

**SEXISM IN ADVERTISING:
INTERNATIONAL FRAMEWORK
UNDER THE CONVENTION ON THE
ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST
WOMEN**

Legal Memorandum

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Executive Summary

This memorandum analyzes the relevant provisions of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) regarding advertisements that contain negative gender stereotypes or sexist content. The core provisions of CEDAW for the purposes of this research are Article 2 regarding policy measures and Article 5 on sex role stereotyping and prejudice. The memorandum analyzes the way in which the CEDAW Committee, responsible for monitoring the Convention's implementation, has interpreted the Convention, and how it has dealt with cases of sexism in advertising. This framework creates several obligations for states parties relevant for addressing sexism in advertising.

Reading Article 2 in conjunction with Article 5 shows that stereotyped views and attitudes of women can amount to discrimination against women. Under Article 2, states parties commit to eliminate and condemn all forms of discrimination against women. While states parties have to refrain from direct or indirect discrimination, they also have a positive obligation to ensure gender equality. Under Article 5(a), states parties have an obligation to modify social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping. The Committee is primarily concerned with harmful gender stereotypes, examples of which include depictions of women in traditional roles; women as subordinate to men; and women as sexual objects.

The CEDAW Committee recognizes the media's important role in constructing and reproducing a cultural model for the roles of men and women. States parties to CEDAW are obliged to take effective measures to ensure that both public and private media do not promote harmful gender stereotypes or discriminate against women. In various Concluding Observations, the CEDAW Committee requests states parties to prevent the occurrence of gender stereotypes in the media and advertising. Specifically, the Committee has called upon states to implement regulations or policies to facilitate and foster positive portrayals of women.

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Statement of Purpose

The purpose of this memorandum is to set out the relevant provisions of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) regarding advertisements that contain gender stereotypes or sexist content. The memorandum analyzes these provisions along with the views of the CEDAW Committee. The purpose is to identify the obligations on states parties regarding regulating sexism in advertising. The information can be used to assess whether specific advertisements may be contrary to the standards established by CEDAW, and may be useful for those seeking to make a complaint regarding certain advertisements. The information can also be used to encourage public and private actors to increase their compliance with CEDAW standards on sexism and stereotyping in advertising.

Introduction

The Netherlands: Sexism in Advertising and CEDAW

Several companies have recently employed media campaigns in the Netherlands that could be regarded as sexist or containing negative gender stereotypes. Examples include ‘Shameless’ by men’s clothing company SuitSupply, advertisements by the toy store Bart Smit, and advertisements for Amsterdam’s ‘Museum Night’. These advertisements led to complaints being lodged by the public with the Dutch advertisement monitoring body (*Reclame Code Commissie – RCC*). In relation to the SuitSupply ads, the RCC dismissed all of the 114 complaints.¹ Given this outcome, questions have been raised in the Netherlands about the adequacy of current legislation, policy and practice of the regulatory body regarding such advertisements. Information regarding international law obligations may be useful in challenging such advertisements in the Netherlands and potentially reforming the system.

This memorandum sets out the relevant legal obligations on states parties to CEDAW regarding sexism in advertisements. The Netherlands is bound by this Convention as it has ratified CEDAW and its Optional

¹ This memorandum does not address the legal or regulatory framework in the Netherlands as this information has been covered in separate memoranda provided to the Public Interest Litigation Project by other researchers.

Protocol without any reservation.² In conjunction with other obligations under the CEDAW framework, the Netherlands has agreed to adopt effective measures that ensure full equality between men and women.³ This is in addition to the obligations on the Netherlands stemming from their regional European commitments, which are addressed in a separate memorandum.

Under Article 18(1)(b) of CEDAW, states parties are required to submit periodic reports every four years that detail the measures taken to implement the provisions of the Convention. Since ratifying the CEDAW, the Netherlands has submitted five periodic reports, the most recent in 2008. Although substantial reference is made to stereotyping generally throughout these reports,⁴ few specific references are made to sexism and stereotyping in advertising.⁵ The only specific reference is in the Netherlands' initial report, which refers to efforts to change the images and roles of women depicted by the media.⁶ Importantly, the Appendix to the Fourth Periodical Report contains a study concluding that the implementation of Article 5(a) CEDAW requires states parties to "conduct an active policy to ban stereotyped images of men and women, for instance in the media and in education".⁷

² CEDAW ratification, 23 July 1991. See, Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at*: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf>;

Optional Protocol ratification, 22 May 2002. See, Convention on the Elimination of All Forms of Discrimination Against Women, art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at*:

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8-b.en.pdf>.

³ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), Preamble.

⁴ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations Against Women, initial periodic report, CEDAW/C/Net/1, 7 April 1993, paras, *inter alia*, 145, 300, 310, 319, 370, 380, (Netherlands); second periodic report, CEDAW/C/Net/2, 15 March 1999, pages, *inter alia*, 5, 10, 16, 17, 29, 55, 60 (Netherlands); fourth periodic report, CEDAW/C/NLD/4, 10 February 2005, pages 28, 82-84 (Netherlands); fifth periodic report, CEDAW/C/NLD/5, 24 November 2008, pages 32, 44, 81, 82 (Netherlands).

⁵ Similarly, the CEDAW Committee has not addressed specifically sexist advertising in its concluding observations on the reports of the Netherlands.

⁶ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations Against Women, initial periodic report, CEDAW/C/Net/1, 7 April 1993, para 378 (Netherlands).

⁷ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations Against Women, fourth periodic report, CEDAW/C/NLD/4, 10 February 2005, Appendix I pages 82-84.

