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## Challenging the Barriers to Real Equality: Transformative Equality

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This paper addresses the concept of *real equality* and tackles the obstacles to its achievement. I wrote this paper with the hope to contribute to the global efforts to make equality a reality, instead of remaining only at a concept level.

The question that emerges is *what stands in the way of real equality?*

The international human rights agenda sets legal and programmatic equality for women. Many governments by now recognize women before and in the law (*de jure*/formal equality) and take them into account in policies and programmes (*de facto*/substantive equality). However, there is still a disconnect between these international and national agendas for equality and women's lived realities. Until women live a daily life free from discrimination, free from violence or fear of it, until women are recognized for their potential and given the opportunities to participate as autonomous and capable adults in the economic, political, social, and cultural development of their countries and to participate in decision-making processes,<sup>1</sup> real equality is not achieved. For such achievement, we need to go beyond legal (formal) and programmatic (substantive) equality and challenge the underlying social and cultural roots of discrimination. As the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) affirms,

*"[a] change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women."*<sup>2</sup>

By focusing on the most pervasive form of discrimination – gender-based violence against women – I argue in this paper that the full elimination of barriers to real equality requires a challenge of those social and cultural patterns of conduct based on ascribed sex roles and gender stereotyping that preserve asymmetric, discriminatory relations of gender.

Consequently, I will first explain in this paper how social and cultural behaviour based on fixed roles for women and men and resultant gender stereotypes hinder women's enjoyment of equality in their lived realities. I will particularly focus on the interrelation between sex roles, gender stereotypes, and gender-based violence against women. Having considered the theoretical conceptualizations, I will next present social data confirming these barriers to equality. The data were collected during the qualitative field research I conducted in Jamaica between 2009 and 2011. I will use these theoretical and empirical understandings to introduce the concept of transformative equality and Article 5 (a) CEDAW, which is the international norm that expresses the concept of transformative equality and makes social and cultural transformation a legal obligation under its provision. I conclude by explaining how transformative equality

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\* This paper relies on excerpts from my book *Transforming Discriminatory Sex Roles and Gender Stereotyping: The Implementation of Article 5(a) CEDAW for the realisation of women's right to be free from gender-based violence in Jamaica*, Antwerp: Intersentia, 2013.

<sup>1</sup> CESCR GC 16, 2005, para. 14.

<sup>2</sup> CEDAW, 1979, Preamble, para. 14.

opens a space that enables working with underlying causes of inequality and gender-based violence against women.

### 1. Barriers to real equality: Sex roles and gender stereotyping

Social and cultural behaviour is entrenched in and shaped by the normative societal structures and habitual ways of understanding and doing things. Such a system of personal and socio-cultural relations produces and reproduces women and men as social categories reflecting the historical, ideological, political, economic, legal, and cultural nuances of the context they are located in. In other words, social and cultural constructions of different sexes, male and female, are conceptualised as gender. Gender thus forms identities and dictates arrangements of power, status, and access to resources between and among women and men. Individuals are labelled, feminine and masculine identities are fixated, and functions and responsibilities for women and men are ascribed according to the biological differences of sex.

Therefore, the formulation *sex roles* used in this paper encapsulates the ascribed fixed identities, tasks, and expectations according to the social and cultural construction of sex differences. Gender stereotyping mirrors such social and cultural construction. It reproduces and expresses the expectations of how women and men should behave and should live their lives through beliefs, attitudes, practices, customs, and relations.<sup>3</sup> *Gender stereotyping* is used in this paper to capture these consequent manifestations of such social ascriptions and expectations.

