

## 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

© Cover image: Varun Baker, Jamaican photographer who shot the photograph especially for the purpose of this book. The words inscribed on the woman's body are a paraphrase of Marcus Garvey's statement of June 1928. The philosopher's statement is the motto of this book.

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# **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*

## **De omvorming van discriminerende sexe-rolverdeling en gender stereotypering**

*De toepassing van Artikel 5(a) van het VN-Vrouwenverdrag voor de verwerkelijking van het recht van vrouwen om vrij te zijn van gender-gebaseerd geweld in Jamaica*

(met een samenvatting in het Nederlands)

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door

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geboren op 21 maart 1979  
te Gura-Humorului, Suceava, Roemenië

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Prof.mr. H.M.T. Holtmaat  
Prof.mr. B.E. Bailey

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*“Liberate the minds of men [and women]  
and ultimately you will liberate the bodies of men [and women].”*

Marcus Garvey, June 1928\*

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\* This statement made by Marcus Garvey can be found in Hill, R.A. (ed.), 1990, *The Marcus Garvey and Universal Negro Improvement Association Papers*, Vol. VII, November 1927 – August 1940, University of California Press, p. 204.



*Părinților mei,  
To my parents,  
Ileana & Alexandru Biholar*





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The process of PhD research is considered by many to be a solitary journey. My PhD journey (2008-2012), however, was a most dynamic and inspiring story of deep engagements with places, people and myself, and ultimately with life itself. It unfolded the world of the other and of the self; the world of freedom and love; a deeper understanding of the past and the present; academic understandings beyond disciplinary boundaries. As in any journey, the traveller goes through times of solitude – those necessary moments of being with yourself reviewing thoughts, impressions, experiences, confronting new knowledge, and crystallising all this on paper. These moments make the companionship that emerges on the travelling path even more precious.

My PhD path was a transatlantic one. While being based at the Netherlands Institute of Human Rights (SIM) in Utrecht, I have crossed the Atlantic numerous times to visit Jamaica for the purpose of qualitative data collection. The seeds of focusing research on Jamaica were planted by my first visit to the island in 2006 when I lived in a Jamaican household, worked with local institutions and got to know the country from an inside perspective. There is a saying that *one either loves or hates Jamaica*; there is no middle ground. My story with Jamaica is a story of love and commitment. I could not help but getting immediately attached to the island – it dazzled me, it inspired me, it intrigued me, it made me feel at home, as much as it made me feel insecure and disturbed me to the point of feeling enraged. Too often I witnessed worrisome situations of inequalities, discrimination and violence. Too often gender and in particular women's stories were at the heart of these worries. I wanted to respond and I did that by getting involved with the work of local institutions that focused on the issues that I was concerned with. I also did that by constantly jotting down impressions, thoughts, experiences, daily challenges. Once I returned to the Netherlands, I started to inform myself in a more academic way with the Jamaican and Caribbean literature that was available in the Dutch university libraries and supported my country observations with literary and theoretical insights. Soon, my island-visit jottings turned into a research project, which was awarded the Netherlands Organisation of Scientific Research NWO-MAGW grant to pursue a PhD trajectory at a Dutch academic institution. This is how my PhD journey started.

I am most grateful to the people who accompanied me along this journey.

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17 April 2013, Roseau, Dominica



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# INTRODUCTION



# CHAPTER 1

## INTRODUCTION

*“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>1</sup>

Male Government official,  
Ministry of Justice, Government of Jamaica

*“There are ... the ever-present issues of deep-rooted and stereotypical attitudes towards gender-based violence. Unless these are changed and more progressive thinking adopted, the battle to eradicate such violence will be lost.”*<sup>2</sup>

Hon. Mme. Justice Désirée Bernard,  
O.R., C.C.H. Judge of the Caribbean Court of Justice

### 1.1 FROM WOMEN’S RIGHTS IN THE BOOKS TO WOMEN’S RIGHTS AS LIVED REALITIES

Gender-based violence against women is a stubborn problem worldwide. From Jamaica to the Netherlands or China, from Romania to South Africa or the United States, in every corner of the world, gender-based violence still affects the everyday lives of many women. This scourge has deep social and cultural roots, which foster a vicious cycle of gender violence. Embedded constructions of femininity and masculinity based on ascribed sex roles and consequent gender stereotyping hinder the elimination of gender-based violence and the implementation and full realisation of women’s human rights. Therefore a social and cultural transformation is necessary in order to render efforts to reduce gender-based violence against women effective and to realise women’s right to a life free from violence.