CEDAW and Sexism in Advertising

The core provisions of CEDAW for the purposes of this memorandum are Article 2 regarding policy measures, and Article 5 on sex role stereotyping and prejudice. These articles are analyzed below, with a focus on the implications for media and advertising. Also addressed is the work of the CEDAW Committee. The Committee was created by the Convention and is responsible for monitoring its implementation in states parties. While the text of CEDAW does not clarify the distinction between sex and gender, the Committee distinguished both terms in General Recommendation N° 28. According to the Committee ‘sex’ refers to biological differences between men and women, while ‘gender’ refers to socially constructed identities, attributes and roles for women and men. The latter contributes to hierarchical relationships between women and men and to the distribution of power and rights that favor men and disadvantage women.⁸

States parties that have also ratified the Optional Protocol accept the competence of the CEDAW Committee to receive and consider communications.⁹ According to Article 2 of the Optional Protocol, communications may be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set out in the CEDAW. Article 4 stipulates the admissibility requirements, which include, *inter alia*, that the complainant has prior to submitting a communication exhausted all domestic remedies. However, there have been no communications submitted to the CEDAW Committee regarding sexism in advertising.

The memorandum first elaborates upon Article 5 of CEDAW and harmful gender stereotyping, providing examples and measures for states to implement to combat gender stereotypes in the media and advertising. Subsequently, the memorandum analyzes the link between gender stereotyping and sex-discrimination, with a focus on Article 2 of CEDAW. This part also discusses the obligations on states regarding actions by both public and private actors. Finally, this memorandum considers reform measures that could be taken in the Netherlands to work towards eliminating sexism and gender stereotyping, addressing both the Dutch Government and the RCC.

⁸ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 5, Dec. 16, 2010, U.N. Doc. CEDAW/C/GC/28.

⁹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, arts. 2-8, Oct. 6, 1999, 2131 U.N.T.S. 13; 19 I.L.M. 33 (1980)

Harmful Gender Stereotypes

Article 5 of CEDAW addresses the social and cultural barriers that hinder women's full enjoyment of their human rights.¹⁰ Article 5(a) specifically raises the issue of stereotyped roles based on the idea of inferiority or superiority of either of the sexes.¹¹ Specifically, Article 5(a) imposes upon states parties the obligation to modify social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping.¹² The CEDAW Committee has explained that states parties have an obligation in particular to modify “*harmful gender stereotypes.*”¹³

In general, a stereotype is harmful when it limits women or men's capacity to develop their abilities, pursue their desired professions, or make choices about their lives and life plans. Both negative and seemingly positive or benign stereotypes can be harmful. For example, the stereotype that women are more nurturing than men is often the reason why the responsibility of bringing up children so frequently falls exclusively on women.¹⁴ The Committee has noted that the persistence of social and cultural attitudes hinders the attainment of equality between women and men in practice.¹⁵

This part below discusses the types of harmful gender stereotypes identified by the Committee. Some of the negative stereotypes identified by the Committee fall under the heading of “traditional roles”. Examples include the depiction of women as only being suited to role of wife or mother, and stereotypes of women working only in the home or in service industries such as nursing. “Traditional roles” as a negative stereotype

¹⁰ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19 on Violence against Women, para. 11, 11th session, 1992, U.N. Doc. CEDAW/C/GC/19.

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a) Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

¹² Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a) Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

¹³ UN Committee on the Elimination of Discrimination against Women, Communication N° 31/2011, *S.V.P. v. Bulgaria*, para. 9.6, UN Doc. CEDAW/C/53/D/31/2011, 24 November 2012 [emphasis added].

¹⁴ Office of the UN High Commissioner for Human Rights (OHCHR), *Gender stereotypes and Stereotyping and women's rights*, (Sept. 2014), available at http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Gender_stereotyping.pdf. See also OHCHR, *Gender stereotypes/stereotyping*, available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>. See also OHCHR, *Gender Stereotyping as a Human Rights Violation*, 18 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>

¹⁵ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19 on Violence against Women, 11th session, para. 24(e), (f), 1992, U.N. Doc. CEDAW/C/GC/19.

also include the portrayal of women as subordinate to men.¹⁶ Other harmful stereotypes include “the idea of an exclusively male head of household,”¹⁷ “role of [the] man as the breadwinner,”¹⁸ and depictions of women as sexual objects rather than individuals.¹⁹

Women as Mothers, Caregivers, and Homemakers

The CEDAW Committee has expressed concern about the cultural promotion of motherhood and family roles for women,²⁰ rather than conceiving of them as individuals and independent actors in the public sphere.²¹ This concern is also due to the fact that the reinforcement of the traditional, stereotyped view of women as mothers can negate the father’s participation in childcare.²² Therefore, it is crucial to incorporate gender in all discussions of equality.²³

¹⁶ Elizabeth Sepper, *Confronting the ‘Sacred and Unchangeable’: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty*, 30 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 585, 608 (2008).

¹⁷ Elizabeth Sepper, *Confronting the ‘Sacred and Unchangeable’: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty*, 30 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 585, 608 (2008); See also UN Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, para. 79, 56th Session, Supplement N° 38, A/56/38, Part II, (Singapore) available at <http://daccessdds.un.org/doc/UNDOC/GEN/N01/534/56/PDF/N0153456.pdf>. (Regarding Singapore: “[the Committee] expressed concern that the concept of Asian values regarding the family, including that of the husband having the legal status of head of household, might be interpreted so as to perpetuate stereotyped gender roles in the family and reinforce discrimination against women”).

¹⁸ UN Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, para. 120, 54th Session, Supplement N° 38, U.N. Doc. A/54/38/Rev.1, Part I (Kyrgyzstan), available at <http://www2.ohchr.org/English/bodies/cedaw/docs/A.54.38.Rev.1.pdf>. (The Committee expressed its concern over the prevalence of patriarchal culture and continuing emphasis on traditional gender roles in Kyrgyzstan).

¹⁹ See UN Committee on the Elimination of Discrimination against Women, 32nd Session, Feb. 15, 2005, Concluding Comments, UN Doc. CEDAW/C/ITA/CC/4-5, para. 25 (Italy). (“The Committee is also deeply concerned about the portrayal of women in the media and in advertising as sex objects and in stereotypical roles.”). See also UN Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 56th Session, Supplement N° 38, A/56/38, Part I, para. 304 (Finland). (Regarding Finland, encouraging “a positive change of atmosphere regarding sex phone lines as they run counter to the efforts being made to portray women positively, and not as ‘sex objects’, in the media”).

