic level. This section will begin with a consideration of the role, mandate and functions of the CEDAW Committee. It will go on to examine how periodic State reports are dealt with, including discussion on the importance of the Concluding Observations. This section will also highlight the significance of General Recommendations, as well as that of the Optional Protocol to the Convention. Finally, this section will examine CEDAW's jurisprudence in order to provide a comprehensive overview of the myriad of ways in which the CEDAW Committee plays a fundamental role in the eradication of gender stereotyping as an underlying cause of GBV.

i. CEDAW Committee's Mandate

Before beginning with an examination of the CEDAW Committee's role in eliminating gender stereotyping and GBV, it is first important to understand the purpose and mandate of the Committee itself. Broadly, the purpose of the Committee is to monitor States Parties' compliance with the Convention on the Elimination of All Forms of Discrimination against Women, and currently meets three times per year, in either Geneva or New York.¹⁴⁸ The mandate of the Committee is thus based on oversight, rather than on enforcement. As one commentator remarked,

ratification of CEDAW, with the prime obligation of reporting, makes states accountable by international standards and subjects them to international scrutiny. This makes the CEDAW Convention and its reporting process a potent tool not only in the international arena but also in the domestic struggle for the advancement of women. The reporting process provides the opportunity to assess the conformity of domestic guarantees for equal rights for women with the international framework, to

¹⁴⁷ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 3 – Education and public information programmes' (3rd Session, 1987), as quoted in Cook and Cusack, *supra* note 46 at 134.

¹⁴⁸ Cook and Cusack, *supra* note 46 at 131.

develop baseline data concerning the factual position of women, and to identify obstacles to the implementation of CEDAW.¹⁴⁹

The Committee reviews periodic reports submitted by the States Parties, and considers them in light of the so-called shadow reports of other stakeholders (namely relevant UN bodies and NGOs). The Committee then prepares a list of issues and questions on specific topics that were raised during a pre-sessional working group, which the State Party may respond to in advance of appearing before the Committee. The State Reports contain information on what the country has done in order to eliminate discrimination against women, as well as any factors which may have impeded implementation of the Convention.¹⁵⁰ The Committee then engages in a constructive dialogue with States Parties about their reports, which involves Committee members posing a series of questions to representatives on the State in question, who then have an opportunity to respond.¹⁵¹ Finally, the Committee drafts concluding observations, which provide an “expert assessment of a State Party’s compliance with the Convention, but also [elaborates on] the nature and scope of States Parties’ normative obligations to elimination all forms of discrimination against women.”¹⁵² All of the above information is made public, and is published in the five official languages of the CEDAW Committee – English, French, Spanish, Arabic, Chinese and Russian – so as to make the information accessible to all States Parties, as well as to the general population.

Now that we have briefly discussed the CEDAW Committee’s mandate, let us proceed to a closer examination of the various functions of the Committee, from the State Reports to the Concluding Observations to the General Recommendations, before turning our attention to the quasi-judicial function of the Committee established in its Optional Protocol.

¹⁴⁹ Ruth Halperin-Kaddari *Women in Israel: A State of Their Own* (2004) at 5-6.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid* at 132.

¹⁵² *Ibid.*

ii. Consideration of State Party Reports and Concluding Observations

The CEDAW Committee uses its Concluding Observations to provide a final response and list of specific recommendations to the State Party's periodic report, and frequently include references to the need for increased effort in eradicating gender stereotyping. In its Concluding Observations following the Democratic People's Republic of Korea's report in 2005, for example, the Committee noted its concern regarding,

the persistence of traditional and stereotyped assumptions and attitudes in respect of the roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact, particularly in the areas of education and employment as well as in other areas of their lives. For example, the Committee is concerned at the stereotyping of women, which perceives them exclusively as caregivers and homemakers and assigns them to areas such as education and employment on the basis of spheres suitable to their "characteristics". The Committee is concerned that such expectations of women have serious consequences, preventing them from accessing rights and entitlements on an equal basis with men and creating a dependency on men, husbands and family for housing, food entitlements and other services. It is also concerned that in times of economic crisis, as in the current situation of the country, women's prescribed roles and lesser entitlement intensifies their hardship and amounts to multiple discrimination.¹⁵³

While not binding, statements such as these offer the State in question, as well as other states, a direct analysis of the problems surrounding gender stereotyping and the effects these have on the universal realization of human rights. This can provide the basis for legislative changes, as well as new policy directions, which is why the CEDAW Committee's mandate and purpose are so crucial to the advancement of women's human rights.

Perhaps the optimal way to demonstrate how the CEDAW Committee's mandate functions, and what their approach to gender stereotyping in its Concluding Observations has been, is to examine a States Party as a case study. South Africa has appeared before the CEDAW Committee on two occasions – during the 19th Session in June-July 1998 and, more recently, during the 48th Session in January-February 2011.

¹⁵³ Committee on the Elimination of All Forms of Discrimination against Women 'Concluding Observations – the Democratic People's Republic of Korea, 33rd Session' (22 July 2005) at ¶35, available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/450/18/PDF/N0545018.pdf?OpenElement>, accessed 12 December 2011.

