

“Girls Just Wanna Have Fun(damental) Human Rights:” How the Women’s Convention and Belgium Combat Gender Stereotypes

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Article Received: 16th October 2019; Accepted: 13th January 2020; Published: 31st January 2020

Abstract

To put it simply, the purpose of the Women’s Convention is to end discrimination on the basis of sex. The inclusion of Article 5, paragraph (a), which focuses on fixed gender roles that get in the way of that goal, provides one of the ways in which they aim to do so. State parties cannot hide behind their respective traditions or customs as to why the realisation of International Human Rights ultimately depends on gender. A question that arises is what does this mean for States in terms of concrete obligations. This article aims to provide an answer to that question by exploring Article 5 (a) and the notion of extra-legal measures, in particular. Equally, it will take a closer look at how one of the State parties, namely Belgium, is doing in this regard both in theory as in practice. By conducting literary research it becomes apparent that State parties have to adopt national laws and/or instruments. Furthermore, they have to incorporate extra-legal measures as well. Meaning, they should incorporate measures to influence the mindsets of people regarding gender equality through means such as education, the media and public information projects, for instance. Although Belgium continues to struggle with the effective implementation of its laws and policies due to its inherent complex institutional structure. It can still be said that its well on its way to combat gender inequality in light of Article 5 (a). Ultimately, Article 5 (a) brings meaning to every right in the Women’s Convention by considering that it is only when gender equality is reached both before the law and in practice that women will be able to enjoy Human Rights.

Keywords: Article 5 UN Women’s Convention; Gender Equality; International Human Rights Law; Extra-Legal Measures; Belgium.

How to cite (Chicago 16th): Beintema, Bo Minou. “Girls Just Wanna Have Fun(Damental) Human Rights:’ How the Women’s Convention and Belgium Combat Gender Stereotypes .” *Udayana Journal of Law and Culture* 4, no. 1 (2020): 1–20. <https://doi.org/https://doi.org/10.24843/UJLC.2020.v04.i01.p01>.

doi: <https://doi.org/10.24843/UJLC.2020.v04.i01.p01>

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1. Introduction

The Convention on the Elimination of All Forms of Discrimination against Women¹(hereafter “the Women’s Convention”) celebrated its 40th birthday on the occasion of International Women’s Day in the Year 2019.² In spite of the impressive steps that have been taken in the past several decades, gender inequality remains a dreadful truth on a global level. It is painfully apparent when looking at a world in which the wage gap, son preference and gender-based violence continue to exist. Article 5 of the Women’s Convention addresses said inequality implicitly by referencing to gender stereotypes in paragraph (a) and fixed parental gender roles in paragraph (b). More specifically, Article 5 (a) entails an obligation upon States “to modify social and cultural patterns of conduct” in regards to men and women on the basis of stereotypes; while Article 5 (b) requires States to take appropriate measures to educate parents on their shared responsibility towards the upbringing and development of their children instead of solely relying on fixed parental roles. This paper will, however, focus only on article 5 (a).

The European Institute for Gender Equality (hereafter “the EIGE”) defines gender inequality as a: “Legal, social and cultural situation in which sex and/or gender determine different rights and dignity for women and men, which are reflected in their unequal access to or enjoyment of rights, as well as the assumption of stereotyped social and cultural roles.”³ As derived from the said definition, it can be stated that expected gender roles and cultural norms can actually stand in the way of the fulfillment of the human rights of women. For instance, in regards to choosing a profession, the law of a State might incorporate provisions that recognize that men and women are equal before the law and therefore enjoy the same right of choosing a job to their liking. Nevertheless, all too often the society in which they live has a different idea of what is appropriate for men and women. A concrete example that portrays this point is the low representation of men in the caregiving industry. This reality can, for a large part, be ascribed to the commonly found belief that communal, nurturing roles are reserved for women.⁴ The other side of the same coin highlights how men are supposedly

¹ Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 of 18 December 1979, article 5.

² Office of the High Commissioner, “Committee on the Elimination of Discrimination against Women.” <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

³ European Institute for Gender Equality, “gender inequality.” <https://eige.europa.eu/thesaurus/terms/1182>

⁴ Alice H. Eagly, Sabine Sczesny, “Gender Roles in the Future? Theoretical Foundations and Future Research Directions.” *Frontiers in Psychology* 10 (2019): 6.

more prone to take action, thereby being more fit to lead.⁵ Thoughts, such as those mentioned above, are often deeply embedded within peoples' beliefs and can dictate which genders should take upon which professions. Therefore, in spite of there being *de jure* equality, as a result of the *de facto* inequality between men and women, women will either not choose certain professions or will simply not be considered for them. As long as it is not socially accepted for both genders to exercise similar professions, the specific right that allows doing so will not contribute to equality.