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 the social and cultural barriers to women’s full enjoyment of their human rights.

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1 Researcher’s interview, Jamaica Ministry of Justice, May 4, 2011.

2 Hon. Mme. Justice Bernard, D., ‘Confronting Gender-Based Violence in the Caribbean’, available at [http://www.caribbeancourtofjustice.org/papersandarticles/07-Confronting%20Gender Based%20Violence%20%2029%2011%2006.pdf](http://www.caribbeancourtofjustice.org/papersandarticles/07-Confronting%20Gender%20Based%20Violence%20%2029%2011%2006.pdf), p. 28, last accessed October 15, 2012.

“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>3</sup>

Article 5(a) thus specifically addresses ascribed sex roles and gender stereotyping and makes demands of social and cultural transformation on the States parties to the Convention. As such, the Article is of principal importance for the realisation of women’s human rights. How could we then put it into practice and bring about such transformation in the concrete realities of States parties?

The difficulty in implementing human rights in general, and women’s human rights in particular, at the country level is not new to either scholars’ or practitioners’ discussions.<sup>4</sup> A norm as fundamental as Article 5(a) poses an even greater challenge

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3 CEDAW, 1979, Article 5(a).

4 Various studies indicate the challenges that the implementation of international human rights poses, or engage in the debate by covering certain aspects of the problem of implementation. Merry, S.E., 2006, *Human Rights and Gender Violence, Translating International Law Into Local Justice*, Chicago/London: University of Chicago Press; Merry, S.E., 2003, ‘Rights Talk and the Experience of Law: Implementing Women’s Human Rights to Protection from Violence’, *Human Rights Quarterly*, 25 (2), 343-381; Levitt, P. and Merry, S., 2009, ‘Vernacularization on the ground: local uses of global women’s rights in Peru, China, India and the United States’, *Global Networks* 9 (4), Blackwell Publishing Ltd & Global Networks Partnership, 441-461; De Gaay Fortman, B., 2011, *Political Economy of Human Rights. Rights, Realities and Realization*, Abingdon/New York: Routledge Frontiers of Political Economy; Oomen, B., 2011, ‘Small places: the home-coming of human rights’, Inaugural lecture delivered on the occasion accepting the Chair of Sociology of Rights at Utrecht University, Middleburg, December 2, 2011; Oomen, B., 2011, ‘Between Rights Talk and Bible Speak: The Implementation of Equal Treatment Legislation in Orthodox Reformed Communities in The Netherlands’, *Human Rights Quarterly*, 33 (1), 175-200; Goodale, M., 2007, ‘Locating Rights, Envisioning Law Between the Global and the Local’ in Goodale, M. and Merry, S.E. (eds.), 2007, *The Practice of Human Rights. Tracking Law Between the Global and the Local*, Cambridge: Cambridge University Press; Balakrishnan Rajabopal engages in the discussion in the same volume, Goodale, M. and Merry, S.E. (eds.), 2007, *The Practice of Human Rights. Tracking Law Between the Global and the Local*; also in Rajagopal, B., 2003, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University; Eijkman, Q.A.M., 2007, *We are here to serve you! Public Security, Police Reform and Human Rights Implementation in Costa Rica*, Antwerp: Intersentia/School of Human Rights Research Series, Vol. 24; Risse, T., Ropp, S.C., Sikkink, K. (eds.), 1999, *The Power of Human Rights. International Norms and Domestic Change*, Cambridge: Cambridge University Pres; Lazarus-Black, M., 2003, ‘The (Heterosexual) Regendering of a Modern State: Criminalizing and Implementing Domestic Violence Law in Trinidad’, *Law & Social Inquiry*, 28 (4), 979-1008; Caribbean practitioners and academics, for example, focused on the challenges in implementing women’s rights during the Commonwealth Caribbean Colloquium on Gender, Culture and the Law of June 21-23, 2011 held in Jamaica. This colloquium was organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Ministry of Youth, Sports and Culture of Jamaica and



for all who are involved in the implementation process. A major hurdle for the full realisation of women's human rights lies in overcoming the disconnect between human rights *in the books* and the life realities of women. The rights that women have under international human rights law often do not *hit the ground* so that they may benefit their lives. This book contributes to bridging that gap.