²⁰ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 74, General Assembly Official Records, 53th Session, Supplement N° 38, U.N. Doc. A/53/38/Rev.1, Part II (Slovakia)

²¹ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 184, General Assembly Official Records, 53th Session, Supplement N° 38, A/53/38/Rev.1, Part I (Czech Republic)

²² UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 74, General Assembly Official Records, 53th Session, Supplement N° 38, A/53/38/Rev.1, Part I (Slovakia)

²³ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, para. 106, 53th Session, Supplement N° 38, A/53/38/Rev.1, Part I (Croatia)

In its 2005 Concluding Observations on the Democratic People's Republic of Korea, the Committee highlighted the manner in which gender stereotypes – especially sex-role stereotypes relating to marriage and family relations – have undermined women's ability to enjoy an adequate standard of living. The Committee's concerns included the unequal access to food and housing, as well as women's increased vulnerability to poverty.²⁴ The Committee expressed its concern at how stereotyping women as caregivers and homemakers limits them to areas of life that are suitable to their *perceived* characteristics.²⁵ According to the Committee, this may prevent women from accessing rights and entitlements on an equal footing with men. Also, it may make women dependent upon men/husbands/family for housing, food etc.²⁶

Further, the Committee has noted that over-protective measures for pregnancy and motherhood increase the cultural glorification of women's roles as mothers²⁷, and can restrict women's employment opportunities and choices.²⁸ The Committee has expressed concern that a gender stereotype that considers a woman's exercise of her reproductive capacity as a duty (rather than a right) excludes and restricts women from receiving certain medical services.²⁹ As a result, this stereotype places women in an unequal position compared to men with respect to the enjoyment of their human rights.³⁰ Therefore, the Committee considers that prioritizing the reproductive function of women above their welfare constitutes a violation of Article 5 CEDAW.³¹

²⁴ OHCHR, *Gender Stereotyping as a Human Rights Violation*, 49 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>.

²⁵ OHCHR, *Gender Stereotyping as a Human Rights Violation*, 49 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>. See also, UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Democratic People's Republic of Korea, UN Doc. CEDAW/C/PRK/CO/1, (2005), para. 35.

²⁶ UN Committee on the Elimination of Discrimination against Women, 33rd Session, 22 July 2005, Concluding Comments, UN Doc. CEDAW/C/PRK/CO/1, para. 35 (Democratic People's Republic of Korea)

²⁷ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 53th Session, Supplement N° 38, A/53/38/Rev.1, Part I, para. 196 (Czech Republic)

²⁸ UN Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 52nd Session, Supplement N° 38, A/52/38/Rev.1, Part II, para 58 (Armenia)

²⁹ UN Committee on the Elimination of Discrimination Against Women, Communication N° 22/2009, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, 25 November 2011, para. 7.7

³⁰ UN Committee on the Elimination of Discrimination Against Women, Communication N° 22/2009, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, 25 November 2011, para. 7.12

³¹ UN Committee on the Elimination of Discrimination Against Women, Communication N° 22/2009, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, 25 November 2011, para. 3.3, 8.15

Finally, UN human rights mechanisms have concluded that the same stereotypes that undermine women's rights within marriage and family relations – sex-role stereotypes of women as caregivers and homemakers and of men as breadwinners and heads of households – also undermine women's rights in political and public life.³² For instance, in one of its General Recommendations, the Committee held that as a result of stereotyping, women participating in politics are confined to issues such as the environment, children and health, and are not involved in fields such as finance, budgetary control, or conflict resolution.³³

Women as Subordinate to Men

In its General Recommendation N° 19, the CEDAW Committee explained that traditional attitudes conceiving of women as subordinate to men can lead to violence or coercion.³⁴ According to the Committee, such attitudes have the potential to promote pornography and the representation of women as sexual objects rather than as individuals, which contributes to gender-based violence.³⁵ Thus, harmful gender stereotypes that portray women as subordinate to men are one of the root causes of gender-based violence against women.

Traditional attitudes that consider women as subordinate to men also impede the full implementation of the CEDAW and undermine women's social status. In addition, these attitudes may also lead to women holding disadvantaged positions in a number of areas, such as education, employment, health, participation in decision-making,³⁶ and their right to a fair trial.³⁷ For example, in the area of education, girls can receive a lesser education if parents believe that the most important duty for women is housework and pleasing their husbands.³⁸

³² OHCHR, *Gender Stereotyping as a Human Rights Violation*, 57 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>

³³ UN Committee on the Elimination of Discrimination against Women, General Recommendation N° 23 on Article 7 Political and Public Life, 16th Session, 1997, para. 12.

³⁴ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19 on Violence against Women, 11th Session, UN Doc. HRI/GEN/1/Rev.7, para. 11.

³⁵ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19 on Violence against Women, 11th Session, UN Doc. HRI/GEN/1/Rev.7, para. 12.

³⁶ UN Committee on the Elimination of Discrimination Against Women, 32nd Session, 15 February 2005, Concluding Comments, UN Doc. CEDAW/C/TUR/CC/4-5, para. 29 (Turkey); Concluding Comments, UN Doc. CEDAW/C/PHI/CO/6, 36th Session, 25 August 2006, para. 17 (Philippines)

³⁷ UN Committee on the Elimination of Discrimination Against Women, Communication N° 18/2008, *Karen Tayag Vertido v. Philippines*, CEDAW/C/46/D/18/2008, 1 September 2010, para. 8.4

³⁸ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined initial, second, and third periodic reports, CEDAW/C/KHM/1-3, 11 February 2004, para. 139 (Cambodia)

Combating Stereotypes in the Media

Pursuant to Article 5(a) CEDAW, the Committee is concerned with the portrayal of women in stereotypical roles in the media and advertising.³⁹ In its 2005 Concluding Observations on Ireland, the Committee stressed the important role of the media in regard to cultural change.⁴⁰ The way mass media represents women and treats gender issues has a lasting influence on the image of women in the mind of the public.⁴¹ Thus, the media plays an important role in constructing and reproducing a referential cultural model for the roles of men and women.⁴² Throughout its country reports, the Committee has both expressed concern at the stereotypical images of women in the media and advertising,⁴³ and welcomed state efforts to eliminate such images.⁴⁴