Thus, as long as gender equality is not simultaneously achieved in law and in practice, the human rights of women will not be effective,⁶ as they will not reach their designed potential. It is equally important to note that gender inequality impacts women differently across the globe and gender can not be simplified into one big catch-all category of women uniting.⁷

In regards to Article 5 (a), this article aims to uncover the meaning behind "all appropriate measures" as meant by the Women's Convention. Furthermore, it will assess how one of the State parties has tried to comply with this article, namely the Kingdom of Belgium, and see the results, or lack of, by the measures taken. The author landed on this choice partly because most Western countries pride themselves on having achieved gender equality simply because of their respective legal recognition of the notion. Even when confronted with evidence suggesting the contrary. Recently in a big city in Belgium, a young woman tragically lost her life after she was raped and left for dead in a river.⁸ It sent a shockwave through the country and raised questions on how this could happen in a country with formal equality and safety measures designed to combat inequality. And for the other part, as the Author an inhabitant and former law student of Belgium, these issues seem interesting to be scrutinized. Therefore, with an empirical approach and particular focus on CEDAW instruments, the author will try to provide answers to the following questions: Firstly, what does Article 5(a) of the Women's Convention entail? What is meant by 'all appropriate measures'? And secondly, which measures have the Government of Belgium taken to uphold its obligations under Article 5 (a) of the Convention and how effective have these been?

⁵ Tanja Hentschel, Madeline E. Heilman and Claudia V. Peus, The Multiple Dimensions of Gender Stereotypes: A Current Look at Men's and Women's Characterizations of Others and Themselves." *Frontiers in Psychology* 10 (2019): 9.

⁶ Ingrid Westendorp, 'Using Culture to Achieve Equality', Ingrid Westendorp (ed.), *The Women's Convention Turned 30*, Intersentia, Cambridge, 2012, 111.

⁷ Liza Baldez, "The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A new way to measure women's interests." *Politics & Gender* 7, no. 3 (2011): 420.

⁸ DeMorgen. "Verdwijning in Antwerpen: Lichaam vermiste Julie van Espen (23) gevonden in Albertkanaal, mogelijke dader gearresteerd." Last Modified May 7, 2019. <https://www.demorgen.be/nieuws/lichaam-vermiste-julie-van-espen-23-gevonden-in-albertkanaal-mogelijke-dader-gearresteerd~be170451/>

The structure of this paper is the following. In section 2.1, this paper will deal with the international legal framework, which starts with the Women’s Convention and specifically the first paragraph of Article 5 in section 2.1.1. Subsequently, it will look into other International Human Rights Treaties and soft law instruments to see if similar provisions have been provided in section 2.1.2. In the following section 2.2, a closer look will be taken at the implementation of article 5 (a) of the Women’s Convention in the domestic framework of Belgium. For which, both legal and extra-legal measures will be taken into account. In section 2.3, this paper will turn to look at the current situation in Belgium and see how and if their measures have contributed to actual gender equality. In this section, author will give her own personal view on the issue discussed. Finally, in section 3, it will address concluding remarks and personal recommendations.

2.1 International Legal Framework

2.1.1 The Women’s Convention

The Women’s Convention is an international multi-lateral treaty, currently counting 189 State parties⁹ and 30 Articles.¹⁰ The Convention was established with the goal in mind of eliminating all forms of discrimination against women on the basis of gender.¹¹ More specifically it “aims to achieve substantive equality where women are able to enjoy their human rights in practice, and are given equal access to opportunities and an enabling environment to achieve equal results”.¹² This goal would be an unreachable fantasy without the inclusion and correct implementation of Article 5.

Article 5 states that “States Parties shall take all appropriate measures:

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

Article 5 (a) of the Women’s Convention was designed specifically to combat harmful prejudices, customs and practices based on stereotypes and the idea of inferiority or superiority over either of the sexes that stand in

⁹ United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women.
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=en

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 of 18 December 1979.

¹¹ Lisa Baldez, *op.cit.*, 423.

¹² UN Women. “Infographic: Human Rights of Women”
<https://www.unwomen.org/en/digital-library/multimedia/2019/12/infographic-human-rights>

between the effective enjoyment of Human Rights for women.¹³ Patterns such as these can be referred to as ‘Gender stereotyping’¹⁴: the practice “of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men”. An example of a harmful gender stereotype is the taboo around female sexuality, especially seen with adolescent girls,¹⁵ combined with a misplaced need of regulating a woman her freedom in that regard. Resulting all too often in wrong or even a complete lack of information concerning sexual and reproductive rights.¹⁶ Whereas Article 5 focuses on the modification of beliefs and ultimately behavior, it amplifies the Women’s Convention ultimate goal and reasoning.¹⁷ Which is why Article 5 has to be read in conjunction with the purpose of the entire Women’s Convention.¹⁸ It is by demanding a “social and cultural transformation” within State parties,¹⁹ that this Article could play a vital role in the realization of the human rights of women when implemented correctly.

Nevertheless, questions remain as to what qualifies as desired behavior by States or what amounts to harmful practices. Considering that most social and or cultural patterns are so deeply embedded within society people nor States might even realize that certain practices are harmful. Or even in the case that some people do, that the practice itself might be considered to be appropriate regardless. The Committee on the Elimination of Discrimination against Women (hereafter “CEDAW”), as the monitoring body to the Women’s Convention, holds the perfect position to offer clarity. Unfortunately, CEDAW has not published a General Recommendation specifically on Article 5 yet. It has made multiple references to this Article in other General Recommendations and has issued Concluding Remarks in response to State Reports in which they do explicitly refer to Article 5 (a). Furthermore, CEDAW has expressed the importance of that Article for the realization of other human rights under the Women’s Convention, including

¹³ Ingrid Westendorp, *op.cit.*, 115.