Although Article 5(a) is fundamental to the realisation of women's equality, academic studies dedicated to this Article are scarce.<sup>5</sup> Little emphasis is placed on the ways in which Article 5(a) specifically addresses the interface between social and cultural constructions of gender and gender-based violence in these theoretical interpretations.<sup>6</sup> Furthermore, systematic research on *how* this Article could be put

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the Commonwealth Secretariat. It brought together Caribbean regional representatives, government officials, civil society actors and academia concerned with and involved in the implementation hurdles.

- 5 Among the few studies dedicated specifically to the theoretical interpretation of Article 5 CEDAW are: Holtmaat, R., 2012, 'Article 5', in Freeman, M.A., Chinkin, C., Rudolf, B. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women*, New York: Oxford University Press, 141-167; Holtmaat, R. and Naber, J., 2011, *Women's Human Rights and Culture. From Deadlock to Dialogue*, Antwerp: Intersentia; Holtmaat, R., 2004, *Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination*, Ministerie van Sociale Zaken en Werkgelegenheid, Doetinchem: Reed Business Information; Cook, R. J. and Cusack, S., 2010, *Gender Stereotyping. Transnational Legal Perspectives*, Philadelphia: University of Pennsylvania Press; Sepper, E., 2008, 'Confronting the "Sacred and the Unchangeable": The Obligation to Modify Cultural Patterns under the Women's Discrimination Treaty', *University of Pennsylvania Journal of International Law*, 20, 585-639.
- 6 The problem of gender-based violence against women is a topic of great interest to scholars; similarly, the social and cultural construction of gender identities and resultant gender relations. Little attention, however, is given to the study of social and cultural constructions of gender and gender-based violence *together* in the context of Article 5(a). C. Chinkin, A. Byrnes, S.E. Merry, J. Connors, to name a few, have undertaken important scholarly work on violence against women in the broad context of the CEDAW and other international instruments. However, these studies do not give sufficient attention to the problem of violence against women in the specific context of Article 5(a) CEDAW. See, Chinkin, C., 2012, 'Violence Against Women', in Freeman, M.A., Chinkin, C., Rudolf, B. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women*, New York: Oxford University Press, 443-489; Byrnes, A. and Bath, E., 2008, 'Violence Against Women, the Obligation of Due Diligence and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women – Recent Developments', *Human Rights Law Review*, 8 (3), 517; Merry, S.E., 2006; Merry, S.E., 2003; Connors, J., 1997, 'Violence Against Women', in Barnett, H. (ed.), *Sourcebook on Feminist Jurisprudence*, London, Sydney: Cavendish Publishing, 558-575; Fitzpatrick, J., 1994, 'The Use of International Human Rights Norms to Combat Violence Against Women' in Cook, R.J., (ed.), *Human Rights of Women: National and International Perspectives*, Philadelphia: University of Pennsylvania Press. Similarly, the studies specifically focused on Article 5 CEDAW, mentioned at supra note 5, devote little attention to the interconnection between the social and cultural constructions of gender and gender-based violence against women; Caribbean authors, of essential importance for this research, offer valuable insights into the incidence of gender-based violence against women and the problems it raises in the Caribbean. To name just a few of these scholars: Robinson, T., 2000, 'Fictions of

into practice concretely at country level with the specific purpose of reducing gender-based violence against women is lacking. Although the implementation deficit is of concern to both practitioners and scholars, there is hardly any research material on how this Article could be implemented in the context of a particular country. Studies on the implementation of Article 5(a) have not gone beyond the investigation of the travaux préparatoires of the Convention, of the CEDAW Committee's Concluding Observations, which are rather vague with regard to Article 5, and its General Recommendations and jurisprudence to understand the implementation of this Article on the ground. Therefore, there is no sufficient explanation of what exactly the implementation of Article 5(a) entails in practice. This one-sidedness of academic endeavours is worrisome, as they do not fully address the concerns expressed on the ground. Fundamental questions remain to be asked or still await an answer. What are concrete actions and strategies to put Article 5(a) into practice and how to undertake them in order to benefit the people *on the ground*? Is the State the main responsible for the implementation of Article 5(a) CEDAW? More specifically, is the State the main actor to bring about social and cultural transformation or are other actors potentially instrumental in this endeavour? What are the conditions accounting for putting Article 5(a) into practice at country level?