It is important to note that stereotyping is implicit to our lives. It arises commonly and not all ideas which underpin it are essentially hostile. We assume, generalize, categorize, ascribe, and label on a daily basis. In an attempt to cope with the abundant and often unexpected or unfamiliar information, situations, and people inundating us on a daily basis, and to make that more understandable, predictable, and manageable, we tend to refer to those “rough-and-ready things”<sup>4</sup> – an ingrained toolkit of generalizations, categories, ascriptions, and labels. Thus, stereotyping can be benign, with no harsh consequences. However, it can also take malign forms, leading to harmful consequences.<sup>5</sup>

To the extent that sex roles and gender stereotyping put the individual in detrimental positions, they allow a framework for exclusion and discrimination. By detrimental positions I mean assumptions of gender roles that prevail over personal contexts, characteristics, capabilities, needs, and wishes, so that they restrict the capacity of individuals to make choices, take autonomous decisions, and hold control over their own identities and lives. Thus, confining individuals’ actual interests, needs, and functions to encoded expectations strips them of agency and power, which runs against the core human rights principles: human dignity and liberty.<sup>6</sup> To this extent sex roles and gender stereotyping are exclusionary and discriminatory. They perpetuate ideas of inferiority or superiority of sexes, reproduce asymmetric relations of power between women and men, and encourage prejudices and resultant sexist attitudes.

Women’s diverse experiences of predestined inferiority lead to “their de-valuation and objectification,” destroy their self-respect, and limit their aspirations.<sup>7</sup> To the extent that social and cultural patterns of conduct preserve patriarchal views, which relegate women as inferior at the expense of their socio-economic development and personal advancement, such patterns of conduct are based on prejudice against women and feed into their inequality. For that reason, one can state that social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping deny women the assertion

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<sup>3</sup> See Barriteau, 1998, ‘Theorizing Gender Systems and the Project of Modernity in the Twentieth-Century Caribbean,’ *Feminist Review* 59, 186-210, p. 191; Cook and Cusack, 2010, p. 13. Of particular interest for the discussion on the constructions of gender is also the work of Scott, J.W., 1986, ‘Gender: A useful category of historical analysis’, *The American Historical Review* 91 (5), 1053-1075, p. 1070.

<sup>4</sup> Appiah, K. A., 2001, “The State and the Shaping of Identity,” the Tanner Lectures of Human Values, delivered at Clare Hall, Cambridge on April 30 and May 1, 2001, p. 242.

<sup>5</sup> See K. A., 2000, ‘Stereotypes and Shaping of Identity,’ *California Law Review* 88 (1), 41-54; also, Cook and Cusack, 2010.

<sup>6</sup> See UDHR, 1948, Article 1.

<sup>7</sup> Perceptions of women’s inherent, thus natural, subordination “extends to their intellectual, spiritual, physical, sexual and emotional lives.” Salter, 2003, p. 2.

of their actual characteristics, potential, and capabilities, and strip them of the control they should exert over their own lives. Therefore, they lead to women's marginalization and exclusion.

Furthermore, sex roles and gender stereotyping have the potential to lead to gender-based violence against women. As mentioned earlier in this paper, this type of violence is the most pervasive form of discrimination against women. It inhibits their freedoms and right to the full enjoyment of equality.<sup>8</sup> It provides for a social mechanism of control used to maintain the patriarchal status quo of women's subordination. It perpetuates ideologies of domination-subordination, gender stereotyping, and sex roles, and in turn, it creates a favourable climate for the occurrence of gender-based violence. Hence, the vicious cycle of gender violence is obvious. Its resilience rests on its roots in historical relationships of structural inequality and power imbalances between women and men. This leads to its normalization or common acceptance in many societies around the world and poses serious barriers to women's enjoyment of real equality.

## **2. Social data on the barriers posed by sex roles and gender stereotyping: The Jamaica case study**

My extensive qualitative explorations in Jamaica confirmed that entrenched social and cultural beliefs about the construction and reproduction of gender lead to the occurrence of violence.