¹⁴ Office of the High Commissioner. “Gender stereotyping.” <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>

¹⁵ CEFMU, Report ‘Tackling the Taboo: Sexuality and gender-transformative programmes to end child, early and forced marriages and unions’ (June 2019) :5.

¹⁶ OHCHR, Report ‘Gender Stereotyping as a Human Rights Violation’, September 2014.

¹⁷ E. Lijnzaad, ‘Over rollenpatronen en de rol van het Verdrag’, A.W. Heringa, J. Hes, L. Lijnzaad (editors), *Het Vrouwenverdrag: een beeld van een verdrag...*, MAKLU Uitgevers, Antwerpen-Apeldoorn, 1994, 43.

¹⁸ Elizabeth Sepper, “Confronting The “Sacred and Unchangeable”: The Obligation to Modify Cultural Patterns Under The Women’s Discrimination Treaty.” *University of Pennsylvania Journal of International Law* 30, no. 2 (2008): 596.

¹⁹ Ramona Biholar, *Transforming Discriminatory Seks Roles and Gender Stereotyping*, Intersentia, Cambridge, 2013, 4.

but not limited to the right to education, the right to participation in political and public life and the right to employment.²⁰

Whereas the Article does not explicitly use terms such as gender inequality or gender-based discrimination, by combining Article 5 (a) together with Article 1 and 2 (f) of the Women’s Convention, it becomes clear that it does deal with gender-based discrimination against women.²¹ While Article 1 provides a definition of what will be understood as discriminatory by the Women’s Convention. Article 2 (f) of the Women’s Convention obliges states “to provide legal protection and to abolish or amend discriminatory laws and regulations as part of the policy of eliminating discrimination against women”.²² This article provides the basis for legal and extra-legal measures, which States are obligated to implement in order to comply with Article 5 (a).²³ In General Recommendation number 25 CEDAW clearly states that obligations deriving from the Women’s Convention go beyond a “purely formal legal obligation of equal treatment of women with men” and have to be integrated into a wider fashion.²⁴

Considering that Article 5 does not offer a definition to what is understood by ‘all appropriate measures’, nor is there a General Recommendation to turn to, one can look at the type of measures CEDAW has in their Concluding Observations advised States to adopt. As mentioned earlier this obligation is twofold and requires both legal and extra-legal measures. For instance, in regards to gender-based violence CEDAW has obliged State parties to adopt legislation in order to protect women from violence in everyday life, such as in the workplace or domestic violence.²⁵ Where legal measures are more traditional and commonly understood in the same manner, extra-legal measures raise questions. It can easily be implied from the wording that States have to incorporate measures that go beyond the law. Nevertheless, without a definition in the Convention or clarification from CEDAW this notion remains vague and unclear as to which measures will be considered as good practice.

Thus, this paper turns to the recommended measures by CEDAW. There are numerous fields that come to mind that present opportunities to combat harmful stereotypes or gender roles. For instance, CEDAW has

²⁰ Ingrid Westendorp, *op.cit.*, 116.

²¹ CEDAW/C/GC/28, General Recommendation No. 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, paragraph 5.

²² CEDAW/C/GC/28, General Recommendation No. 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, paragraph 31.

²³ Ingrid Westendorp, *op.cit.*, 113.

²⁴ CEDAW, General Recommendation No. 25, Temporary Special Measures (art. 4), 2004, paragraph 6.

²⁵ CEDAW, General Recommendation No. 12, Violence against women, 1989, preamble.

urged States parties “to adopt education and public information programs, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women”.²⁶ Education can be used as an effective tool to shape the minds of children and presents a clear field in which measures should be taken. Additionally, CEDAW has urged State parties to create new textbooks or make changes in existing ones that portrayed stereotypical behavior and traditional role patterns.²⁷ They have also called upon State parties to “Intensify its efforts aimed at diversifying academic and vocational choices for women and men and take further measures to encourage women and men to choose non-traditional fields of education and careers;” therefore encouraging women and men to ignore gender roles and choose education fields regardless of societal expectations that may exist.²⁸ The media has also been recognized by CEDAW as an important influence on the mindset of people. States are therefore urged to work with, influence or use the media themselves as an appropriate measure.²⁹

Later recommendations dealt with gender-based violence where CEDAW clarified what was expected from State parties as the following: “the obligations of the State party that are set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of, and protection from violence against women, ...”³⁰ which amounts to a positive obligation for States. General Recommendation 19 elaborated on the notion of gender-based violence by stating that traditional attitudes, which place women in a subordinate position to men, are typically used as justifications for violence by perpetrators. In the case of *Ms. A.T v. Hungary*, in which Hungary had failed to take the appropriate measures to protect Ms. A.T from her abusive husband, it was blatantly apparent how the entire country viewed women as inferior to men.³¹ Again through combining Article 5 (a) with Article 1 of the Women’s Convention it becomes clear that it is both upon State parties and private actors to not only refrain from gender-based violence but take measures to abandon these type of harmful attitudes that led to the violence in the first place.³² Further examples of concrete measures include statistics

²⁶ CEDAW/A/42/38, General Recommendation No.3, Education and public information campaigns, 1987, preamble.