In its 1997 Concluding Observations on Slovenia, the CEDAW Committee commended the adoption of the Slovene Advertising Code.⁴⁵ This self-regulatory mechanism provided among other things that advertising may not contradict the self-evident equality between the sexes, and neither may it present men, women or children in an insulting or degrading way.⁴⁶ Further, in its 2014 Concluding Observations on

³⁹ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, 32nd Session, Supplement N° 38, A/60/38, Part I, para. 322 (Italy)

⁴⁰ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, 32nd Session, Supplement N° 38, A/60/38, Part I, para. 383 (Ireland)

⁴¹ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined initial and second periodic reports, CEDAW/C/CHE/1-2, 8 July 2002, para.133 (Switzerland)

⁴² UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Second periodic reports, CEDAW/C/ITA/2, 1 November 1996, p. 54 (Italy)

⁴³ See for example: Committee on the Elimination of Discrimination against Women, Report of the Committee against the Discrimination against Women, pg. 38, G.A.O.R. 26th Session, U.N. Doc. A/57/38 (Jan. 14 – Feb. 1, 2002) (Portugal); and Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 80, G.A.O.R. 23rd Session, U.N. Doc. A/55/38 (June 12-30, 2000) (Romania).

⁴⁴ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 52nd Session, Supplement N° 38, A/52/38/Rev.1, Part I, para. 93 (Slovenia); UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/7-8, 14 November 2014, para. 16

⁴⁵ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 52nd Session, Supplement N° 38, A/52/38/Rev.1, Part I, para. 93 (Slovenia)

⁴⁶ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of

Venezuela, the Committee acknowledged the state's legislative efforts to address gender stereotypes by establishing an agency to monitor sexist or discriminatory content in the media.⁴⁷ However, the Committee found that the measures were not comprehensive enough to eliminate gender stereotypes in all spheres.⁴⁸

In its 2003 Concluding Observations on Brazil, the Committee recommended that Brazil develop policies to eliminate harmful gender stereotypes related to women's traditional roles in the family, workplace, and society in general.⁴⁹ Certain advertisements in Brazil portrayed women as a commodity or sex object in order to market products targeting men, such as beer, cars, etc.⁵⁰ Moreover, media entertainment shows portrayed women in a similar manner and maintain myths related to sexual and domestic violence.⁵¹ As a result, the Committee recommended that Brazil encourage the media to project positive images of women, and the equal status and responsibilities of women and men in society.⁵²

In general, states parties under Article 5(a) are obliged to take effective measures to ensure that the media promote respect for women.⁵³ This obligation entails monitoring the portrayal of women in the media, and encouraging the elimination of images of women as sexual objects in

Discriminations against Women, Second periodic reports, CEDAW/C/SVN/2, 26 April 1999, p. 32 (Slovenia)

⁴⁷ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/7-8, 14 November 2014, para. 16

⁴⁸ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/7-8, 14 November 2014, para. 17(f)

⁴⁹ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 58th Session, Supplement N° 38, A/58/38, Part II, para. 109 (Brazil).

⁵⁰ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined initial, second, third, fourth and fifth periodic reports, CEDAW/C/BRA/1-5, 7 November 2002, p. 86 (Brazil)

⁵¹ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined initial, second, third, fourth and fifth periodic reports, CEDAW/C/BRA/1-5, 7 November 2002, p. 86 (Brazil). The Committee discusses several myths related to sexual violence in the following case: UN Committee on the Elimination of Discrimination Against Women, Communication N° 18/2008, *Karen Tayag Vertido v. Philippines*, CEDAW/C/46/D/18/2008, 1 September 2010, para. 3.5.1-3.5.8.

⁵² UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 58th Session, Supplement N° 38, A/58/38, Part I, para. 115 (Switzerland), para. 210 (Kenya), para. 412 (Norway); Part II, para. 109 (Brazil), para. 167 (Morocco), para. 270 (France), para. 360 (Japan)

⁵³ UN Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19 on Violence against Women, 11th session, 1992, CEDAW/C/GC/19, para. 24 (d)

media and advertisements.⁵⁴ There are various ways for states to comply with this obligation. For example, states parties may enact directives to prevent the use of degrading female stereotypes in advertising;⁵⁵ issue recommendations to raise awareness on the gender perspective;⁵⁶ and conduct surveys to highlight cultural patterns.⁵⁷ CEDAW requires the recognition of the multiple roles, activities, and contributions that women possess. These include their roles in the community and family,⁵⁸ distinct from the important role of mother and wife.⁵⁹

Conclusion: Harmful Gender Stereotypes

Article 5 CEDAW addresses the social and cultural barriers that hinder women's full enjoyment of their human rights – specifically referring to stereotyped gender roles. Article 5(a) obliges states parties to modify social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping. This section of the memorandum discussed the harmful gender stereotypes identified by the CEDAW Committee. This included negative stereotypes relating to “traditional roles” such as the depiction of women as only being suited to role of wife/mother, and stereotypes of women working only in the home or in service industries. Other harmful stereotypes include women in positions of subordination to men, and depictions of women as sexual objects.⁶⁰

⁵⁴ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/7-8, 14 November 2014, para. 17 (f)

⁵⁵ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined initial and second periodic reports, CEDAW/C/CHE/1-2, 8 July 2002, para.133 (Switzerland)

⁵⁶ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Combined seventh and eighth periodic reports, CEDAW/C/VEN/7-8, 7 January 2013, para. 62 (Venezuela)

⁵⁷ UN Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discriminations against Women, Second periodic reports, CEDAW/C/ITA/2, 1 November 1996, p. 54 (Italy)

⁵⁸ UN Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 225, General Assembly Official Records, 54th Session, Supplement N° 38, A/54/38/Rev.1 (Part II), (Chile).

⁵⁹ Wouter Vandenhoe, NON-DISCRIMINATION AND EQUALITY IN THE VIEW OF THE UN HUMAN RIGHTS TREATY BODIES 271-272 (2005).