In its Initial State Report, South Africa commented that patriarchy is deeply entrenched in the customs, cultures and religions of the country, and that children are engrained with the stereotypes associated with patriarchy from a young age.¹⁵⁴ The Government furthermore conceded that stereotypes ascribed to women were pervasive in language, the education system, the media, popular culture, and everyday life.¹⁵⁵ In response, South Africa changed school curriculums and established the Commission for Gender Equality, but asserted that there were limitations to its ability to alter stereotypes in regards to the media and religious groups in particular, in keeping with the fundamental freedoms enshrined in the Constitution.¹⁵⁶

In its concluding observations to South Africa's Initial State Report, the CEDAW Committee went right to the heart of the issue in terms of the nexus between stereotyping and GBV. The Committee recommended to the South African delegation,

that efforts to prevent and combat violence against women continue to receive the priority attention they require, with a view to ensuring a comprehensive approach. Steps should be taken, including through education, awareness-raising and sensitization of the public, to deal with stereotypical attitudes that are amongst the root causes of violence against women and to emphasize the unacceptability of such violence.¹⁵⁷

This is significant because it demonstrates the causal link the Committee views as existing between GBV and stereotyping. The Committee does not directly address the issue of how to alter stereotypes without infringing on the constitutional fundamental freedoms, but recommends that education and awareness are the keys to altering stereotypes. It can be gleaned that the Committee is not advocating that directives be ordered to religious groups or the media to change their messages, but rather that change must come from individuals themselves, through the catalyzing agent of the government spreading a message of equality and non-discrimination.

¹⁵⁴ Committee on the Elimination of Discrimination against Women 'South Africa: First State Report' (28 February 1998) at p. 44, available: http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.ZAF.1_fr.pdf, accessed 11 December 2011.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* at pp. 44-45.

¹⁵⁷ Committee on the Elimination of Discrimination against Women 'Concluding Observations: South Africa, 19th Session' (29 June 1998) at ¶122, available: http://www2.ohchr.org/english/bodies/cedaw/docs/South%20AfricaCO19_en.pdf, accessed 11 December 2011.

The Committee prepared a list of issues and questions¹⁵⁸ for South Africa in anticipation of South Africa's presentation of its combined second, third and fourth periodic reports¹⁵⁹ in February 2011. In its list of issues, the CEDAW Committee asked South Africa for additional information on a Constitutional Court judgement that, in their view, entrenched the role of women as caregivers and men as bread-winners. The Constitutional Court case to which the CEDAW Committee referred is *President of South Africa and Another v Hugo*,¹⁶⁰ which dealt with the release of non-violent female prisoners with children under the age of twelve, but refused the release of male prisoners under the same circumstances, following a pardon by President Nelson Mandela.¹⁶¹ The Government conceded that this reinforced the "stereotypical attitude of women's roles as primary care-givers,"¹⁶² but deemed it to be a "fair discrimination" practice nevertheless.¹⁶³ The Government also emphasized that women's groups had not vociferously demanded a reversal of the decision.¹⁶⁴ In Justice Krigler's dissenting opinion, however, he pointed out that,

the purpose of the pardon was prescriptive in nature; in remitting the sentences of mothers, and not fathers, President Mandela was not only saying that women *are* primary caregivers in South African society; he was also saying that women, and not men, *should be* primary caregivers. Sex roles were imposed on men and women, not by virtue of their individual characteristics, qualities or choices, but on the basis of predetermined, albeit time-honoured, gender scripts.¹⁶⁵

¹⁵⁸ Committee on the Elimination of Discrimination against Women 'List of issues and questions with regard to the consideration of periodic reports – South Africa' (2 September 2010), available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/447/65/PDF/G1044765.pdf?OpenElement>, accessed 11 December 2011.

¹⁵⁹ Committee on the Elimination of Discrimination against Women 'South Africa: Combined Second, Third and Fourth State Report' (24 March 2010), available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/288/63/PDF/N1028863.pdf?OpenElement>, accessed 11 December 2011.

¹⁶⁰ *President of South Africa and Another v. Hugo* 1997 s(4) SA 1 (CC); 1997 (6) BCLR 708 (CC).

¹⁶¹ *Ibid* at ¶2.

¹⁶² Committee on the Elimination of Discrimination against Women 'Responses to the list of issues and questions with regard to the consideration of the combined second, third and fourth periodic report' (December 2010), at p. 17, available: <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW.C.ZAF.Q4.Add1.pdf>, accessed 11 December 2011.

¹⁶³ *Ibid*.

¹⁶⁴ *Ibid*.

¹⁶⁵ Cook and Cusack, *supra* note 46 at 115.

The issue in this case was not so much whether or not the presidential pardon was based on gender stereotypes – both sides of the case conceded this point – but rather whether such an entrenchment of stereotyping was justifiable on other grounds. The CEDAW Committee did not directly address this issue in its concluding observations, however.

With the exception of not addressing South Africa's response regarding the *Hugo* decision, the CEDAW Committee was generally more pointed in its Concluding Observations to South Africa in 2011 than it was following the Initial Report. In order to address "the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities,"¹⁶⁶ the Committee urged South Africa, *inter alia*, to "raise awareness on the subject [of harmful practices and stereotypes that discriminate against women,] targeting men and women at all levels of society, including traditional leaders, in collaboration with civil society."¹⁶⁷ The Committee also expressed concern with the "continuing stereotypical portrayal of women in the media, which encourages discrimination and undermines the equality of women and men."¹⁶⁸ This approach can be distinguished from the more vague suggestions the Committee gave in response to South Africa's Initial State Report in 1998; here, in 2011, the CEDAW Committee expressly mentions that portrayals of women in the media need to be addressed urgently, and that a variety of different leaders and members of society must be involved in the effort to eradicate GBV through altering discriminatory stereotypes.

iii. General Recommendations

The Committee also issues General Recommendations which interpret the nature and scope of the obligations contained in the Convention. Of particular relevance to the issue of gender stereotyping are General Recommendations 19 (violence against

¹⁶⁶ Committee on the Elimination of Discrimination against Women 'Concluding observations of the Committee on the Elimination of Discrimination against Women – South Africa' (5 April 2011), at ¶ 20, available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/418/78/PDF/G1141878.pdf?OpenElement>, accessed 11 December 2011.