In order to gain an in-depth understanding and to address these dilemmas in the theory and practice of Article 5(a), I explored the lived realities of putting this Article into practice in the concrete country setting of Jamaica. Based on this empirical research, this book presents a practical model for the implementation of Article 5(a) in a concrete country setting. Concentrating on Jamaica as a case study, the main question guiding the research is the following:

**In what manner can Article 5(a) CEDAW be put into practice at the country level in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women?**

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Citizenship, Bodies Without Sex: The Production and Effacement of Gender in Law', *Small Axe* 7, 1-27; Robinson, T., 2004, 'An Analysis of Legal Change: law and gender-based violence in the Caribbean', Caribbean Judicial Colloquium on the Application of International Human Rights Law at the Domestic Level, Nassau, Bahamas, May 17-19, 2004; Antrobus, P., 2009, 'Men as Partners in the Elimination of Violence Against Women', Paper presented at the Bureau of Women's Affairs' Anniversary of the International Day for the Elimination of Violence Against Women, Kingston, Jamaica, November 25, 2009; Salter, V.A., 2003, 'And Father God Created Male (and Female as an Afterthought): The Effects of the Myth of Male Superiority on Gender Relations', Paper presented at the Caribbean Studies Association Annual Conference, Belize, May 2003. However, an analysis of social and cultural constructions of gender as accounting for gender-based violence in the context of Article 5(a) CEDAW is not undertaken in these studies.

To answer this question, the research in this book goes beyond legal analysis and embarks on a socio-legal, empirical inquiry into the process of putting Article 5(a) into practice. It complements the top-down perspectives, which place the focus on the State and its obligations under CEDAW, with the study of other actors and strategies that may have the potential to transform social and cultural patterns of conduct. It employs a three-tiered analysis of the implementation process, which engages with State actors as duty-bearers, with civil society actors as vernacularisers, and individuals as rights holders actors. This analytical framework sheds light on the actors, their actions and strategies, and the complex interactions between and among them that have the potential to bring about social and cultural transformation. Based on this analysis, this research advances a *synergistic model*, which illuminates the integrated, organic approach, which is necessary for putting Article 5(a) into practice. A holistic approach to a process that is multifaceted is thus provided.

The synergistic model is not only to untangle the tension and mend the fissure between Article 5(a) on paper and the lived realities of women in Jamaica. It is also a model for the implementation of Article 5(a), which contributes in practical ways to the ultimate universal goal of reducing gender-based violence against women and realising women's human right to a life free from violence. Using complex qualitative within-case analysis, and exploring the social, cultural, legal, political, economic and historical specificities of Jamaica, this country stands for an instance of putting Article 5(a) into practice. Although emerging from this particular context, the synergistic model can be extrapolated to and inform the process of implementation and realisation in other contexts.<sup>7</sup> Furthermore, although emerging from the study of Article 5(a) and gender-based violence against women, the synergistic model can be conceptually used for the implementation of other dimensions of CEDAW.

This book targets not only academia, but also actors who are involved in the day-to-day struggle of implementing women's human rights in general, and Article 5(a) in particular. The extensive empirical analysis undertaken in this study aims to contribute to and engage with the work of scholars of both legal and social studies. It also aims to support the work of practitioners, including Government officials, representatives of civil society organizations, women's NGOs and (women's) human rights activists in Jamaica and other countries, who grapple with the issues of implementing CEDAW in general in order to realise women's human rights. In engaging with the practitioners' daily work, this book seeks to provide meaningful resource tools for suitable actions, initiatives and strategies that have the potential to bring about the social and cultural transformation needed to successfully eliminate gender-based violence against women.

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7 The applicability of this case study is explained in Chapters 5 and 9.

This chapter first situates the research within the existing literature dealing with Article 5(a), gender-based violence against women and issues of implementation. It lays down the key concepts used throughout the book to support the analysis of putting Article 5(a) into practice. Therefore, it introduces certain concepts, such as sex roles and gender stereotyping, gender-based violence against women, social and cultural transformation, and provides the stance taken in this book on the implementation and realisation of (women's) human rights. The chapter further explains the empirical approach taken to the study of putting Article 5(a) into practice, and presents the academic reasons and personal motivation for conducting this research in Jamaica. Finally, the chapter concludes by outlining the structure of the book.