⁶⁰ See UN Committee on the Elimination of Discrimination against Women, 32nd Session, Feb. 15, 2005, Concluding Comments, UN Doc. CEDAW/C/ITA/CC/4-5, para. 25 (Italy). (“The Committee is also deeply concerned about the portrayal of women in the media and in advertising as sex objects and in stereotypical roles.”). See also UN Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, General Assembly Official Records, 56th Session, Supplement N° 38, A/56/38, Part I, para. 304 (Finland). (Regarding Finland, encouraging “a positive change of atmosphere regarding sex phone

The CEDAW Committee has directly expressed concern regarding the portrayal of women in stereotypical roles in the media and advertising. The Committee stressed the important role of the media in regard to cultural change. Throughout its country reports, the Committee has welcomed state efforts to eliminate stereotyped images of women in the media and in advertising, and made recommendations to further such efforts. In addition to being harmful in and of themselves, it has also been contended that gender stereotypes may constitute a form of discrimination against women. This issue of discrimination is addressed in the following section.

Gender Stereotyping as Discrimination

According to the Office of the High Commissioner for Human Rights, there is a broad consensus across UN human rights mandates that differences in treatment based on gender stereotypes may constitute discrimination against women.⁶¹ Differences in treatment may constitute discrimination, provided there is no objective and reasonable justification for these differences.⁶² The CEDAW Committee has widely recognized that stereotypical attitudes may result in discrimination.⁶³ The Committee has also noted the link between gender stereotypes and discrimination against women.⁶⁴

The CEDAW Committee has played a key role in contributing to this understanding of gender stereotyping as a form of discrimination. The Committee explained in General Recommendation N° 25 that discrimination against women includes differences in treatment that exist “because of stereotypical expectations, attitudes and behavior directed towards women” and “because of the generally existing subordination of women by men.”⁶⁵ The Committee has urged states parties to encourage

lines as they run counter to the efforts being made to portray women positively, and not as ‘sex objects’, in the media”).

⁶¹ OHCHR, *Gender Stereotyping as a Human Rights Violation*, 44 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>.

⁶² OHCHR, *Gender Stereotyping as a Human Rights Violation*, 44 (Oct. 2013), available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>.

⁶³ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 65 G.A.O.R 52nd Session Supplement N° 38 UN Doc. A/52/38/Rev.1 (Jan. 31, 1997) (Morocco); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 101 G.A.O.R 52nd Session Supplement N° 38 UN Doc. A/52/38/Rev.1 (Jan. 31, 1997) (Namibia).

⁶⁴ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 191 G.A.O.R 55th Session Supplement N° 38 UN Doc. A/55/38 (Apr. 19, 2000) (Iraq).

⁶⁵ UN Committee on the Elimination of Discrimination against Women, General Recommendation N° 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination

the media to change stereotypical attitudes in order to reduce the discriminatory depiction of women.⁶⁶ The Committee recognized that positive portrayals of women in the media can reduce discriminatory and stereotypical depictions of women in general.⁶⁷ The Committee urges states to engage the media in combatting stereotypical attitudes that promote discrimination.⁶⁸

This section addresses the prohibition of discrimination by CEDAW provisions, as well as the work of the CEDAW Committee regarding discrimination.

CEDAW Provisions Prohibiting Discrimination

The phrase “all forms of discrimination” in CEDAW denotes the intention of the states parties to prohibit in strong terms discrimination in various forms, including emerging forms of discrimination.⁶⁹ According to Article 1 CEDAW, “discrimination against women” means all distinctions, exclusions, and restrictions premised on sex.⁷⁰ The effect or purpose of such discrimination prejudices women’s equal enjoyment of human rights and fundamental freedoms.⁷¹ Article 2 is one of the key CEDAW provisions and establishes a comprehensive framework to

against Women, on temporary special measures, 30th Session, U.N. Doc. HRI/GEN/1/Rev.7, para. 7, note 1. The Committee reiterated this link between stereotyping and discrimination in General Recommendation N° 28: UN Committee on the Elimination of Discrimination against Women, General Recommendation N° 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, para. 9.

⁶⁶ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 303 G.A.O.R 55th Session Supplement N° 38 UN Doc. A/55/38 (Apr. 19, 2000).

⁶⁷ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 324 G.A.O.R 55th Session Supplement N° 38 UN Doc. A/55/38 (Apr. 19, 2000) (Germany).

⁶⁸ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 329 G.A.O.R 61st Session Supplement N° 38 UN Doc. A/61/38 (Aug. 25, 2006) (Bolivarian Republic of Venezuela).

⁶⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 8, CEDAW/C/GC/28 (Dec. 16, 2010); Andrew Byrnes, *Article 2, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 71, 76 (Marsha A. Freeman, Beate Rudolf, and Christine Chinkin, eds., 2012).

⁷⁰ Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

⁷¹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

eliminate discrimination.⁷² Article 2 is essential for CEDAW's full implementation, and is linked with other provisions, including Article 5 discussed above.⁷³ Reading Article 2 in conjunction with Article 5 shows that stereotyped views and attitudes towards women amounts to discrimination against women.⁷⁴

This part of the memorandum sets out the forms of discrimination prohibited under CEDAW, including direct and indirect discrimination. It outlines the obligations of CEDAW states parties to combat discrimination in order to ensure substantive equality between men and women. It also establishes the obligation on states parties to ensure that both public authorities and private institutions do not engage in acts or practices that are discriminatory to women. Importantly, this part includes the views of the CEDAW Committee on prohibiting discrimination against women.

Prohibition of Direct and Indirect Discrimination

CEDAW in Article 1 covers direct and indirect discrimination⁷⁵ and Article 2 prohibits both forms of discrimination.⁷⁶ Direct discrimination relates to explicit differential treatment on the basis of gender and sex.⁷⁷ Indirect discrimination refers to laws, policies, practices, and programs that are not overtly discriminatory but in practice have a discriminatory effect.⁷⁸ For example, the Committee recognized that stereotypical conceptions of women within the context of the family reflect indirect discrimination.⁷⁹ States parties have to refrain from

⁷² Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19, Violence against Women, para. 10, UN Doc. A/47/38 (1992)

⁷³ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 6-7, CEDAW/C/GC/28 (Dec. 16, 2010).