¹⁶⁷ *Ibid* at ¶ 21(a).

¹⁶⁸ *Ibid* at ¶ 20.

women),¹⁶⁹ 21 (marriage and family relations),¹⁷⁰ 23 (political and public life),¹⁷¹ 24 (women and health),¹⁷² 25 (temporary special measures),¹⁷³ and 26 (women migrant workers).¹⁷⁴ In General Recommendation No. 23, for example, the Committee explained how women have typically been confined to the private sphere, with responsibilities to be the primary caregivers and homemakers, whereas men have been allowed to dominate the respected spheres of political and public life.¹⁷⁵ The Committee has recommended that States Parties adopt measures aimed at alleviating women's domestic burden and economic dependency on men as a means of addressing this.¹⁷⁶ The absence of female prominence in the public realm is a clear example of how well-entrenched stereotypes have led to the exclusion of women from political and public life, a clear form of gender-based discrimination.

General Recommendation No. 25 (2004) is also central to the Committee's role in eliminating gender stereotypes that perpetuate discrimination, including violent discrimination. Here, the CEDAW Committee enumerated three general obligations that were fundamental to States Parties' implementation of the Convention and subsequent elimination of all forms of discrimination against women. The third obligation deals specifically with gender stereotyping, and emphasizes the centrality of eliminating

¹⁶⁹ CEDAW GR 19, *supra* note 27.

¹⁷⁰ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 21 – Equality in marriage and family relations' (13th Session, 1994), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>, accessed 12 December 2011.

¹⁷¹ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 23 – women in political and public life' (16th Session, 1997), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23>, accessed 12 December 2011.

¹⁷² Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 24 – Women and health' (20th Session, 1999), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>, accessed 12 December 2011.

¹⁷³ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 25 – Temporary special measures' (30th Session, 2004), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom25>, accessed 12 December 2011.

¹⁷⁴ Committee on the Elimination of All Forms of Discrimination against Women 'General Recommendation 26 – Women Migrant Workers' (42nd Session, 2008), available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom26>, accessed 12 December 2011.

¹⁷⁵ Cook and Cusack, *supra* note 46 at 134.

¹⁷⁶ CEDAW GR 23, *supra* note 171 at ¶11.

stereotypes in States' efforts to combat discrimination: "States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions."¹⁷⁷

General Recommendation No. 19 (1992) is particularly relevant when considering the relationship between GBV and gender stereotyping, because its thematic focus is violence against women. Here, the CEDAW Committee unequivocally states,

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.¹⁷⁸

Similar to the Committee's Concluding Observations, General Recommendations are not binding. Nevertheless, they provide an indispensable persuasive basis for policy and legislative change, as well as an important advocacy tool for NGOs lobbying governments.¹⁷⁹ Another tool that the CEDAW Committee has developed is the Convention's Optional Protocol, which provides the basis for a complaints mechanism to the Committee and has resulted in important jurisprudential outputs.

iv. CEDAW's Optional Protocol – Complaints Mechanism

In 1999, the Committee drafted an Optional Protocol to the CEDAW Convention which established a complaints mechanism.¹⁸⁰ The Optional Protocol entered into force on

¹⁷⁷ CEDAW GR 25, supra note 173 at ¶7.

¹⁷⁸ CEDAW GR 19, supra note 27 at ¶11.

¹⁷⁹ International Land Coalition 'How to Use CEDAW as an Advocacy Tool' (November 2009), available: http://www.e-quality.nl/assets/e-quality/dossiers/VNVrouwenverdrag/ILC_infonoteCEDAW.pdf, accessed 12 December 2011.

¹⁸⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (6 October 1999), available: <http://www2.ohchr.org/english/law/cedaw-one-about.htm>, accessed 12 December 2011 [OP-CEDAW]

22 December 2000, and currently has 103 States Parties.¹⁸¹ The communications procedures allows individuals, groups of individuals, or people acting on their behalf, to submit claims that they have been the victims of a violation of any of the rights in the CEDAW Convention.¹⁸² Admissibility is assessed on the basis of whether all available domestic remedies have been exhausted;¹⁸³ that the same matter has not already been examined by the Committee or by another procedure of international investigation or settlement;¹⁸⁴ that the facts alleged occurred after the Optional Protocol's entry into force for the State Party;¹⁸⁵ and that the communication is not manifestly ill-founded or insufficiently substantiated, and is not an abuse of the right to submit a complaint.¹⁸⁶ Once a case has been deemed admissible, the Committee considers the complaint based on its merits. The Committee then issues a decision in the form of views, together with any recommendations.¹⁸⁷ While the Optional Protocol does not have an enforcement mechanism *per se*, it does allow the Committee to follow up with States Parties during the reporting procedure on specific matters, as well as holding States accountable in a public forum.

Several commentators have argued that the complaints mechanism, and CEDAW in general, provides inadequate remedies for violations of women's human rights. Kerri Ritz, for examples, notes that the Optional Protocol applies only to States that are a party to both CEDAW and the Optional Protocol, and that ratification of the Optional Protocol is subject to an 'out-out' clause.¹⁸⁸ Ritz also argues that in order for the Optional Protocol to provide strong remedies for women and effect positive change, it

¹⁸¹ United Nations Treaty Collection 'Status of Ratification – Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' available: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdq_no=IV-8-b&chapter=4&lang=en, accessed 12 December 2011.

¹⁸² OP-CEDAW, *supra* note 180.

¹⁸³ *Ibid* at art. 4.

¹⁸⁴ *Ibid*.