²⁷ Ingrid Westendorp, *op.cit.*, 118.

²⁸ UN Doc, C/BEL/CO/7, Concluding observations on the seventh periodic report of Belgium, CEDAW, 2014, para 31.

²⁹ Ingrid Westendorp, *op.cit.*, 119.

³⁰ *A.T. v. Hungary (Ms. A.T. v. Hungary)*, Communication No.2/2003, CEDAW 2005, para. 9.3.

³¹ Loveday Hodson, “Women’s Rights and the Periphery: CEDAW’s Optional Protocol,” *European Journal of International Law* 25, No. 2 (2014): 568.

³² CEDAW/A/47/38, General Recommendation No. 19, Violence against women, 1992, para. 11-12.

on the incidence of violence of all kinds against women and on women who are victims of violence in their reports to the Committee.³³

2.1.2 Other Human Rights Treaties and Declarations

Anti-discrimination clauses can be found in almost every human rights instrument,³⁴ but only several other international instruments contain provisions in which obligations are posed upon States to eliminate harmful cultural practices and social patterns that stand in the way of the realization of Human Rights. Some of these instruments explicitly mention discrimination between men and women on the basis of gender, while others were later clarified to include such meaning. Both types are discussed below.

Article 3 of the International Covenant on Civil and Political Rights³⁵ (Hereafter “ICCPR”) covers the obligation on States to ensure “the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”. The Human Rights Committee (hereafter “HRC”) updated its views on Article 3 of the ICCPR in 2000 in its General Recommendation number 28. In this document, the HRC considers that “inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes”.³⁶ In the final paragraph of the same General Recommendation, the HRC addresses the specific rights enjoyed by minorities in respect of their culture, language and religion and how said rights will not justify discrimination against women in the fulfillment of their human rights under the ICCPR. Nor will it allow a difference in legal protection between men and women.³⁷ Therefore States cannot rely on cultural patterns or social constructs as a justification as to why women did not enjoy equal treatment before the law or equal enjoyment of the rights under the ICCPR specifically.

Article 3 of the International Covenant on Economic, Social and Cultural Rights³⁸ (hereafter “ICESCR”) is identical in wording to Article 3 ICCPR and obliges States to “ensure” the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in

³³ Ibid.

³⁴ Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Article 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 39/46, 10 December 1984, Article 1;...

³⁵ International Covenant on Civil and Political Rights, General Assembly Resolution 2200 (XXI), 16 December 1966.

³⁶ CCPR/C/21 General Recommendation No.28, Equality of Rights between Men and Women (art. 3), 2000, para. 5.

³⁷ CCPR/C/21, General Recommendation No.28, Equality of Rights between Men and Women (art. 3), 2000, para. 32.

³⁸ International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI), 16 December 1966.

ICESCR. “To ensure” entails a positive obligation, meaning that States have to undertake action in order to comply with the obligation. Article 3 ICESCR has to be read in conjunction with each specific right guaranteed under the Convention.³⁹ In their General Recommendation Number 16, the Committee on Economic, Social and Cultural and Rights (hereafter “CESCR”) explains how gender can affect the enjoyment of rights, whereas this enjoyment is an equal right in itself for both men and women. And how gender-based assumptions and expectations usually work to the disadvantage of women.⁴⁰ The Organisation for Economic Co-operation and Development (also known as “OECD”) even went as far as to conclude; “gender equality will take over 200 years”, on the basis of their own collected data,⁴¹ derived from their Gender, Institutions and Development Database.⁴² Factors such as discrimination in the family based on societal expectations were the basis to said conclusion. Women worldwide continue to bear 75 percent of unpaid domestic housework.⁴³ This precludes women from fully participating in economic, social and political development, which leads to inequality.

The Declaration on the Elimination of Violence against Women⁴⁴ entails such obligation under Article 4 that obligates States to not only condemn violence against women on the one hand but on the other hand not to justify said violence on the basis of custom, tradition or religious consideration⁴⁵. The Beijing Declaration and Platform for Action (hereafter “the Beijing Declaration”)⁴⁶ was adopted on the Fourth World Conference on Women and designed to function as an agenda for the empowerment of women. During the World Conference on Women, multiple actors come together, such as government delegates, NGO representatives and international civil servants, to reach political agreements on shared goals towards female empowerment. Paragraph 24 of its preamble⁴⁷ mentioned that all necessary measures will be taken “to eliminate all forms of

³⁹ CESCR/E/C.12/2005/4, General Comment No. 16, Equality of Rights between Men and Women (art. 3), 2005, para. 2.

