

## LEGAL EXPERTS' OPINION ON DRAFT GR 41 ON GENDER STEREOTYPING

May 2026

### INTRODUCTION

Dear members of the Working Group on GR 41,

We, scholars and civil society advocates working in the field of gender equality law, CEDAW and gender stereotyping, welcome the opportunity to submit comments on the Draft of "*General Recommendation no. 41 on Dismantling Gender Stereotypes and the Unequal Power Relations that Sustain them*".<sup>1</sup> We thank the CEDAW Committee for taking the initiative to develop this important GR, and the Working Group for all the work it has put into this project thus far.

Our comments and suggestions stem from our deep and longstanding commitment to CEDAW as scholars and advocates. CEDAW is a beacon and a stronghold in the fight against all forms of discrimination against women. Clarification of its meaning and scope in relation to combating gender stereotypes is called for, because it is precisely this concept (embedded in Articles 2f, 5 and 10c) that makes this Convention into a progressive and living human rights instrument. CEDAW has the potential to address the persistent and structural discrimination of women at all levels and in all spheres of personal and public life. At the same time, at this very moment in history, the concepts of gender and gender stereotypes are heavily under attack globally by politically influential actors that defend the 'traditional' relationships between (biological) men and women. As we all know: '*traditional*' is often a coded term for '*unequal*'. GR 41 on gender stereotyping and unequal power relationships could offer an important contribution to counter these regressive movements. The Draft contains many useful insights into the damaging nature of gender stereotypes. However, we believe that this GR could be made more effective if fundamental concepts that are crucial to a proper understanding of this issue were addressed more explicitly and explained in a clear way.

In this Paper, we suggest improvements of the GR with respect to:

A: The inclusion of definitions of 'gender' and 'gender stereotyping'.

B: The inclusion of the explicit statement that gender stereotyping is (also) a form of discrimination against women.

C: A clarification of how combating gender stereotyping is related to transformative equality and what this concept entails.

D: A clarification of the relationship between gender stereotyping and structural or systemic discrimination and how this form of discrimination should be addressed.<sup>2</sup>

We sincerely hope that the Working Group will take our suggestions into consideration.

### A: DEFINITIONS OF GENDER AND GENDER STEREOTYPING

Comments in this Section refer to Section II, A of the Draft.

Although the title of this Section suggests that an explicit definition of gender stereotypes will be provided here, we could not find one. We think that both gender and gender stereotypes need to be

---

<sup>1</sup> Draft of 4 March 2026.

<sup>2</sup> The words structural and systemic are often used as synonyms in these discussions. For reasons of brevity we will use the word 'structural' in this Paper.

defined in this GR and that these definitions should preferably be placed at the beginning of this part (in or as a substitute for par 9 or in the introductory section of the GR (paras 1-7).

As for gender, we are aware that nowadays this is a heavily contested concept. Failing to define it in this GR could suggest that the CEDAW Committee is backtracking on its earlier course, in which it has acknowledged that a proper understanding of the meaning of gender is crucial for combating all forms of discrimination against women. We can understand that, for practical and strategic reasons, this GR could simply restate the earlier adopted definition: gender ‘refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences’. (GR No 33 para 7.) However, we would encourage the Committee to include an ‘updated’ definition that also acknowledges transgender and non-binary people. In the context of gender stereotyping, these groups are profoundly affected, as well as women.

A definition of stereotypes is also absent from the Draft. The one often used in International Law stems from Cook & Cusack<sup>3</sup> and is also used by the Office of the UN High Commissioner for Human Rights<sup>4</sup>: a stereotype is ‘a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group’.

Combined, the GR could define gender stereotypes as: “generalized views or preconceptions of attributes or characteristics possessed by, or the roles that are or should be performed by women, men, transgender and non-binary people, in accordance with the cultural meaning imposed by society on to biological differences between them”.

## **B: GENDER STEREOTYPES AS A FORM OF DISCRIMINATION AGAINST WOMEN**

Suggestions in this section relate to Paragraph 8 and Section II, A of the Draft.

In this part of the Draft, gender stereotypes are discussed in relation to the underlying causes or ideologies thereof, the forms they may take, the places where they manifest themselves, and the impact they have on the enjoyment of women’s human rights. Gender stereotypes are rightfully described as a major cause of the persistent and structural exclusion, oppression, stigmatization, discrimination and violence that women experience worldwide. These are all important aspects of the phenomenon of gender stereotyping, and we welcome this overview.