¹⁸⁵ *Ibid*.

¹⁸⁶ *Ibid*.

¹⁸⁷ Cook and Cusack, *supra* note 46 at 142-143.

¹⁸⁸ Kerri L. Ritz 'Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of All Forms of Discrimination against Women' (2001-2002) 25:1 *Suffolk Transnational Law Review* 191 at 209.

must make the implementation of the Committee's recommendations mandatory, and that the Committee should have criminal jurisdiction over the violators of women's human rights.¹⁸⁹

Vaughn Lowe has expressed that, "if no consequences attach to [breaches of international law], we should question whether they are rules of law or statements of policy or aspiration."¹⁹⁰ While this is a valid point to a certain extent, I take issue with posing law, policy and aspiration as mutually exclusive concepts. A consideration that should be addressed, however, is that gender stereotyping may impede access to the complaints mechanism.¹⁹¹ It is not clear how the Committee intends to deal with the fact that the very stereotypes that they are attempting to alter may be an impediment to complaints being brought in the first place – if a woman is illiterate as a result of the discrimination she faces in her country, for example, then she may not be able to submit a communication to the Committee in the first place.

While there are limitations to the CEDAW Committee's ability to enforce its findings under the Optional Protocol, the importance of naming and shaming in international relations should not be minimized. As Cook and Cusack argue, "[t]he ability to eliminate a wrong is contingent on it first being "named," by which is meant that a particular experience has been identified and publicly acknowledged as a wrong in need of legal and other forms of redress and subsequent prevention."¹⁹² In addition, one of the greatest strengths of the Optional Protocol, irrespective of its perceived shortcomings, has been the production of invaluable jurisprudence on gender stereotyping and GBV. This jurisprudence provides, at the very least, persuasive value at the domestic level, and interprets the CEDAW Convention so as to provide guidance to States. The following section will provide an examination of complaints considered by the Committee under the Optional Protocol where gender stereotyping was at the forefront of the communication.

¹⁸⁹ *Ibid* at 213.

¹⁹⁰ Vaughn Lowe *International Law* (2007) at 119.

¹⁹¹ Cook and Cusack, *supra* note 46 at 143.

¹⁹² Cook and Cusack, *supra* note 46 at 39.

v. CEDAW Jurisprudence

Since the establishment of a complaints mechanism, CEDAW has received many communications from individuals, groups of individuals, and people representing the alleged victims. Many have been deemed inadmissible, so the focus of this section will be on cases which were considered admissible by the Committee. Due to its significance in the area of gender stereotyping and GBV, I will also provide some analysis of CEDAW's *Ciudad Juárez* inquiry,¹⁹³ although it was not based on a complaint but was rather examined under the Committee's inquiry procedure.

The CEDAW Committee has heard complaints alleging article 5 violations on many occasions, and, in each, violence was also an issue in the case. In *Fatma Yildirium v. Austria* (2005),¹⁹⁴ the author of the complaint was an organization acting on the behalf of an Austrian woman who was repeatedly harassed and physically assaulted by her husband, until he eventually killed her after she filed for divorce. Ms. Yildirium made repeated attempts to have the police intervene, and took every judicial option at her disposal to remove herself from the abusive situation she was in, but the authorities were nevertheless unable to protect her from being murdered. The authors of the complaint argued that,

the murder of Fatma Yildirium is one tragic example of the prevailing lack of seriousness with which violence against women is viewed by the public and by the Austrian authorities. The criminal justice system, particularly public prosecutors and judges, consider the issue a social or domestic problem, a minor or petty offence that happens in certain social classes. They do not apply criminal law to such violence because they do not take the danger seriously.¹⁹⁵

¹⁹³ Committee on the Elimination of Discrimination against Women 'Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico' (27 January 2005), available: <http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf>, accessed 14 December 2011 [*Ciudad Juarez Report*].

¹⁹⁴ Committee on the Elimination of All Forms of Discrimination against Women 'Communication No. 6/2005: Fatma Yildirium v. Austria' (1 October 2007), available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/39/D/6/2005&Lang=E>, accessed 14 December 2011.

¹⁹⁵ *Ibid* at ¶3.6.

This was a similar line of argument taken in the *Sahide Goekce v. Austria* (2005)¹⁹⁶ case, where the alleged victim was represented by the same organization that submitted Ms. Yildirium's complaint, and where the fact scenario was virtually identical. In both the *Goekce* and *Yildirium* cases, the Committee recommended that the State Party, "vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence."¹⁹⁷

In the most recent decision from the CEDAW Committee, Peru was found to be in violation of article 5 of the Convention on the basis that,

placing conditions on timely access to a medical treatment on which the exercise of the right to health, life and life of dignity depended by continuing an unwanted pregnancy resulted in discrimination based on the stereotype of imposing the reproductive function on [the complainant] above her welfare.¹⁹⁸

This complaint focused on a Peruvian girl who, at the age of 13, was sexually abused by a 34-year-old man. The abuse resulted in a pregnancy. Suffering from depression, L.C. attempted to commit suicide by jumping off a building, which resulted in her being paralysed from the neck down. While in hospital for these injuries, L.C. requested an abortion. In Peru, however, abortion on the grounds of rape or sexual abuse is not legally available, and a decision regarding L.C.'s request was repeatedly delayed. Eventually, at 16 weeks pregnant, L.C. spontaneously miscarried. The CEDAW Committee found that, "the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother."¹⁹⁹ Furthermore, the Committee recommended that the State Party take measures that include, "education and training programmes to encourage health

¹⁹⁶ Committee on the Elimination of All Forms of Discrimination against Women 'Communication No. 5/2005: Sahide Goekce v. Austria' (6 August 2007), available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/39/D/5/2005&Lang=E>, accessed 14 December 2011.