The interview discussions I conducted with individuals from various levels, such as government officials, civil society representatives, and rights holders, unveiled a sense of hostility commonly dominating relations between many Jamaican women and men. They seem to negotiate within the boundaries of "dysfunctional" gender relationships, in which aggressive expressions, either physical or emotional, are likely to occur.<sup>9</sup> "[A] lot of women in this country ... at all levels of the strata are being beaten."<sup>10</sup> Some women may take the beating differently depending on their class, power, and educational level, "but they are being beaten up: physically beaten up, or emotionally beaten up."<sup>11</sup>

Various respondents shared a general understanding of the interplay between the fixated sex roles and unequal power relations manifested in intimate partner violence in Jamaica. One respondent pointed out,

*"In a long-standing patriarchal society, we grew up thinking that the man is the stronger sex and the woman is the weaker sex; that the man is the head of the household. These are attitudes that have been passed on from generation to generation. So, that is one underlying cause of violence against women, which hasn't changed as much as we wanted to change over the years."<sup>12</sup>*

Another respondent confirmed,

*"There is definitely a link between our cultural attitudes and behaviour and violence against women ... for us at our national level you find that the whole notion of what it means to be a man and what it means to be a woman will definitely impact gender-based violence and ... it is believed and said that if a man doesn't beat a woman he doesn't love her: women believe it, men believe it and as a society, sometimes we propagate it."<sup>13</sup>*

Overall, respondents indicated that social and cultural constructions of gender are conducive to an environment in which the "aberration" of gender-based violence against women is not acknowledged as a societal problem. As a consequence, the invisibility and systemic nature of ascribed sex roles and gender

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<sup>8</sup> As Robinson says, "gender based violence presents one of the greatest impediments to women's well-being and their right to equal citizenship." In Robinson, 2004, p.2.

<sup>9</sup> Interviews conducted at Broadcasting Commission, April 28 and May 6, 2011, male senior government official.

<sup>10</sup> Interview Victim Support Unit (VSU), May 4, 2011, male senior government official.

<sup>11</sup> Interview VSU, May 4, 2011.

<sup>12</sup> Researcher's interview, Jamaica Ministry of Justice, May 4, 2011.

<sup>13</sup> Interview Bureau of Women's Affairs (BWA), March 25, 2011 (1).

stereotyping makes them difficult to grasp. Thus, combating the discrimination carried with them is most challenging.

### 3. Legal provisions on sex roles and gender stereotyping as barriers to real equality

At the international level, Article 5 (a) of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls attention to these social and cultural barriers to women's full enjoyment of their human rights. This Article reads:

*"States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;"*<sup>14</sup>

Article 5 (a) thus specifically addresses ascribed sex roles and gender stereotyping. Because of their entrenched nature, this legal provision makes demands of structural change on the States parties to the Convention.

The placement of such legal provision as Article 5 (a) in the women's human rights international treaty renders it explicit that sex roles and gender stereotyping form a systemic problem, which lies at the heart of relations between women and men prevailing to this date, and is common to all parts of the world. They are discriminatory against women and inevitably lead to sustaining structural gender inequality.<sup>15</sup> Moreover, although the Convention does not explicitly address gender-based violence against women, the CEDAW Committee, the body monitoring the implementation of the Convention, stresses in its General Recommendation No. 19 that "[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion."<sup>16</sup>

Furthermore, the Committee points out in General Recommendation No. 25, in its jurisprudence and in a number of Concluding Observations that a variety of means and structures – such as individuals' behaviour, policy, legal and other societal institutions – reflect, preserve, and reaffirm sex roles and gender stereotyping, and restrict women's full enjoyment of all their rights guaranteed under the Convention.<sup>17</sup>

In its decision on Communication No. 28/2010, *R.K.B. v. Turkey*, for example, the Committee indicates that actors from all branches and levels of the government as well as private actors can perpetuate gender stereotyping.<sup>18</sup> Institutions, such as the family, may preserve traditions and ideologies of women's inferiority that reinforce asymmetric sex roles and gender stereotyping. Moreover, certain legal provisions, judges' decisions, and public speeches of individuals in official positions might promote inequality and traditional roles within the family and society.<sup>19</sup>

CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Philippines* is another clear illustration of the social damage and prejudice embodied and caused by gender stereotyping, in this case the revictimization of the author of the communication through the stereotyping relied upon in a Court

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<sup>14</sup> CEDAW, 1979, Article 5 (a).