In addition, we think that it is important to clearly pronounce that gender stereotyping is (also) a form of discrimination. The present Draft mentions this in paragraph 8, where the scope of this GR is discussed, but it does not elaborate on what this means.<sup>5</sup> Discrimination is often understood as *unequal treatment of women as compared to men*. Other forms of discrimination, like violence, oppression, stigmatizing and stereotyping, are thus placed outside the scope of existing

---

<sup>3</sup> R. Cook and S. Cusack, *Gender Stereotyping: Transnational Legal Perspectives*; University of Pennsylvania Press, 2010.

<sup>4</sup> OHCHR, ‘Gender Stereotyping’

<<https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>> accessed 31 May 2022.

<sup>5</sup> At other places, the GR states that gender stereotypes *contribute* to discrimination (e.g. par 11) and that they *perpetuate* discrimination (par. 15).

anti-discrimination or equal treatment legislation.<sup>6</sup> We think that this GR would gain strength and impact if it declared in a specific paragraph (preferably in the Introduction of the GR) that the Committee considers that the application of a gender stereotype as such may amount to discrimination against women, that is prohibited under the Convention. Such a declaration could stimulate and inspire the judiciary to interpret existing non-discrimination law in this wider, encompassing way.

### **C: TRANSFORMATIVE EQUALITY**

This Section comments on Paragraph 2 of the Draft.

Since the adoption of GR No 25 in 2004, it is commonly understood that CEDAW entails a wide and progressive concept of equality, combining the (legal) right to formal, substantive and transformative equality<sup>7</sup> in a holistic way.<sup>8</sup> We welcome the reference in the Draft to the concept of transformative equality in paragraph 2, where it states that ‘the obligation under Article 5(a) is central to the transformative conception of equality in the Convention’.<sup>9</sup> Nevertheless, we consider that an explanation of what this concept entails is called for. Therefore, we recommend that a paragraph on transformative equality be included in the first part of this GR.<sup>10</sup>

To begin with, the GR could confirm that the Committee has consistently underlined the importance of transformation: ‘States parties are to adopt measures towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.’<sup>11</sup> In General Recommendation No 38, the Committee formulated it as follows: States are to ‘[a]dopt a transformative approach, promoting gender equality and the empowerment of women, in order to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights’.<sup>12</sup> In relation to women in conflict and

---

<sup>6</sup> In this regard, it is crucial that the GR clearly states that in particular Article 5(a) is a self-standing non-discrimination norm, and at the same time a transversal norm, which is crucial for the interpretation and implementation of all non-discrimination rights under CEDAW. See A. Timmer & R. Holtmaat, “Article 5”, in: Schulz, P., Halperin-Kaddari, R., Rudolf, B. & Freeman, M. A. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary*. New York: Oxford University Press, 2022, at p. 222.

<sup>7</sup> In the literature, the term ‘equality as transformation’ is also used to denote a similar approach to the (legal) equality principle.

<sup>8</sup> R Holtmaat, ‘The CEDAW: A Holistic Approach to Women’s Equality and Freedom’ in Anne Hellum and Sinding Assen (eds), *Women’s Human Rights: CEDAW in International, Regional and National Law* (CUP 2013).

<sup>9</sup> In the same paragraph, in relation to Article 5(b), the text mentions the transformative approach to the implementation of the Convention. In paragraph 41, the GR mentions the Convention’s transformative approach to addressing gender stereotypes. The word ‘transformation’ also appears in the text several times, but not in relation to the concept of equality.

<sup>10</sup> See A Byrnes and Puja Kapai, ‘Article 1’ in Schulz, P., Halperin-Kaddari, R., Rudolf, B. & Freeman, M. A. (eds). *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2<sup>nd</sup> ed 2022) 79, 84-107, referring to Sandra Fredman’s discussion of transformative equality: S a Fredman, ‘Equality: Concepts and Controversies’, Chapter 1 in Fredman, *Discrimination Law* (Oxford: OUP, 3rd ed, 2022) at 29-43,

<sup>11</sup> GR No 25 para 10; GR No 36 para 26. GR No 36 also refers to transformation in many other paragraphs. See also, eg GR No 31 para 17, where the Committee addresses the necessary transformation of harmful cultural practices, and GR No 33 para 18, where the Committee uses the term ‘transformative justice’.