¹⁹⁷ *Ibid* at ¶12.3(b).

¹⁹⁸ Committee on the Elimination of All Forms of Discrimination against Women 'Communication No. 22/2009: L.C. v. Peru' (4 November 2011) at ¶3.3, available: http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf, accessed 14 December 2011.

¹⁹⁹ *Ibid* at ¶8.15.

providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence.”²⁰⁰ This represents an important decision because it illustrates yet another arena in which women are stereotyped to their detriment; by recommending that Peru educate its health professionals in order to alter their attitudes and behavior, the Committee is providing a means by which States Parties can comply with article 5 of the Convention in the hopes of eradicating discriminatory stereotypes of women.

The *A.T. v. Hungary*²⁰¹ and *Vertido v. Philippines*²⁰² decisions are of central importance to CEDAW’s jurisprudential legacy in contributing to the eradication of GBV by effecting compliance with article 5 of the Convention. In *A.T. v. Hungary*, the Committee considered the case of a woman who faced repeated abuse from her common-law husband, resulting in 10 medical certificates being issued since 1998 in connection with separate incidents of severe physical violence.²⁰³ Here, the Committee made the express link between gender stereotyping and GBV, finding that the “persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family [and the] traditional attitudes by which women are regarded as subordinate to men”²⁰⁴ contributed to experiences of GBV in Hungary.

While *A.T. v. Hungary* represents an important piece of jurisprudence in the context of GBV and gender stereotyping, some commentators believe that the Committee did not go far enough. In their recent book on gender stereotyping in international law, Rebecca Cook and Simone Cusack, note that “the Committee could have strengthened

²⁰⁰ *Ibid* at ¶12(b)(ii).

²⁰¹ Committee on the Elimination of All Forms of Discrimination against Women ‘Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Communication No.: 2/2003, Ms. A.T. v. Hungary’ (26 January 2005), available: http://www2.ohchr.org/english/law/docs/Case2_2003.pdf, accessed 14 December 2011 [A.T. v. Hungary].

²⁰² Committee on the Elimination of All Forms of Discrimination against Women ‘Communication No. 18/2008, Karen Tayag Vertido v. Philippines’ (22 September 2010), available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/46/D/18/2008&Lang=E>, accessed 14 December 2011 [Vertido].

²⁰³ *A.T. v. Hungary*, supra note 201.

²⁰⁴ *Ibid* at ¶9.4.

its analysis by naming the specific sex role stereotypes within the family.”²⁰⁵ Cook and Cusack suggest that stereotypes such as men being the head of household, the notion that women should be homemakers, wives and mothers, as well as men’s ‘proprietary interest’ in women should have been enumerated and discussed in order to bolster the Committee’s findings.²⁰⁶ The authors also advocate for the Committee to elucidate the contexts in which gender stereotypes in Hungary exist, such as within the family and in the criminal justice system. Cook and Cusack argue that,

since the Committee determined that gender stereotypes were both socially pervasive and persistent in Hungary, it could have described how stereotypes were integrated into social institution and meaning and how they facilitate the conditions for the social stratification and subordination of A.T., and Hungarian women in general.²⁰⁷

While the Committee could have been more specific in its findings, the significance of making an unambiguous link between GBV and gender stereotyping cannot be minimized.

A more recent decision from the CEDAW Committee’s complaints mechanism is the *Vertido*²⁰⁸ communication. On 29 March 1996, the author of the complaint, Ms. Karen Tayag Vertido, was raped by the President of the City Chamber she worked for. Ms. Vertido reported the rape within 24 hours of the incident taking place, and underwent a medical and legal examination. She filed a case, but her complaint was dismissed due to lack of probable cause. Ms. Vertido appealed the dismissal, and the case remained at the trial court level from 1997 to 2005. On 26 April 2005, the court issued its verdict – an acquittal. The basis of this decision was three-fold: firstly, the Judge found that it is easy to make an accusation of rape, but difficult to prove it; secondly, that “in view of the intrinsic nature of the crime of rape, in which only two people are usually involved, the testimony of the complainant must be scrutinized with extreme caution;”²⁰⁹ and thirdly, that the prosecution’s evidence must be persuasive on its own merits, not simply in

²⁰⁵ Cook and Cusack, *supra* note 46 at 157.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Vertido*, *supra* note 202.

²⁰⁹ As quoted in *Vertido*, *supra* note 202 at ¶2.9.

comparison to a weak defence.²¹⁰ Moreover, the Court seemed to use the fact that Ms. Vertigo was not a “timid woman who could be easily cowed” as evidence that the sex was consensual.²¹¹ In accordance with a Filipino Supreme Court ruling, the Court “concluded that should the author really have fought off the accused when she had regained consciousness, and when he was raping her, the accused would have been unable to proceed to the point of ejaculation, in particular bearing in mind that he was already in his sixties.”²¹²

A significant proportion of Ms. Vertigo’s complaint to the Committee was based on a violation of her rights under article 5 of the CEDAW Convention, and argued that the Court relied on gender-based myths and stereotypes in acquitting her rapist.²¹³ She enumerated seven myths or stereotypes that the Court relied on, and that constituted a violation of article 5: 1) that a rape victim must try to escape at every opportunity;²¹⁴ 2) that to be raped by means of intimidation, the victim must be timid or easily cowed;²¹⁵ 3) that to conclude that a rape occurred by means of threat, there must be clear evidence of a direct threat (here, Ms. Vertido argued that lack of consent should be the basis of determining whether or not a rape occurred, rather than focusing on whether there was an element of force involved);²¹⁶ 4) that the fact that the accused and victim were more than acquaintances and therefore the sex was consensual;²¹⁷ 5) that when a rape victim reacts to the assault by resisting the attack and also by cowering in submission because of fear, it is problematic – Ms. Vertido was deemed to have consented to the intercourse because she did not resist the advances of the accused and “she did not escape when

²¹⁰ *Ibid.*

²¹¹ *Ibid* at ¶3.5.5.