⁷⁴ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 7, CEDAW/C/GC/28 (Dec. 16, 2010);

⁷⁵ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 87, G.A.O.R 56th Session Supplement N° 38 UN Doc. A/56/38 (Apr. 19, 2001) (Kazakhstan).

⁷⁶ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 342, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (May. 2, 2002) (Portugal).

⁷⁷ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 16, CEDAW/C/GC/28 (Dec. 16, 2010).

⁷⁸ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 16, CEDAW/C/GC/28 (Dec. 16, 2010).

⁷⁹ Committee on the Elimination of All Forms of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 184, G.A.O.R 53rd Session Supplement N° 38 UN Doc. A/53/38/Rev.1 (Feb. 6, 1998) (Czech Republic).

making direct or indirect discriminatory legislation, policies, and institutional structures that deny women's rights.⁸⁰

In General Recommendation N° 28, the Committee held that states parties have a duty to ensure that women do not suffer from direct or indirect discrimination.⁸¹ The CEDAW Committee has called on states to eliminate *de jure* and *de facto* discrimination.⁸² The Committee has also urged states parties to take steps against stereotypical attitudes towards men and women that result in direct and indirect discrimination.⁸³ The Committee also encouraged states to involve media and civil society to address stereotypes in order to combat discrimination.⁸⁴ In particular, the Committee noted that states have to involve media and civil society in public education and awareness campaigns to address traditional gender stereotypes.⁸⁵

Obligation to Achieve Gender Equality

CEDAW's objective is to eliminate all forms of discrimination against women in order to guarantee women's rights in all fields on the

⁸⁰ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 9, CEDAW/C/GC/28 (Dec. 16, 2010).

⁸¹ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 16, CEDAW/C/GC/28 (Dec. 16, 2010); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 165, G.A.O.R 58th Session Supplement N° 38 UN Doc. A/58/38 (Mar. 14, 2003).

⁸² Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 16, CEDAW/C/GC/28 (Dec. 16, 2010); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 113 G.A.O.R 54th Session Supplement N° 38 UN Doc. A/54/38(Part I) (May. 4, 1999); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination Against Women, para. 172 G.A.O.R 52nd Session Supplement N° 38 UN Doc. A/52/38/Rev.1 (Jan. 31, 1997) (Israel).

⁸³ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 39, G.A.O.R 56th Session Supplement N° 38 UN Doc. A/56/38 (Apr. 19, 2001) (Andorra); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 165, G.A.O.R 58th Session Supplement N° 38 UN Doc. A/58/38 (Mar. 14, 2003) (Congo); and Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 132, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (May. 2, 2002) (Uganda).

⁸⁴ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 165, G.A.O.R 58th Session Supplement N° 38 UN Doc. A/58/38 (Mar. 14, 2003) (Congo); Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 134, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (May. 2, 2002) (Uganda).

⁸⁵ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 134, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (May. 2, 2002) (Uganda).

basis of equality with men.⁸⁶ In General Recommendation N° 25, the Committee noted that CEDAW requires state to achieve substantive equality.⁸⁷ Primarily, substantive equality means creating an environment where both men and women can achieve equal results qualitatively and quantitatively.⁸⁸ CEDAW obliges states to eliminate the causes and consequences of substantive inequality.⁸⁹

In General Recommendation N° 28, the Committee says that the principle of gender equality means that human beings are free to make choices personally and professionally without limitations fixed by stereotypes, gender roles, and prejudices.⁹⁰ A policy of gender equality in line with CEDAW would require States to recognize that women can have different roles in society.⁹¹ The Committee recommends that states' obligations to achieve gender equality involve the reconceptualization of women's roles as mother and wife in the family and society.⁹² Stereotypical portrayals of women do not move towards such reconceptualization.

States parties are obliged to consider the existence of women within the context in which they live, and the measures they adopt should transform historically grounded archetypes of opportunities, institutions, and systems.⁹³ States are required to develop public policy and institutional frameworks that lead to the full and equal development of

⁸⁶ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 4, CEDAW/C/GC/28 (Dec. 16, 2010).

⁸⁷ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 25, On article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para. 8, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

⁸⁸ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 25, On article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para. 8-9, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

⁸⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 25, On article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para. 7, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

⁹⁰ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 22, CEDAW/C/GC/28 (Dec. 16, 2010).

⁹¹ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 48, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (Part II) (May. 2, 2002) (Suriname).

⁹² Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 148, G.A.O.R 57th Session Supplement N° 38 UN Doc. A/57/38 (May. 2, 2002) (Trinidad & Tobago).

⁹³ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 25, On article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para. 14, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

women.⁹⁴ Furthermore, the Committee recommends states parties refrain from condoning or sponsoring any policy that violates the Convention.⁹⁵ It also calls on states parties to take special measures to ensure gender equality in practice.⁹⁶

Responsibility for Public and Private Actors

As established above, Article 2(d) CEDAW requires states parties to abstain from activities that discriminate against women.⁹⁷ It requires states parties to ensure that public authorities and institutions do not discriminate against women.⁹⁸ Importantly, states parties are also obliged to protect women from discrimination by private actors. States parties have to regulate activities of private actors in all areas including but not limited to education, employment, and services.⁹⁹ When states fail to exercise due diligence in regulating the activities of private parties, they can be held liable for the actions of private actors.¹⁰⁰

According to Article 2(e), states parties are obliged to take measures to prevent and eliminate discrimination by persons, organizations, and enterprises.¹⁰¹ The CEDAW Committee has said that states are required to take steps to prevent discrimination irrespective of whether it is committed by private actors.¹⁰² Specifically, the Committee read Articles 1 to 5 and 24 CEDAW together to determine that states

⁹⁴ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 9, CEDAW/C/GC/28 (Dec. 16, 2010).

⁹⁵ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 37(a), CEDAW/C/GC/28 (Dec. 16, 2010).

⁹⁶ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 37(d), CEDAW/C/GC/28 (Dec. 16, 2010).

⁹⁷ Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(d), Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

⁹⁸ Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(d), Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

⁹⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 13, CEDAW/C/GC/28 (Dec. 16, 2010).

¹⁰⁰ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 19, Violence against Women, para. 9, UN Doc. A/47/38 (1992).