## **1.2 ARTICLE 5(a) CEDAW ON PAPER: A CONCEPTUAL TOOL KIT**

This section explains the key concepts that provide for the tool kit to unravel Article 5(a) in the books and the process of putting it into practice.

### *Sex roles and gender stereotyping*

The concepts of stereotypes and gender are indispensable to understanding how sex roles and gender stereotyping operate. Stereotypes are so deeply seated in the cognitive processes of individuals, that they unconsciously construct perceptions and attitudes that operate undetected.<sup>8</sup> They can be defined as those “rough-and-ready things”<sup>9</sup> covering generalized beliefs of “personal traits, physical characteristics and appearances, behaviour and roles, occupations, and assumptions of sexual orientation”.<sup>10</sup> Stereotypes create in this way prescriptive and/or normative frameworks of how members of a particular group ought to be, act, and behave irrespective of individual features, abilities, qualities and circumstances.

Gender, as opposed to sex, denotes the social and cultural construction of different sexes: male and female. That indicates that women and men are produced and reproduced categories within a system of personal and socio-cultural relations of a certain historical, ideological, political, economic, legal and cultural context.<sup>11</sup> Gender thus forms identities and dictates arrangements of power, status and access to resources between and among women and men within the particular context of countries and regions. Individuals are labelled, feminine and masculine identities are

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8 Cook and Cusack, 2010, p. 11.

9 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.

10 Cook and Cusack, 2010, p. 20.

11 Chapter 2 discusses further the concept of gender in the context of the definition provided by the CEDAW Committee in its General Recommendation No. 28 (2010).

fixated, and functions and responsibilities for women and men are ascribed according to the biological differences of sex. The term *sex roles* is used throughout the book to capture the functions attached to ascriptions of femininity and masculinity. Gender stereotyping mirrors the social and cultural construction of gender identities. 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>12</sup> *Gender stereotyping* is used in this book to capture these consequent manifestations of identity constructions.

To the extent that sex roles and gender stereotyping put the individual in detrimental positions, they allow a framework for exclusion and discrimination.<sup>13</sup> By detrimental positions I mean assumptions of gender identities and 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>14</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.

Usually, women are the ones at the forefront of discrimination stemming from sex roles and gender stereotyping. They constitute the obvious vulnerable group in the arrangements of gender. However, this gender system, as it stands now, operates in concealed ways that obscures some of its victims. It creates unobvious vulnerability, which easily remains invisible. The dysfunctional gender arrangements of patriarchy render both women and men vulnerable. Acknowledging the detrimental effects that gender stereotyping and the ascription of roles have on men should not be ignored.

12 See Barribeau 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.

13 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 an ingrained toolkit of generalizations, categories, ascriptions and labels. Stereotyping may be either benign, with no harsh consequences, or indeed malign, leading to harmful consequences. See Appiah, K.A., 2000, 'Stereotypes and Shaping of Identity', *California Law Review*, 88, (1), 41-54; also, Cook and Cusack, 2010.

14 See UDHR, 1948, Article 1.

In this book, however, I focus on social and cultural constructions of gender that are detrimental to women and deny them full enjoyment of rights and freedoms. This choice does not disregard the negative effects that social and cultural gender constructions can have on men. Throughout the book, the detrimental implications of sex roles and gender stereotyping that men experience will necessarily emerge.

*Gender-based violence against women: an interface with Article 5(a)*

Gender-based violence against women is the most pervasive form of discrimination against women, which inhibits their freedoms and rights to the full enjoyment of equality.<sup>15</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: the vicious cycle of gender-based 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 a serious challenge to the efforts to eliminate it.

Although gender-based violence is not explicitly expressed in CEDAW, the CEDAW Committee's interpretation of the Convention in General Recommendation No. 19 (1992) makes gender-based violence against women a form of discrimination to be considered under CEDAW.<sup>16</sup> States parties have the obligation to eliminate gender-based violence against women in order to realise their right to be free from violence and enjoy equality with men. Moreover, the Committee acknowledges in General Recommendation No. 19 (1992) the interrelation between gender-based violence and social and cultural constructions of gender.<sup>17</sup> It makes clear that social and cultural constructions of gender that account for gender-based violence against women need to be addressed in order to be able to eliminate this scourge. Article 5(a) provides for a legal basis for this endeavour.