²¹² *Ibid.*

²¹³ *Ibid* at ¶3.5.

²¹⁴ *Ibid* at ¶3.5.1.

²¹⁵ *Ibid* at ¶3.5.2.

²¹⁶ *Ibid* at ¶3.5.3.

²¹⁷ *Ibid* at ¶3.5.4.

she appeared to have had so many opportunities to do so”;²¹⁸ 6) that a rape victim could not have resisted a sexual attack if the accused was able to proceed to ejaculation;²¹⁹ and 7) that it is unbelievable that a man in his sixties would be capable of rape.²²⁰ Moreover, Ms. Vertido argued that her case was not isolated, and that there were many other examples of trial court decision in rape cases that discriminated against women and perpetuated discriminatory beliefs about rape victims.²²¹

The Committee agreed with Ms. Vertido that her treatment by the Filipino justice system constituted a violation of article 5. The Committee found that,

it is clear from the judgement that the assessment of the credibility of the author’s version of events was influenced by a number of stereotypes, the author in this situation not having followed what was expected from a rational and “ideal victim” or what the judge considered to be the rational and ideal response of a woman in a rape situation [...].²²²

Moreover, the Committee linked gender stereotyping to the right to a fair trial, which can now be applied to a variety of different issues in cases.²²³ The Committee also went a step further than it did in the *A.T. v. Hungary* communication, and named the various stereotypes that exist concerning rape victims.²²⁴ This is important because it allows other courts and governments to identify more precisely what needs to be changed in their legislation and judicial system in order to comply with their international obligations. As Cusack and Cook argue, “[n]aming a stereotype is necessary in much the same way that a medical diagnosis is required before medical treatment can be applied.”²²⁵ The *Vertido* case is also significant because it is the first communication heard by the CEDAW Committee where discriminatory gender stereotyping and States Parties’

²¹⁸ *Ibid* at ¶3.5.5.

²¹⁹ *Ibid* at ¶3.5.6.

²²⁰ *Ibid* at ¶3.5.7.

²²¹ *Ibid* at ¶3.8.

²²² *Ibid* at ¶8.5.

²²³ Simone Cusack and Alexandra S.H. Timmer ‘Gender Stereotyping in Rape Cases: The CEDAW Committee’s Decision in *Vertido v. The Philippines*’ (2011) *Human Rights Law Review* at 2 (advance access copy) [Cusack and Timmer].

²²⁴ *Ibid* at 7.

²²⁵ As quoted in *ibid* at 9.

obligations to address wrongful attitudes and behaviours have been at the centre of the case.²²⁶ Some commentators have argued that the shortfall of the *Vertido* decision is that it did not go far enough in explaining and expanding upon ideas such as the role of the judiciary in perpetuating wrongful gender stereotypes, and in articulating the States Parties' obligation to address systemic judicial stereotyping.²²⁷ Nevertheless, when we compare the *Vertido* decision to the *A. T.* decision, there is a clear progression on the part of the Committee, which is encouraging.

The Committee also relied on its inquiry process to examine the issue of gender stereotyping when it reported on the incidents in Ciudad Juárez, Mexico, in 2005.²²⁸ The situation in Ciudad Juárez also resulted in a number of cases being brought to the Inter-American Commission and the Inter-American Court of Human Rights,²²⁹ but the focus of this analysis will be on CEDAW's inquiry into the matter. Between 1993 and 2003, up to 400 women were estimated to have been murdered in Ciudad Juárez, a Mexican city on the border with the United States.²³⁰ Of these 400 women, one third of the victims were reported to have been sexually assaulted; in addition, 4500 women have been reported missing in the same period.²³¹ Many theories have been posited as to why these murders, disappearances and assaults have occurred – from police corruption to human trafficking to domestic violence – but consensus is that the ultimate cause of these incidents was GBV.²³² One report found that, “the gender of the victim seems to have been a significant factor in the crime, influencing the motive, the context, the type of violence suffered by the woman and the way in which the authorities responded to it,”²³³ and that it is “all of the unstated, attached constructions and

²²⁶ Cusack and Timmer, *supra* note 223 at 8.

²²⁷ *Ibid* at 10.

²²⁸ *Ciudad Juarez Report*, *supra* note 193.

²²⁹ See Cook and Cusack, *supra* note 46 at 165.

²³⁰ *Ibid*.

²³¹ *Ibid*.

²³² *Ibid*.