<sup>12</sup> GR No 38 para 49.

post-conflict situations, the Committee has stated that ‘reparation measures should seek to transform the structural inequalities that led to the violations of women’s rights, respond to women’s specific needs and prevent their recurrence’.<sup>13</sup>

Transformative equality challenges the root causes of persistent, stubborn and deeply engraved and embedded patterns and practices of exclusion, oppression and violence against individuals and groups that are thereby denied the full enjoyment of their human rights. It is aimed at changing unequal power relationships and power structures, ensuring these individuals and groups participate in decision-making.<sup>14</sup> It aims to fundamentally restructure cultural, economic and societal power dynamics, laws, and institutions, transforming them from mechanisms of exclusion into drivers of social justice.

Thus, we recommend that the GR explain the content of the concept of transformative equality, along the following lines:

“Transformative equality moves beyond merely guaranteeing legal equal rights (formal equality) and the acknowledgement of difference (substantive equality) to proactively dismantle the structural, systemic, and cultural barriers that create and sustain inequality.”<sup>15</sup>

#### **D: STRUCTURAL DISCRIMINATION**

This Section comments on Paragraphs 2, 11, 16 and 22 of the Draft.

In combination with the wide and progressive understanding of the concept of equality, CEDAW also entails a broad understanding of the phenomenon of discrimination. The basis for this interpretation of CEDAW was laid down in GR No 25, in which the Committee stated that one of the three central obligations of States parties under the CEDAW Convention 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.’<sup>16</sup> This means that the phrase ‘combatting all forms of discrimination against women’ includes not only direct and indirect discrimination, but also structural discrimination.

Since 2004 the Committee has noted on many occasions that on the basis of Article 5, States parties are required to combat structural discrimination.<sup>17</sup> The Committee often emphasizes the structural aspects of women’s inequality. In General Recommendation No 28, for example, the Committee has spoken of the ‘structural and historical patterns of discrimination and unequal power relationships

---

<sup>13</sup> GR No 30 para 79. See also GR No 35 para 33(b), where the Committee recommends States parties to ‘design transformative reparations programmes that help to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation’.

<sup>14</sup> The CRPD Committee has also embraced a transformative approach to equality under the CRPD Convention, using the term “inclusive equality”: GC No 6 on equality and non-discrimination (2018), para 11

<sup>15</sup> See e.g. J.E. Goldschmidt, ‘New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?’, *Nordic Journal of Human Rights*, Volume 35, 2017.

<sup>16</sup> GR No 25 para 7.

<sup>17</sup> See, e.g. GR No 30 para 77: ‘States parties’ obligations under the Convention require them to address all violations of women’s rights as well as the underlying structural sex and gender- based discrimination that underpinned such violations.’

between women and men'.<sup>18</sup> Similarly, in General Recommendation No 33, the Committee noted the 'structural context of discrimination and inequality'.<sup>19</sup>

Despite all this important ground-clearing work, already done by the Committee, in the Draft the notion of structural discrimination is mentioned only once in combination with systemic discrimination (in par. 22). In par. 2 and 11, the GR also mentions 'systemic discrimination', without defining this concept. Also lacking in the GR is the fact that the Committee distinguishes between three levels of discrimination: individual, institutional, and structural.<sup>20</sup> The Committee takes a very broad view of what is 'structural': it includes formal institutions (laws, policies, programmes)<sup>21</sup> but also any kind of cultural practices and interactions. The suggestion, in the text of par. 2 of the current Draft, that 'systemic' discrimination is also about individual acts, in our view, is not in line with this understanding.

Gender stereotypes are engraved and embedded into societal, legal, economic and cultural beliefs, systems and structures that are very hard to change – and *de facto* impossible to change by individuals who experience discrimination. Strengthening and clarifying the concept of structural discrimination is crucial for effectively putting an end to *all* forms of discrimination. Therefore, it is highly desirable that a description (or definition) of the phenomenon of structural discrimination, and of the nature of the duty to effectively combat this form of discrimination, is included in this GR.

In legal systems (at international, regional and national level) that prohibit discrimination, the concept of structural discrimination is as yet underdeveloped as compared to the concepts of direct and indirect discrimination. In legal theory, the construction (and subsequent adoption) of a clear-cut prohibition of structural discrimination would be a major contribution to the existing body of anti-discrimination legislation, precisely because it is capable of addressing the underlying causes of the oppression and exclusion of those individuals and groups that are being discriminated against. A prohibition of direct and indirect discrimination, offering legal redress to individual victims, is not enough to effectively abolish or counteract this particular form of discrimination. Therefore, in legal theory, the duty to abolish all forms of structural discrimination is phrased as a positive duty to take all necessary actions. This is sometimes worded as a 'positive duty of care'. This duty is addressed to those 'actors' (State Parties, governmental officials, directors / CEOs of companies, boards of institutions, e.g. in the health care or education sector) who have the means and the powers to intervene in these structures or systems; and to thus advance the necessary transformations. In that way, the concept of structural discrimination is crucial for a proper understanding of the positive duties that come with adopting the principle of transformative equality.