<sup>15</sup> Holtmaat explains structural gender discrimination as referring to "those forms of discrimination that are a consequence of the fact that the structure or organization of society is based on gender stereotypes which serve to sustain the existing unequal power relations between the sexes." Holtmaat, 2004, p.90.

<sup>16</sup> CEDAW GR. 19, para. 11.

<sup>17</sup> See CEDAW GR. 25, 2004, para. 7; CEDAW CO Luxembourg, 1997, para. 404.

<sup>18</sup> CEDAW Communication No. 28/2010, *R.K.B. v. Turkey*, para. 8.8; See also CEDAW Communication No. 18/2008, *Karen Tayag Vertido vs. Philippines* as an example of the perpetuation of gender stereotyping through the administration of justice, especially paras. 8.1-8.8.

<sup>19</sup> CEDAW CO Mexico, 1998, para. 398.

decision.<sup>20</sup> In this Communication, the author, a victim of rape, bases her complaint on expressly naming the gender stereotyping that has led to the acquittal of the accused. She names a number of gender stereotypes in the decision, including: “the victim must be timid or easily cowed ... according to which women who are not timid or not easily cowed are less vulnerable to sexual attacks;”<sup>21</sup> “the fact that the accused and the victim are ‘more than nodding acquaintances’ makes the sex consensual;”<sup>22</sup> “when a rape victim reacts to the assault by resisting the attack and also by cowering in submission because of fear” negates lack of consent; the victim should try to escape at every opportunity.<sup>23</sup> The author argues that the decision illustrates that “discriminatory assumptions in jurisprudence continue to place rape victims at a legal disadvantage and significantly reduce their chances of obtaining redress for the violation they suffered.”<sup>24</sup> Such decisions deprive victims of “a just and effective remedy for the harm they suffered and continue to force them into a position subordinate to men.”<sup>25</sup> This CEDAW Communication exemplifies how court decisions have the potential to endorse gender stereotyping and institutionalize the ascription of women and men to specific behaviour and characteristics, further harming and revictimizing not only the author of the Communication concerned, but other women as well.<sup>26</sup>

#### 4. Challenging barriers to real equality: *Transformative equality*

The principle of equality is essential to CEDAW. The approach to equality in CEDAW mirrors the concept of non-discrimination, which represents the core objective and scope of the Convention. This objective is based on a three-pronged understanding of non-discrimination and emerges clearly from General Recommendation No. 25 (2004).

Accordingly, States parties are obliged:

1) to “ensure that there is no direct or indirect discrimination against women in ... laws and that women are protected against discrimination” committed by State or non-State actors, in the public or in the private spheres. This indicates the recognition of full equality between women and men before the law, in both the public and the private sphere, by public authorities as well as by private individuals. It represents the principle of *de jure* or *formal equality*.<sup>27</sup> The complementary obligation is to provide women with the right to equal treatment before and in the law.

2) to “improve the *de facto* position of women through concrete and effective policies and programmes.” This corresponds to the principle of *de facto* or *substantive equality*.<sup>28</sup> Given the various differences between women and men (which range from biological to socially and culturally constructed differences), the guarantee of identical treatment for women and men is not sufficient to achieve equality for women. The analogous obligation is to give women an “equal start” in order to ensure equality of results – “the logical corollary of *de facto* or *substantive equality*.”<sup>29</sup> These results, according to this General Recommendation, “may be quantitative and/or qualitative in nature” and include, *inter alia*, women enjoying freedom from violence.<sup>30</sup>

3) 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, legal and societal structures and

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<sup>20</sup> CEDAW Communication No. 18/2008, *Vertido v Philippines*, paras. 8.5-8.8.

<sup>21</sup> *Ibid.*, para. 3.5.2.

<sup>22</sup> *Ibid.*, para. 3.5.4.

<sup>23</sup> *Ibid.*, paras. 3.5.5 and 3.5.1.

<sup>24</sup> *Ibid.*, para. 3.9.

<sup>25</sup> *Ibid.*, para. 3.8.

<sup>26</sup> *Ibid.*, para. 3.7.