⁴⁰ CESCR/E/C.12/2005/4, General Comment No. 16, Equality of Rights between Men and Women (art. 3), 2005, para. 14.

⁴¹ OECD. “A long way before promises turn into progress: discriminatory laws and social norms still hamper gender equality.” <https://www.oecd.org/gender/data/a-long-way-before-turning-promises-into-progress-discriminatory-laws-and-social-norms-still-hamper-gender-equality.htm>

⁴² OECD. “Gender, Institutions and Development Database.” <https://stats.oecd.org/Index.aspx?DataSetCode=GIDDB2019>

⁴³ OECD. “A long way before promises turn into progress: discriminatory laws and social norms still hamper gender equality.” <https://www.oecd.org/gender/data/a-long-way-before-turning-promises-into-progress-discriminatory-laws-and-social-norms-still-hamper-gender-equality.htm>

⁴⁴ UN Doc. A/RES/48/104, Declaration on the Elimination of Violence against Women, 20 december 1993.

⁴⁵ Ingrid Westendorp, *op.cit.*, 114.

⁴⁶ A/CONF.177/20: Beijing Declaration and Platform for Action, 1995.

⁴⁷ *Ibid*, para. 24.

discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women”. The rest of the Beijing Declaration contains strategic objectives and actions as well as critical areas of concern. One of the areas of concern that is mentioned is the stereotyping of women and inequality in regards to access to communication.

2.2 The Domestic Framework of the Kingdom of Belgium

2.2.1 Legal Measures

Like most Western States, Belgium has accomplished formal equality between men and women in the eyes of the law.⁴⁸ Meaning that Belgian law does not merely formulate equality between the sexes in explicit terms but has incorporated anti-discrimination measures as well. In regards to its international obligations, Belgium has a monist constitutional system. Due to its monist status, Article 5 is directly applicable in the domestic legal system of Belgium, by virtue of ratification of the Women’s Convention. Therefore, Belgium did not have to adopt a specific law in order for Article 5 to be applicable in its territory.⁴⁹ Nevertheless, it has adopted its own specific legal measures as well, which will be addressed in the following section. Due to its federal nature, as a country consisting of three Regions and three Communities, both federal and local regulations exist.⁵⁰ All the existing measures on a federal level will be addressed first.

In 2002, the Federal Institution for the Equality of Women and Men (hereafter “the Institution”) was created. The Institution is an autonomous public agency with legal personality, which has been trusted with the difficult task of changing the mindsets of the Belgian people in a way that gender equality will not only be seen but actually be experienced as the norm in daily life. Its mandate allows the Institution, for instance, to conduct, coordinate and develop research as well as make recommendations to Belgian legislators.⁵¹ So far it has only issued one recommendation on the topic of gender discrimination, categorized by them as falling under ‘sexism’. The Institution consists of several units, one of which is called ‘Gender mainstreaming’.⁵²

⁴⁸ Elizabeth Sepper, *op.cit.*, 587.

⁴⁹ Katholieke Universiteit Leuven. “The Struggle Concerning Interpretative Authority in the Context of Human Rights – The Belgian Experience.” <https://www.law.kuleuven.be/personal/mstorme/HumanRightsBelgianExperiences.pdf>

⁵⁰ Belgium.be. Belgium, a federal state. https://www.belgium.be/en/about_belgium/government/federale_staat

⁵¹ Instituut voor Gelijkheid van Vrouw en Man. “Opdrachten”. <https://igvm-iefh.belgium.be/nl/organisatie/opdrachten>

⁵² Instituut voor Gelijkheid van Vrouw en Man. “Institute for the Equality of Women and Men.” <https://igvm-iefh.belgium.be/en/organisatie>

Furthermore, Belgium implemented a Federal General Anti-Discrimination Law consisting of three parts in 2007. One of which focused solely on discrimination between men and women, namely, the Gender Act 2007.⁵³ In the same year the complementary Gender Mainstreaming Law was adopted. The goal of both legislations, as mentioned above, is to improve equality between men and women. Gender mainstreaming specifically: “seeks to change institutional structures, policy instruments, and priorities from a gender equality perspective. It does so by creating the conditions for institutional learning—for instance, by building up gender expertise within organizations. The idea is to enable bureaucrats to reorganize institutional procedures and to redefine policy values in ways to achieve gender equality.”⁵⁴ Through Article 2 of the Belgian Gender Mainstreaming Law, the Government of Belgium expresses its intentions of guarding over the implementation of the goals set by the Beijing Declaration.⁵⁵ Namely, it does so by offering its own individual set of objectives within that instrument. Whereas, by simply adding on to them or providing stronger protection clauses, these goals are in accordance with the existing objectives as provided in the Beijing Declaration.