²³³ As quoted in *ibid*.

assumptions about a woman's value, worth, and respectability that makes 'being a woman' dangerous in Juárez."²³⁴ The Committee writes,

within this context, a culture of impunity has taken root which facilitates and encourages terrible violations of human rights. Violence against women has also taken root, and has developed specific characteristics marked by hatred and misogyny.²³⁵

The Human Rights Council further commented on the situation in Ciudad Juárez, saying, "the arrogant behaviour and obvious indifference shown by some state officials in regard to these cases leave the impression that many of the crimes were deliberately never investigated for the sole reason that the victims were 'only' young girls with no particular social status and who therefore were regarded as expendable."²³⁶

In its report, the Committee found Mexico in violation of articles 1-3, 5, 6 and 15 of the Convention, and that it had offended DEVAW as well as CEDAW General Recommendation 19.²³⁷ While Mexico had made some attempts at public information campaigns aimed at preventing GBV, the Committee found that even these "have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women's dignity, but on making potential victims responsible for their own protection by maintaining traditional cultural stereotypes."²³⁸ Despite highlighting the point that the Mexican authorities' initiatives were misplaced and insufficient, the Committee did not elaborate fully on States' obligations vis-à-vis article 5 of the Convention.²³⁹ Moreover, some scholars have pointed out that the Committee failed to name "the compound stereotype that poor, young, migrant women are inferior to men and other subgroups of women and, therefore, once their value has been used up, they can be discarded like waste."²⁴⁰ While the report may not have

²³⁴ *Ibid.*

²³⁵ *Ciudad Juarez Report*, supra note 193, at ¶26.

²³⁶ As quoted in Cook and Cusack, supra note 46 at 168.

²³⁷ As cited in *ibid* at 166.

²³⁸ *Ciudad Juarez Report*, supra note 193 at ¶57.

²³⁹ Cook and Cusack, supra note 46 at 167.

²⁴⁰ *Ibid.*

seized every opportunity at its disposal to expand upon important legal obligations and ideas, it is nevertheless very thorough in its documentation of the events occurring in Ciudad Juárez, and in expressly linking gender stereotyping and GBV. Moreover, it expounds the fact that States' have a responsibility not to simply *have* information campaigns on the issues of GBV and gender stereotyping, but that these attempts to alter wrongful behaviours and attitudes must have the potential to be effective.

What is clear from the CEDAW Committee's jurisprudential record is that States have both positive and negative duties in regards to article 5 of the Convention, as well as in regards to GBV – States must alter the attitudes and behaviours of civil servants and citizens through education and awareness initiatives (as was found in the *L.C. v. Peru* complaint), and must also refrain from entrenching discriminatory gender stereotypes (as was found in the *Vertido* complaint). States Parties must both protect and promote women's human rights in all sectors and to the greatest of their abilities. The following chapter will consider in greater detail States' obligations at both the international and regional levels, particularly in regards to how this applies to gender stereotyping and GBV.

IX. STATE RESPONSIBILITY

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

– Vienna Convention on the Law of Treaties, 1969²⁴¹

State responsibility at the international and regional levels has two components: firstly, the substantive obligations of States and, secondly, the standard to which States must meet these obligations. In the latter aspect, state responsibility centres on the notion of due diligence. This section will focus primarily on the concept of due diligence and how it has been interpreted at the international and regional levels. Before examining the standard of due diligence, however, we will briefly consider the substantive obligations of states under international law.

²⁴¹ Vienna Convention on the Law of Treaties (1969) at art. 26, available: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, accessed 19 December 2011

If an instrument is binding, the substantive obligations of States are the provisions in the treaties to which countries are a party to. Binding instruments are, essentially, treaties, and operate under the doctrine of *pacta sunt servanda*. The Vienna Convention on the Law of Treaties stipulates that, “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”²⁴² Non-binding instruments include declarations, action plans, and the like, and are non-enforceable in a legal sense. Nevertheless, they are important indicators of the direction states are taking in their interpretation of various treaties. Another important concept, particularly when it comes to non-discrimination, is the international legal doctrine of *jus cogens*. *Jus cogens* obligations are peremptory norms that, through state practice coupled with *opinio juris*, supersede any treaty or other agreement.²⁴³ Many have argued that non-discrimination is a *jus cogens* norm and therefore must be respected by all nations, irrespective of whether or not they are a State Party to a treaty.²⁴⁴ This is significant because if we conceptualize GBV as a form of discrimination, then all states would be bound by an obligation to eradicate GBV. This is a broad obligation, however, and would not include an obligation to alter stereotypes specifically.

If a State is a Party to a binding instrument, such as the CEDAW Convention, then it must respect every clause within that text, unless it has entered a valid reservation to a provision. This seems straight-forward enough, but proves difficult in practice. While negative obligations which arise out of treaties are relatively easy to assess in terms of whether or not a State is complying with its obligations, positive obligations are much more difficult to interpret. In the case of altering stereotypes and behaviours that are discriminatory against women, there is not necessarily a quantifiable goal to work towards. Stereotypes take different forms in different countries, the altering of which can be achieved in different ways. It therefore makes it challenging for treaty bodies to determine, when a violation has been identified, whether or not a State can be held legally responsible for the violation. In the case of GBV, for example, many of the

²⁴² *Ibid.*

²⁴³ *Ibid* at art. 53.

²⁴⁴ See, for e.g., the discussion in Andrea Bianchi ‘Human Rights and the Magic of *Jus Cogens*’ (2008) 19:3 *EJIL* 491 at 506.

perpetrators of the acts in question are private actors, over whom the state may have no direct control. The standard for state responsibility has been borne out of the instruments themselves, as well as having been interpreted through jurisprudence at the regional level in particular, and has been set at the threshold of due diligence.

DEVAW stipulates that States must “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”²⁴⁵ Additionally, the due diligence standard must be exercised in good faith.²⁴⁶ This standard can be applied in regards to States’ obligations to prevent, protect, and provide compensation for the victims of GBV, as well as prosecuting the offenders.²⁴⁷ The former Special Rapporteur on VAW asserted in her 2006 report on the due diligence standard that the principle of due diligence is a rule of customary international law, due to the copious amounts of *opino juris* and state practice she outlines.²⁴⁸

The due diligence standard, itself rather vague, has been interpreted in a more focused fashion by the regional human rights bodies. In the *Velásquez* case, a watershed decision on the standard of due diligence, the Inter-American Court of Human Rights found that,

[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.²⁴⁹

This means that the due diligence standard is, like the principle of non-discrimination, a peremptory norm under international law and must be respected by every State. The

²⁴⁵ DEVAW, supra note 32 at art. 4(c).