The structural view on discrimination should, in our view, also be emphasized more in the section that addresses intersectionality (para 16 and further). Paragraph 16 now emphasizes identities instead of structures. The text could more clearly state that stereotypes are produced, reinforced and maintained by intersecting systems of oppression, like racism, sexism, heteronormativity, ableism, ageism and classism.<sup>22</sup>

---

<sup>18</sup> GR No 28 para 16.

<sup>19</sup> GR No 33 para 3.

<sup>20</sup> GR No 35 para 33(b).

<sup>21</sup> See, e.g. GR No 36 para 25.

<sup>22</sup> See for example Elena Ghidoni and Dolores Morondo Taramundi (2022), *El papel de los estereotipos en las formas de la desigualdad compleja: algunos apuntes desde la teoría feminista del derecho antidiscriminatorio*, *Discusiones*. Núm. 28.1, 2022, p. 37-70; and Lorena Sosa (2025). *Bodies in Context: Strengthening*

## CONCLUSION

CEDAW, in particular in Article 5(a), has provided a crucial building block to develop the concepts of transformative equality and structural discrimination. In that way, CEDAW, has proved to be a living and progressive instrument in the advancement of the rights of all those individuals and groups that suffer from gender stereotypes and structural discrimination. This holistic reading of CEDAW has also impacted on the interpretation of other international and regional Human Rights documents and national constitutions addressing discrimination on various grounds.<sup>23</sup> A specific GR on dismantling gender stereotypes and unequal power relationships offers a unique opportunity to further explain the content of these concepts, in order to create a better understanding of them among the judiciary, political actors, (women's) human rights activists and the general public. It would be very regrettable if GR 41 would not clearly explain these concepts to legal actors.

## SIGNATURES:

Rikki Holtmaat, Emeritus Professor of International Non-Discrimination Law, Leiden University

Alexandra Timmer, Associate Professor of Human Rights Law, Utrecht University

Dorothea Anthony, Senior Lecturer, School of Law, University of Wollongong

Federico Arena, Senior Researcher at the Institute of Analytic Philosophy, Barcelona, and Independent Researcher at CONICET, Argentina.

Barbara Giovanna Bello, Assistant Professor of Philosophy of Law, University of Tuscia

Maria Giulia Bernardini, Associate Professor of Law, University of Ferrara

Ramona Biholar, Senior Lecturer, Faculty of Law University of the West Indies, Mona

Eva Brems, Professor of Human rights Law, Ghent University

Andrew Byrnes, Emeritus Professor of International Law and Human Rights, University of New South Wales, Sydney

Meghan Campbell, Reader in International Human Rights Law, University of Birmingham

Laura Clérico, Chair of Constitutional Law, University of Buenos Aires; Honorary Professor of Human Rights, FAU University Erlangen-Nürnberg

Elena Ghidoni, Visiting Researcher, Deusto University

Anna De Giuli, Postdoctoral researcher in Philosophy of Law, University of Milan

---

Intersectionality's Potential for Addressing Structural Inequalities. In: Macioce, F., Saeidzadeh, Z., Vujadinović, D. (eds) *Feminist Legal and Political Practices. Gender Perspectives in Law*, vol 6. Springer, Cham. [https://doi.org/10.1007/978-3-032-02856-3\\_11](https://doi.org/10.1007/978-3-032-02856-3_11)

<sup>23</sup> See e.g. for the case of the widening of interpretation of the ECRM, Alexandra Timmer, 'Towards an Anti-Stereotyping Approach for the European Court of Human Rights' (2011) 11 *Human Rights Law Review* 4.

Jenny Goldschmidt, Emeritus Professor of Human Rights Law, Utrecht University

#### The International Commission of Jurists

Alazne Irigoien, Assistant Professor of Philosophy and Theory of Law, University of the Basque Country

Fleur van Leeuwen, Lecturer of Human Rights Law, Utrecht University

Dolores Morondo Taramundi, Associate Professor of Human Rights Law, Universidad de Deusto

Patricia Schulz, ICJ Commissioner / Senior Research Associate UNRISD, Geneva

Linda Senden, Professor of European Law, Utrecht University

Lorena Sosa, Associate Professor of Human Rights Law, Utrecht University

Ramona Vijeyarasa, Professor in Gender and the Law, University of Technology, Sydney