Additionally, another feature of this Gender Mainstreaming Law is the integration of a so-called “gender dimension” within Belgium’s federal governance structures in which Belgium both the political and administrative side of the government have to take gender equality into account every step of the way when making decisions. For instance, Belgian ministers have to take the gender dimension into account when preparing budgets, referred to as “gender budgeting”. As a consequence, for every preparatory document, a “gender nota” has to be added as to how credits will amount to the development of gender equality. In regards to the administrative side, with every possible subsidy or public contract gender equality has to be taken into account in regards to choosing a candidate.⁵⁶ To further combat gender inequality, the “Gendertest”⁵⁷ was implemented by royal decree. It provides a guiding tool for the responsible minister to conduct an *ex ante* gender impact assessment when drafting laws. In this test, it is assessed what the impact is of draft legislation on the situation of women and men.

In regards to legal measures taken at the regional level, the competent Communities and Regions adopted their own legislation in the form of

⁵³ The Gender Act 2007 (10 May 2007, B.M. of 9 June 2007)

⁵⁴ Gülay Caglar, "Gender mainstreaming." *Politics & Gender* 9, no. 3 (2013), 340.

⁵⁵ A/CONF.177/20: Beijing Declaration and Platform for Action, 1995, paragraph 293.

⁵⁶ Instituut voor Gelijkheid van Vrouw en Man. “Wetgeving”. https://igvm-iefh.belgium.be/nl/activiteiten/gender_mainstreaming/wetgeving

⁵⁷ Instituut voor Gelijkheid van Vrouw en Man. “de_gendertest”. https://igvm-iefh.belgium.be/nl/activiteiten/gender_mainstreaming/toepassing/de_gendertest

decrees.⁵⁸ For instance, the Flemish Community adopted the Equal Opportunities and Equal Treatment Policy in 2008⁵⁹ and the French-speaking Community of Belgium adopted another decree in the same year, which is called the Decree on the Fight against Certain Forms of Discrimination.⁶⁰ The latter covered the same grounds as the federal Gender Mainstreaming Law. Respectively, the Walloon Region adopted a decree on the fight against certain forms of discrimination that included a compartment on the discrimination between men and women.⁶¹

2.2.2 Extra-legal Measures

As mentioned above, State parties to the Women’s Convention have an obligation to take all appropriate measures to eliminate all cultural practices and traditions that amount to gender inequality, both in and outside the law. Therefore States need to implement extra-legal measures alongside the legal ones in order to modify social and cultural patterns of conduct.

Both the Belgian Federal Government and the Communities alike have adopted several measures to eliminate harmful stereotypes in the media. Communities in Belgium try to combat gender inequality by raising awareness amongst teachers and by creating innovative textbooks. In the French Community, for instance, educational textbooks will be ‘screened’ for gender roles and traditional stereotypes and schools can get subsidies when purchasing ‘gender equal’ textbooks.⁶² In regards to the media and advertisements, The Jury for Ethical Practices in Advertising (hereafter “JEP”) regarding ethical communication was founded in 1974 and functions as a self-regulatory body.⁶³ “Its main task is to determine whether the advertising messages disseminated through the mass media (newspapers, magazines...), e-mailing and/or direct mail are in accordance with the rules on advertising ethics, for which it relies on Belgian statutory law and on the self-disciplinary codes”.⁶⁴ Since 2009 the Institution is represented in the

⁵⁸ European Institute for Gender Equality. “gender inequality.” <https://eige.europa.eu/thesaurus/terms/1182>

⁵⁹ Framework Decree on Equal Opportunities And Equal Treatment Policy of 10 July 2008 (B.M 23 September 2008)

⁶⁰ Decree of 12 December 2008 on the Fight against Certain Forms of Discrimination (B.M. of 13 January 2009)

⁶¹ Decree, concerning the Fight Against Certain Forms of Discrimination 6 November 2008 (B.M. 19 December 2008)

⁶² The Policy on Gender Equality in Belgium- Update 2015. https://rosavzw.be/digidocs/dd-000777_2015_Policy_on_Gender_Equality_in_Belgium_EP.pdf

⁶³ ACC Belgium. “Advertising Self Regulation and the JEP.” <http://www.accbelgium.be/tools-services/advertising-self-regulation-jep>

⁶⁴ Y. Janssens, ‘Sex-role stereotyping and sex discrimination regulation in advertising: the belgian case’, C. Cerqueira; R. Cabecinhas & S. I. Magalhães (Eds.), *Gender in focus: (new) trends in media*, CESC- Centro de Estudos de Comunicação e Sociedade Universidade do Minho, Braga Portugal, 2016, 87.

JEP, to make sure that a gender dimension will be taken into account when dealing with complaints.⁶⁵ Furthermore, the same Institution is coordinating a national action plan to combat gender-based violence.⁶⁶

2.3 In practice

The EIGE has awarded Belgium with a 71.1 out of a 100 in the European Gender Equality Index, based on the indicators they use to review how far European countries are removed from achieving gender equality.⁶⁷ As the previous section mentioned Belgium has adopted multiple measures aiming to combat gender inequality, but the question arises as to how these measures are being implemented to benefit both men and women. It appears that in spite of the existing measures and the focus on legal recognition of equality, Belgium still struggles to fully comply with the aim of Article 5 of Women's Convention. Whereas the main struggle seems to lie with cultural and social barriers, such as traditional gender roles and sexist behaviors, Belgium also faces some difficulties on the legal front.