The terms of *gender-based violence* and *violence against women* are used interchangeably in international documents, in literature and in practice. In this book the term *gender-based violence against women* is used for its indication of the social and cultural construction of difference between sexes. First, as Robinson

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15 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.

16 See CEDAW GR 19, 1992, para. 6; The definition of gender-based violence as provided by the CEDAW Committee in General Recommendation No.19 (1992) is provided in Chapter 2, which takes a close look at this problem.

17 See CEDAW GR 19, 1992, para. 11, which is further discussed in Chapter 2.

explains, the notion of gender in gender-based violence against women indicates who experiences the violence, who perpetrates the violence and what is the reason for violence.<sup>18</sup> Gender-based violence against women informs us that violence targets women because they are women. Moreover, the term captures the implications of masculinity and femininity and the consequent gender relations in the performance and experience of violence. As Peggy Antrobus stressed in a lecture she delivered in Kingston on November 25, 2009, gender-based violence “speaks to the larger issue of violence that is embedded in our gender relations.”<sup>19</sup> Additionally, by using the term women in referring to gender-based violence, two important aspects become clear: that I focus on women’s experience of gender-based violence and that gender-based violence is not a form of violence that is directed exclusively at women. It may target men as well. It is a fact of life that violence is prevalent and affects women and men, directly or indirectly.<sup>20</sup>

### *Social and cultural transformation under Article 5(a)*

The legal obligation of States parties to modify social and cultural patterns of conduct based on sex roles and gender stereotyping places social and cultural transformation at the heart of Article 5(a). The provision expressly embodies the principle of *transformative equality* or *equality as transformation* in order to achieve CEDAW clear objectives of non-discrimination and equality. 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. 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. This calls for transformative equality.<sup>21</sup> Effective efforts to eradicate gender-based violence require, in a similar fashion, a transformative approach. At the crossroads between equality arguments and gender-based violence arguments, social and cultural transformation emerges as crucial to ensuring women’s full enjoyment of their rights to be equal and to be free from violence and discrimination. This book emphasizes

18 Robinson, 2004, pp. 2-3.

19 Antrobus, 2009, p. 17; The lecture was delivered on the occasion of the anniversary of the International Day for the Elimination of Violence Against Women in Kingston.

20 See Robinson, 2004, pp. 2-3; also, Mohammed, P., 1991, ‘Reflection on the Women’s Movement in Trinidad: Calypso, Changes and Sexual Violence’, *Feminist Review*, 38, 33, p. 43.

21 I discuss in depth the threefold interpretation of the Convention’s objectives of non-discrimination and equality in Chapter 2. I put a focus on transformative equality and the calls for social and cultural transformation. I also bring into the discussion the works of Fredman, S., 2003, ‘Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights’ in Boerefijn, I. et al (ed.), *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4 (1) UN CEDAW Convention*, Intersentia; and, Holtmaat and Naber, 2011.

that Article 5(a) puts an obligation on States parties to take a social and cultural transformation approach and thus address social and cultural forms and causes of discrimination in efforts to ensure full equality and to reduce gender-based violence against women. The book also draws attention to the corresponding right of women under this provision to a life free from discrimination and violence stemming from sex roles and gender stereotyping.

### 1.3 ARTICLE 5(a) IN PRACTICE: IMPLEMENTATION AND REALISATION

The disconnect between women's human rights in the books and women's everyday lives is mended when rights resonate with their realities and women acquire a knowledge of rights and of the ways to use them.<sup>22</sup> Resonance between human rights and subjects of human rights is of particular importance for the process of bringing about social and cultural transformation. Given the entrenched nature of sex roles and gender stereotyping, the achievement of social and cultural transformation does not require a mere incorporation of this provision by a national government into its legal and policy instruments. It requires actions and strategies that intimately connect to and resonate with life realities, so that rights are further "embedded in everyday social practices, shaping the rules people carry in their heads".<sup>23</sup> It ultimately requires individuals, at the different societal levels, who are cognizant of the ideas, provisions and rights in Article 5(a), to internalize them,<sup>24</sup> and ultimately to practice them.<sup>25</sup> This research brings to attention that the level of individual consciousness is a key dimension that anchors the process of the implementation of obligations under Article 5(a) and renders it conducive to the realisation of rights.