¹⁰¹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(e), Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

¹⁰² Committee on the Elimination of Discrimination Against Women, General Recommendation N° 28, The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 10, CEDAW/C/GC/28 (Dec. 16, 2010).

parties are obliged to prevent discrimination committed by private actors.¹⁰³

The Committee's Concluding Observations provide further elaboration of this obligation to take steps to combat discrimination by private organizations and enterprises. The Committee has requested states parties to prevent gender stereotypes in the media and advertising, calling upon states to implement regulations or policies to facilitate and foster positive portrayals of women in the media. Specifically, the Committee has mandated states to develop programs to raise awareness among media personnel about the equality of men and women in order to facilitate the eradication of sexist stereotypes in all media.¹⁰⁴

In the Committee's Concluding Observations on Italy, the Committee expressed its concern about the portrayal of women in the media and in advertising as sex objects and in stereotypical roles.¹⁰⁵ The Committee requested that Italy adopt a large scale, comprehensive and coordinated program to combat the widespread acceptance of stereotypical roles of men and women.¹⁰⁶ The Committee recommended that Italy make every effort to disseminate information on CEDAW among both private and public actors.¹⁰⁷ The Committee recommended that media and advertising agencies be targeted and encouraged to project an image of women as equal partners in all spheres of life. Such agencies should make a concerted effort to change the perception of women as sex objects and as primarily responsible for child-rearing.¹⁰⁸

¹⁰³ Committee on the Elimination of Discrimination Against Women, General Recommendation N° 25, On article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para. 6-7, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

¹⁰⁴ Committee on the Elimination of Discrimination Against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 381-382 G.A.O.R 54th Session Supplement N° 38 UN Doc. A/54/38(Part I) (May. 4, 1999) (Colombia).

¹⁰⁵ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination, para. 25, G.A.O.R 32nd Session U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (Italy) *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Italy/CEDAW-CC-ITA-0523853E.pdf>

¹⁰⁶ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination, para. 25-26, G.A.O.R 32nd Session U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (Italy) *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Italy/CEDAW-CC-ITA-0523853E.pdf>

¹⁰⁷ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination, para. 26, G.A.O.R 32nd Session U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (Italy) *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Italy/CEDAW-CC-ITA-0523853E.pdf>

¹⁰⁸ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination, para. 25-26, G.A.O.R 32nd Session U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (Italy) *available at*

Conclusion: Stereotyping as Discrimination

Article 5 of CEDAW directly addresses issues of gender stereotyping and the obligations on states to combat such harmful stereotypes – including those presented in the media. The CEDAW Committee, among others, has recognized that stereotypical attitudes may result in discrimination or perpetuate discrimination. Under CEDAW there is a positive obligation on states parties to take measures to eliminate such discrimination.¹⁰⁹ As such, this section of the memorandum addressed the prohibition of discrimination by CEDAW focusing on Articles 1 and 2, as well as the work of the CEDAW Committee.

The CEDAW prohibits both direct and indirect discrimination, and obliges states parties to ensure substantive equality between men and women. This means that states should take special measures to ensure gender equality in practice – overcoming *de jure* and *de facto* obstacles. Under international law, states are responsible for both public and private actors and institutions that violate human rights. As such, states parties to CEDAW have an obligation to ensure that both public and private actors do not engage in acts or practices that are discriminatory to women. This means that states are obliged to combat stereotypes and discrimination against women also when advanced in advertisements by private companies or broadcast via private media.

Potential Reform Areas for the Netherlands

As set out in the introduction of this memorandum, several companies have recently employed media campaigns in the Netherlands that could be regarded as sexist or containing negative gender stereotypes. In response, questions have been raised in the Netherlands about the adequacy of current legislation, policy, and practice of the regulatory body regarding such advertisements. Information regarding international law obligations stemming from CEDAW may potentially be useful in reforming the Dutch system regarding such advertising.

The information in this section of the memorandum regarding potential reform areas in the Netherlands is provided on the basis of the

<http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Italy/CEDAW-CC-ITA-0523853E.pdf>

¹⁰⁹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(d), (e), Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

above analysis of CEDAW, with the caveat that PILPG have not analyzed the Dutch legislation, policy, or regulatory framework on advertising. This memorandum also does not address the application of CEDAW in the Netherlands (including whether one can bring a claim based on CEDAW before Dutch courts). As such, this information should be considered in light of substantial research on the Dutch system provided separately to the Public Interest Litigation Project (PILP).

The information presented in this memorandum could be discussed with the various actors involved in the Netherlands, including the advertising monitoring body (*Reclame Code Commissie* – RCC); the Dutch Government and Parliament; as well as individual advertisers/broadcasters. Some of these actors may not be fully aware of the international law obligations and standards relating specifically to gender stereotypes and discrimination in the media and advertising. Highlighting these obligations may assist in encouraging such actors to voluntarily amend the relevant laws, policies or practices.

In relation to the Dutch Government and Parliament, there are a number of recommendations made by the CEDAW Committee that could be relevant for them to consider implementing. For example, the Netherlands could:

- Design and implement comprehensive programs in the mass media to promote roles and tasks of women and men in all sectors of society;¹¹⁰
- Disseminate information on CEDAW among both private and public media actors;¹¹¹
- Encourage the media to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres;¹¹² and
- Facilitate awareness-raising and educational programs directed at members of the media regarding gender equality.¹¹³

¹¹⁰ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 63, G.A.O.R. 23rd Session, U.N. Doc. A/55/38 (June 12-30, 2000) available at <http://www.un.org/womenwatch/daw/cedaw/reports/a5538.pdf>

¹¹¹ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination, para. 26, G.A.O.R. 32nd Session U.N. Doc. CEDAW/C/ITA/CC/4-5 (Feb. 15, 2005) (Italy) available at <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Italy/CEDAW-CC-ITA-0523853E.pdf>

¹¹² Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 18, G.A.O.R. 39th Session, U.N. Doc. CEDAW/C/NOR/CO/7 (Aug. 10, 2007) (Norway) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FCO%2FNOR%2FCO%2F7&Lang=en

The Dutch Government could also consider commissioning studies on the impact of harmful stereotypes in the media, including potentially a study on the possible impact of over-sexualized representation of girls and women in the media on increasing levels of gender based violence against women.¹¹⁴ The Government could also consider establishing a monitoring body on the representation of women in the media.¹¹⁵ The Dutch Government could be encouraged to report to CEDAW in the next cycle highlighting the efforts undertaken to reduce gender stereotypes and discrimination in the media. The Dutch Government could moreover be reminded of the importance of reporting duties, as its sixth periodic report is overdue by three years. PILP or another NGO may also consider taking the occasion of the next Dutch report to file a shadow report addressing this issue of sexist advertisements in the Netherlands.