Due to Belgium's monist nature, the Articles derived from the Women's Convention are all supposed to be fully applicable within domestic law from the moment of ratification. Nevertheless, in practice not all substantive rights are fully applicable yet due to the fact that Belgian Courts still have to determine whether or not they are compatible with Belgian Law.⁶⁸ Furthermore, Belgium has a complex institutional structure that, in spite of the legislation and policies trying to combat inequality, has a tendency towards fragmentation of gender equality and causes gender gaps to remain.⁶⁹ CEDAW has recognized this complexity in its most recent Concluding Observations on the seventh periodic report of Belgium, conducted in 2014, where it voices its concerns with regards to the efficiency of the Institution.⁷⁰

Although CEDAW recognizes the potential of the work of the Institution, it is worrying that an overarching strategy is lacking and that the Institution does not possess the power to coordinate federal policies on

⁶⁵ The Policy on Gender Equality in Belgium- Update 2015. https://rosavzw.be/digidocs/dd-000777_2015_Policy_on_Gender_Equality_in_Belgium_EP.pdf, p. 22.

⁶⁶ European Institute for Gender Equality. "Combating violence against women: Belgium". <https://eige.europa.eu/rdc/eige-publications/combating-violence-against-women-belgium>

⁶⁷ European Institute for Gender Equality. Gender Equality Index: Belgium. <https://eige.europa.eu/gender-equality-index/2019/BE>

⁶⁸UN Doc, C/BEL/CO/7, Concluding observations on the seventh periodic report of Belgium, CEDAW, 2014, para. 8-9.

⁶⁹ The Policy on Gender Equality in Belgium- Update 2015. https://rosavzw.be/digidocs/dd-000777_2015_Policy_on_Gender_Equality_in_Belgium_EP.pdf

⁷⁰UN Doc, C/BEL/CO/7, Concluding observations on the seventh periodic report of Belgium, CEDAW, 2014, para. 10-11.

gender mainstreaming. Therefore, CEDAW has recommended a strategic plan that is sensitive to Belgium’s complex federal structure. This plan includes the idea of leaving the overall coordination up to the Institution as CEDAW believes it would be better suited to deal with this task.

The potential of the Institution was recently confirmed with the first positive Belgian Judgement of discriminate behavior towards women, that had been brought forward by the Institution.⁷¹ On the 3rd of September 2019, the Dutch-speaking Brussel’s Labor Court decided in the case a woman who had recently given birth should be able to return to her place of employment without being degraded to a lower position. Which, according to the Court, suggests discrimination on the basis of sex and discrimination against pregnant women.⁷²

In regards to education, young Belgian women are currently higher educated than men by indicating that more women in the age restrictions of 25 to 34 have a tertiary degree in comparison to their male counterparts. Nevertheless, gender differences towards certain educational topics, such as mathematics, remain.⁷³ This is something CEDAW commented on as well in the same Concluding Observations by stating that Belgium had to intensify its efforts towards diversifying academic choices for women and to encourage women into choosing non-traditional fields of study.⁷⁴

So far, the Institution has conducted one study concerning ‘sexism’, as mentioned earlier, called “the depicted image of Women and Men in advertisements in Belgium”.⁷⁵ In this study, it is mentioned that the “JEP” (“*Jury voor Ethische Praktijken inzake reclame*”, translated as the jury for ethical practices in regards to advertisements) has not received many complaints. The Institution could think of several reasons as to why that was the case. One suggestion was that not many people had heard of the JEP, another was that stereotypes are too heavily embedded within the mindsets of people, which meant that people did not even notice that there were stereotypes within Belgian advertisements.

Furthermore, in regard to the national action plan to combat intimate partner violence and other forms of violence, CEDAW has raised its concerns

⁷¹Instituut voor de Gelijkheid van Vrouwen en Mannen. Degradatie na zwangerschap, rechter oordeelt voor het eerst geslachtsdiscriminatie. https://igvm-iefh.belgium.be/sites/default/files/downloads/pb_terugkeer_zwangersverlof.pdf.

⁷² (Instituut voor de Gelijkheid van Vrouwen en Mannen v. N.V.), Judgment, Arbeidsrechtbank Brussel-Nederlandstalig, ... bron vinden.

⁷³ Greater educational equality has not translated into equality in the labour market <https://www.oecd.org/belgium/Closing%20the%20Gender%20Gap%20-%20Belgium%20FINAL.pdf>

⁷⁴ CEDAW/BEL/CO/7, Concluding observations on the seventh periodic report of Belgium, CEDAW, 2014, para. 31.