²⁴⁶ Inter-American Commission on Human Rights ‘*Velásquez Rodríguez v. Honduras*, 29 July 1988, Series C: Decisions and Judgments, No. 04,’ as quoted in Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk ‘The Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (20 January 2006), available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>, accessed 14 October 2011 [Due Diligence Report].

²⁴⁷ *Ibid* at ¶103.

²⁴⁸ *Ibid* at ¶ 29.

²⁴⁹ Due Diligence Report, supra note 246.

ECtHR has recently advanced the due diligence standard in the context of intimate partner violence in its *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey* decisions. The Court named various measures through which a State can be considered to have the due diligence standard in order to “give practical substance to judging a state’s adherence to the principles of protection, investigation and prosecution.”²⁵⁰ These measures include judicial mechanisms for obtaining protection measures, and the availability of prosecution in the public interest for all crimes of domestic violence. In the *Opuz* decision, the Court also held that it would recognize a state’s failure to exercise due diligence as GBV.²⁵¹ In other words, while the State may not have been the direct agent perpetrating violence, it is vicariously liable for a private actor’s actions if it does not meet the due diligence standard.

The standard of care is not one of omniscience or omnipotence, but rather one that requires States to fulfill their obligations to the best of their abilities. This is important due to the cyclical and multi-sectoral nature of GBV. As Prof. Lisa Davis expresses,

[w]hen States fail to bring perpetrators to justice, they implicitly condone such violence, giving rise to impunity that facilitates further abuses and normalizes GBV. This lack of accountability leads to further endangerment for women. Furthermore, women begin to lose faith in the justice system as prevailing gender inequalities are reinforced. The State must act with due diligence in preventing violence against women and providing justice for women who have already suffered violence by implementing effective measures to ensure thorough and timely investigation, prosecution, and punishment, as well as by providing access to redress for victims.²⁵²

Despite the preeminent importance, therefore, of meeting the due diligence standard and fulfilling States’ obligations to comply with the treaties they are a party to, all States have fallen short of their responsibilities in terms of GBV and of altering discriminatory stereotypes.

²⁵⁰ Lee Hasselbacher ‘State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International legal Minimums of Protection’ (2009) 8 *Nw. U. J. Int’l Hum. Rts.* 190 at 203.

²⁵¹ *Ibid* at 203.

²⁵² *Post-Earthquake Rape*, supra note 33 at 884.

X. CONCLUSION

The development and evolution of international and regional normative frameworks that acknowledge, identify, and address stereotyping as an underlying cause of GBV has been an important step forward in the universal realization of human rights. No State, no matter how powerful, wealthy or prominent, is immune to GBV, and no State should forget this. Many States, however, continue to focus too much attention on the overt manifestation of underlying, systemic, and societal misperceptions; while prosecuting the perpetrators of GBV, for example, is extremely important, more attention needs to be paid to why some men feel that it is to some extent reasonable to violate women's human rights. Stereotyped gender roles based on antiquated notions of femininity and masculinity perpetuate cycles of violence, which in turn impede women's ability to realize their human rights. Altering these stereotypes should therefore remain a priority in States' efforts to eradicate GBV.

Something that is not discussed very frequently is that the stereotypes that perpetuate GBV are not merely those ascribed to women, but that the stereotypes associated with men also buttress the seemingly interminable nature of GBV. In order to truly eradicate GBV and alter discriminatory stereotypes and behaviours, I posit that male stereotypes also need to be addressed. As Justice Mokgoro explained in the *Hugo* decision, the stereotype of women as caregivers and men as not being as actively involved in raising children, prevented women from "forging identities for themselves independent of their roles as wives and mothers [...] and denied fathers the opportunity to participate in child rearing."²⁵³ The goal should be equality and the ability to choose one's profession, develop a personality, and exude qualities without fear of being perceived as being 'unfemale' or 'unmale'. In other words, a woman who chooses not to get married or have children should not be seen as less womanly than a woman who devotes her life to raising her children, just as a man who is not particularly assertive or aggressive should not be seen as any less manly than his counterparts.

²⁵³ Cook and Cusack, *supra* note 46 at 65.

Until GBV is eradicated, women will not be able to enjoy the human rights to which they are entitled by virtue of their humanity. The eradication of GBV must include both top-down and bottom-up approaches, with governments working to enforce appropriate legislation at the domestic level, and private citizens altering their attitudes and behaviours in the workplace, the community, and at home. Stereotypes are not concepts which will disappear or morph overnight; it will undoubtedly be a lengthy process. Fortunately, many of the normative frameworks which exist at the regional and international levels have recognized the significant role stereotyping plays in the perpetuation of GBV. The issue of implementation, however, remains challenging. Stereotypes can be difficult to identify, which is why, as Cook and Cusack have pointed out, the use of jurisprudence to name specific stereotypes that undermine efforts to eradicate GBV is so important. The ultimate objective for States, treaty bodies, and ordinary citizens must be to live in a world where a woman being subject to violence for the simple fact that she is a woman is not seen as a private matter that can be swept under the rug, but is seen as a despicable, reproachable and reprehensible act of discrimination. We are not there yet by any stretch of the imagination, but with a strong normative framework in place, an increase in political will, and receptiveness from society more generally, perhaps more and more women will know what it is like to live in societies, communities, and families where they are not subject to violence, and where their worth is not based on motherhood and wifedom, but rather on the equal respect that all humans deserve.

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