Finally, in relation to the RCC, there are a number of recommendations made by the CEDAW Committee that could be relevant for them to consider implementing. For example, the RCC could be encouraged to:

- Prepare a Code of Advertising that reflects the prohibition of harmful gender stereotypes and discrimination, including ‘traditional role’ stereotypes for men and women;¹¹⁶
- Increase the number of women in decision-making positions in the RCC and other media bodies;¹¹⁷ and
- Facilitate the creation and use of self-regulatory mechanisms in the media to reduce discriminatory and stereotypical portrayals of women.¹¹⁸

¹¹³ Committee on the Elimination of Discrimination against Women, Report of the Committee against the Discrimination against Women, pg. 38, G.A.O.R. 26th Session, U.N. Doc. A/57/38 (Jan. 14 – Feb. 1, 2002) *available at*

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/375/46/PDF/N0237546.pdf?OpenElement>

¹¹⁴ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, para. 21, G.A.O.R. 51st Session, U.N. Doc. CEDAW/C/NOR/CO/8, (Mar. 9, 2012) *available at*

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NOR-CO-8.pdf>

¹¹⁵ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 35, G.A.O.R. 24th Session, U.N. Doc. A/56/38 (Jan 15 – Feb. 2, 2001) (Egypt) *available at*

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/534/56/PDF/N0153456.pdf?OpenElement>

¹¹⁶ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 63, G.A.O.R. 23rd Session, U.N. Doc. A/55/38 (June 12-30, 2000) (Lithuania) *available at* <http://www.un.org/womenwatch/daw/cedaw/reports/a5538.pdf>

¹¹⁷ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 35, G.A.O.R. 24th Session, U.N. Doc. A/56/38 (Jan 15 – Feb. 2, 2001) (Egypt) *available at*

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/534/56/PDF/N0153456.pdf?OpenElement>

¹¹⁸ Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, pg. 80, G.A.O.R. 23rd Session, U.N. Doc. A/55/38

Conclusion

This memorandum set out the relevant legal obligations and standards under CEDAW regarding sexism in advertisements. Articles 2 and 5 CEDAW are the core provisions in this regard. Article 2 establishes a framework to eliminate discrimination, and Article 5 obliges states parties to modify social and cultural patterns based on discriminatory sex roles and gender stereotyping. The memorandum elaborated upon harmful gender stereotyping, providing examples and measures for states to implement to combat stereotypes in the media and advertising. The memorandum also analyzed the link between gender stereotyping and sex-discrimination, and the obligation on states parties to ensure substantive equality between men and women. CEDAW prohibits both direct and indirect discrimination, and states should take special measures to ensure *de jure* and *de facto* gender equality.

The CEDAW Committee frequently expresses concern about the portrayal of women in stereotypical roles in the media and advertising. These roles include depictions of women as mothers and care-givers, in positions of subordination to men, and as sexual objects. In relation to the state obligation to modify social and cultural patterns based on discriminatory sex roles and gender stereotyping, the Committee has highlighted the important role of the media in cultural change. The Committee has urged states to engage the media in combatting stereotypical attitudes that promote discrimination. It is therefore particularly relevant if it is the media itself that is perpetuating stereotyped or discriminatory images of women.

The memorandum also discussed the obligations on states parties regarding actions by both public and private actors. It can be inferred from Articles 2 and 5 CEDAW and the Committee's interpretations that states parties are under an obligation to prevent discrimination not only by the national authorities, but also by private actors. This means that states are obliged to combat stereotypes and discrimination against women when advanced in advertisements by private companies or broadcast via private media.

Information regarding international law obligations and standards stemming from CEDAW may potentially be useful in reforming the Dutch system of advertising regulation. The final section of this

(June 12-30, 2000) (Romania) available at <http://www.un.org/womenwatch/daw/cedaw/reports/a5538.pdf>

memorandum suggested potential areas of reform in the Netherlands to improve compliance with CEDAW regarding gender stereotypes and sexist advertisements. This section also presented initiatives based on CEDAW Committee recommendations that could be adopted in the Netherlands, both by the Government and by the RCC.

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, operates as a non-profit, global *pro bono* law firm providing free legal assistance to its clients, which include governments, sub-state entities, and civil society groups worldwide. PILPG specializes in the following practice areas:

- **Peace Negotiations**
- **Post-Conflict Constitution Drafting**
- **Transitional Justice and War Crimes Prosecution**
- **Policy Planning**
- **Democracy and Governance**

Through its work, PILPG promotes the use of international law as an alternative to violent conflict for resolving international disputes. PILPG provides legal counsel to *pro bono* clients during peace negotiations, advises on the creation and operation of transitional justice mechanisms, provides expertise during the drafting of post-conflict constitutions, and advises on ways to strengthen the rule of law and effective institutions. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

In January 2005, a number of PILPG's *pro bono* clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial *pro bono* legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."

In addition to a staff of full-time attorneys that implement PILPG's programs, PILPG leverages volunteer assistance from international lawyers, diplomats, and foreign relations experts, as well as *pro bono* assistance from major international law firms. Annually, PILPG is able to provide over \$20 million worth of *pro bono* international legal services.

PILPG is based in Washington, D.C., New York, and The Hague. To date, PILPG has maintained project offices in: Bosnia and Herzegovina, Côte d'Ivoire, Egypt, Georgia, Iraq, Kenya, Kosovo, Libya, Nepal, Somaliland, South Sudan, Sri Lanka, Tanzania, Tunisia, Turkey, and Uganda.

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