⁷⁵ Instituut voor Gelijkheid van Vrouw en Man. https://igvmiefh.belgium.be/sites/default/files/adivsories/beeldvorming_van_vrouwen_en_mannen_in_de_reclame.pdf

on the lack of effective implementation by the Belgian Government.⁷⁶ Which turned out to be justified in light of the number of cases of rape and gender-based violence Belgium is faced with. Earlier this year a young woman lost her life after being raped and left for the dead which highlighted Belgium's inefficacy of dealing appropriately with these types of cases. Instead of addressing the bigger issues at hand, the Belgian judiciary treated the incident as an isolated incident that occurs due to budgetary cuts leaving the victim "in the wrong place at the wrong time".⁷⁷

Article 5 (a) seems of the utmost importance. It is only when one eliminates stereotypes, gender roles and other harmful cultural patterns or social constructs, that women and girls will finally be able to fully enjoy human rights. If equality is not achieved both *de facto* and *de jure*, every right incorporated in the Women's Convention remains a dead letter. Article 5 (a) ties everything together, whereas the Women's Convention may provide substantive rights such as the Right to Education in Article 10, the right of Participation in Politics in Article 7 (a) or the Right to health, including family planning in Article 12. Unless State parties remove both the legal and cultural barriers that are standing between the fulfillment of these rights all of them will be meaningless. In multiple States around the world, such as South Korea, sons are still preferred over daughters. Resulting in realities that often exclude women from seeking education or may even end tragically with policies on an off-spring selection that infer with their right to life.⁷⁸ Similar issues arise in cultures that do not allow for family planning and thereby put the lives of women in danger in spite of having ratified the Convention.

An effective way to reach *de facto* equality between men and women is through a "bottom-up approach", in which non-state actors, such as community leaders, are involved in the process. Cultures have the ability to change but will only do so when mindsets are changed, something that requires a strong will, time, and effort. It is my view that it is upon State parties to find a way to work together with community leaders, to find a way to reach out to families and carry the idea of equality through in every aspect of public and private life. It is only when society views men and women as equals that there will ever be true equality in the sense of Article 5 (a) of the Women's Convention.

⁷⁶ CEDAW/BEL/CO/7, Concluding observations on the seventh periodic report of Belgium, CEDAW, 2014, para. 20.

⁷⁷ De Tijd. "Lastpakken in toga's." Last Modified May 11, 2019. <https://www.tijd.be/politiek-economie/belgie/federaal/lastpakken-in-toga-s/10125913.html>

⁷⁸ Andrea Den Boer, Valerie Hudson, "Patrilineality, Son Preference, and Sex Selection in South Korea and Vietnam," *Population and Development Review* 43, no. 1 (2017):119-121.

On a final note, it would be highly beneficial if CEDAW issued a General Recommendation on Article 5 and enlightened State parties on the exact meaning of this international obligation. By offering some examples of suitable extra-legal measures to take, as these measures can be quite confusing due to a lack of definition. Often, people do not realize that their behavior could be considered sexist or limiting to girls in the first place. Especially when these behaviors stem from deeply imbedded traditions or customs. The law can only do so much in that regard, it is through these so-called extra-legal measures that real change tends to happen as they have the ability to influence mindsets.

3. Conclusion and Recommendation

In conclusion, Article 5 (a) of the Women’s Convention obliges State parties to eliminate all social constructs and cultural patterns, such as traditions, that have a harmful effect on the enjoyment of the human rights of women. States need to ensure both formal and de facto equality between men and women by taking all appropriate measures. These measures are twofold, on the one hand, State parties need to take legal measures, which means that they have to adopt Article 5 (a) in their national legislation and possibly additional laws if needed to ensure the full applicability of said right. On the other hand, State parties have to take measures outside the law. By means of carrying gender neutrality through education, media and public information for instance. Several other international instruments have incorporated similar provisions, to be found in treaties and in soft law instruments, such as the Declaration.

Belgium has already implemented a number of laws and policies in order to modify social and cultural patterns of conduct. The creation of the Institution in 2002 and the adoption of the Gender Mainstreaming Law in 2007, were both great steps in the right direction. Furthermore, Belgium has taken some extra-legal measures as well, such as the National Action Plan. Nevertheless, its complex institutional structure has a tendency to cause fragmentation in regards to gender equality and as a result gender gap remains to exist. To which CEDAW suggested to explore the possibility of letting the Institution handle the coordination on the implementation of policies in the future to tackle said fragmentation. All things considered, it is not in perfect compliance with Article 5 (a) yet due to several reasons.

While legal measures are important and they send the relevant messages to the inhabitants of a country, the law can only do so much. Effective change in regards to the behaviour of people will only follow by changing beliefs and mindsets. This is something that could be achieved by State parties through the implementation of appropriate extra-legal measures. Thus the author urges CEDAW to issue a General Recommendation specifically on Article 5 in which they should highlight the

importance of the Article to the Convention. By establishing its precise interpretation and through providing appropriate examples they could avoid confusion and ultimately even achieve better compliance, not just Article 5 (a) but of all the Rights in the Women's Convention as a result. Tying everything together, every right within the Women's Convention becomes void and meaningless when State parties do not live by Article 5.

Acknowledgment and Disclaimer

This article is the advanced version from a paper written by the Author during her study at the Globalisation and Law Master Programme, Faculty of Law of Maastricht University, the Netherlands in 2019. The initial idea was created and submitted for the course Human Rights of Women, taught by Dr. Ingrid Westendorp. The substance contained in this academic paper is the author's personal view and does not necessarily connect to the affiliation of the Author.

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