<sup>27</sup> The principle of *de jure* or formal equality refers to equality as an inherent trait of every human being, meaning that all human beings are alike and should be treated identically. They “are born free and equal in dignity and rights.” UDHR, 1948, Article 1.

<sup>28</sup> If *de jure* equality stresses the similarities between human beings, the principle of *de facto* or substantive equality draws attention to the differences between individuals. The different contextual positioning of individuals, i.e., geographical, racial, ethnical, social, economic, etc. should not impede their enjoyment of full equality.

<sup>29</sup> CEDAW GR. 25, 2004, para. 8.

<sup>30</sup> *Ibid.*, para. 9.

institutions.”<sup>31</sup> This obligation calls for an alteration of those patterns of human relations, laws, or structures that form or cause discrimination. Accordingly, this third understanding of the principle of non-discrimination and its underlying requirements reflect the principle of *transformative equality* or *equality as transformation*.<sup>32</sup>

Clearly, the principle of transformative equality embodies a *change* stance. Setting transformative equality as a goal and channelling efforts towards its realisation opens a space for challenging social and institutional structures and for the removal of the causes of entrenched forms of discrimination. According to Byrnes, transformative equality “might also be seen as a form of substantive equality with systemic and structural dimensions.”<sup>33</sup> As CEDAW General Recommendation No. 25 affirms,

*“The lives of women and men must be considered in a contextual way, and measures adopted 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>34</sup>

This indicates that ensuring women’s freedom from discrimination and their full enjoyment of equality requires steps to be taken beyond the guarantee of *de jure* or formal and *de facto* or substantive equality. This is because real enjoyment of equality is achieved not only by removing formal barriers. It is achieved when social and cultural structures and power relations that perpetuate models of subordination-domination of sexes are modified.

## 5. Concluding remarks

In this paper I proposed that the achievement of transformative equality must be set as a goal in order to challenge the barriers to real equality. I first explained how social and cultural behaviour based on fixed roles for women and men and resultant gender stereotypes hinder women’s enjoyment of equality in their lived realities and I highlighted the interrelation between sex roles, gender stereotypes, and gender-based violence against women. I exemplified the theoretical explanations with social data collected during qualitative field research conducted in Jamaica. I introduced Article 5 (a) CEDAW, as it is the international norm that expresses the concept of transformative equality and makes structural change an obligation under its provision. This places on States parties to CEDAW the duty to challenge hegemonic patriarchal arrangements and to eradicate systemic, mostly hidden forms of discrimination, including gender-based violence. I put forward the concept of transformative equality and I explained how it opens a space, which enables working with underlying causes of inequality and gender-based violence against women.

I conclude by stressing that ensuring *de jure* and *de facto* equality through the development and implementation of legislation, policy, and programmes are top-down approaches, which press forward the empowerment of women and the promotion of their rights. These approaches are essential, as they lay the authoritative ground for further action to be taken at the level of societal structures and individual entrenched mentalities and behaviour. Therefore, such top-down action must be taken beyond the legal, policy, and programmatic measures by translating in the vernacular the letter of the law, the norms and values therein, and the policy texts in order to make these measures known, guarantee that they benefit the population, and lay the groundwork for a realisation of rights. This approach encompasses the *transformative* equality approach.

Moreover, ensuring transformative equality requires developing a consciousness of what underlying causes for inequality mean and of the gravity of gender-based violence against women. Such consciousness should permeate at the levels of *individuals ranging from government officials and civil society organisations to ordinary people in their everyday life*. Consciousness is important as it lays the stage for tackling entrenched mentalities that imbue institutions and structures, ranging from the family,

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<sup>31</sup> CEDAW GR. 25, 2004, para. 7.

<sup>32</sup> See Fredman, 2003, p. 115.

<sup>33</sup> See Byrnes, 2012, p. 56.

<sup>34</sup> CEDAW GR 25, 2004, para. 10.

the school, the church, the media, to the community and the State (the legal and judicial system, the police), and thus challenging barriers to real equality.

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