This book talks about *putting Article 5(a) into practice* to express the process by which rights, norms and ideas under this provision materialize and impact the everyday life of people. Moreover, the formulation brings together the terms implementation and realisation of rights, which are often used interchangeably. It indicates that top-down approaches, by which State obligations are sought to be implemented, and bottom-up approaches, by which rights are sought to be realised, are interrelated.

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22 Ignatieff, M., 2001, *Human Rights as Politics and Idolatry*, Princeton, NJ: Princeton University Press; de Gaay Fortman, 2011.

23 Merry, 2006, p. 3; see also, De Gaay Fortman, 2011; Oomen, 2011.

24 An – Na'im, A., 2002, *Cultural Transformation and Human Rights in African Societies*, New York: Zed Books.

25 Ignatieff, 2001; Goodale, 2007.



#### 1.4 AN EMPIRICAL APPROACH TO PUTTING ARTICLE 5(a) CEDAW INTO PRACTICE

Flood argues that “*law is constituted by everyday concerns*” and therefore fieldwork is of key importance.<sup>26</sup> This is very much the epistemological underpinning of this research. Putting Article 5(a) in practice is as much a social process as it is legal. The research presented in this book is therefore based on a qualitative, in-depth investigation of possibilities and difficulties to put this provision into practice. It is in the social spaces of national contexts<sup>27</sup> where human rights emerge and are put into practice;<sup>28</sup> all the more, it is the mentalities and consciousness of people in their everyday life that the social and cultural transformation in Article 5(a) essentially addresses.<sup>29</sup> This study is therefore necessarily contextual – it involves the social realities of a particular locality, and engages with and applies local knowledge<sup>30</sup> that reveals local processes, strategies and mechanisms instrumental in the implementation of this international legal norm.<sup>31</sup> The interaction with local experiences of norms, inequalities, and violence substantiates the model to put Article 5(a) into practice proposed in this book. The scarcity of previous systematic studies on putting Article 5(a) into practice rendered my research necessarily exploratory. For that reason, this research is based on qualitative field research approach and develops theoretical conclusions from field research findings. To conclude, I refer to Flood once again: “Law ... is situated at the intersection of life and theory”.<sup>32</sup> Therefore “without interaction scientific description of our world will be lifeless and most probably incorrect”.<sup>33</sup>

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26 Flood, J., 2005, ‘Socio-Legal Ethnography’ in Banakar, R. and Travers, M., (eds.), *Theory and Method in Socio-Legal Research*, Oñati International Series in Law and Society, Hart Publishing, pp. 33-48, p. 37.

27 Donnelly, J., 2003, *Universal Human Rights in Theory and Practice*, London: Cornell University Press, p. 34.

28 Goodale 2007, p. 17.

29 Merry 2006, p. 3.

30 See Nabudere ‘Towards an Africology of Knowledge Production and African Regeneration’ [year of publication unavailable], accessed at [http://store.blackherbals.com/Africology\\_and\\_Renewal.pdf](http://store.blackherbals.com/Africology_and_Renewal.pdf). Nabudere argues for an understanding of local communities as knowledge sites. In the production of knowledge, understanding is arrived at through dialogue and communication between the researcher and those “who know”, i.e. the locals as custodians of knowledge, pp. 24 and 32.

31 Therefore, by using *local* in this book I indicate that I understand and present the need for social and cultural transformation as it emerges from all the actors, i.e. Governmental actors, civil society actors, rights holders, who are intimately involved in the process by both working for it and being affected by it within the country context.

32 Flood, 2005, p. 37.

33 Ibid.

## 1.5 A CONTEXTUALIZED, CASE STUDY RESEARCH: JAMAICA

“If one wants to study violence, one goes to Jamaica.”<sup>34</sup> The island is notorious for its high levels of violence in a region that leads the violence rates of the world.<sup>35</sup> According to the United Nations Office on Drugs and Crime (UNODC), the homicide rate in Jamaica is among the highest in the Caribbean. This rate varied between 58.4 per 100,000 population in 2007 and 59.5 per 100,000 in 2008, to reach as high as 61.6 per 100,000 in 2009; in 2012, it decreased only to 52.2 per 100,000 population.<sup>36</sup> Within this context, gender-based violence against women is rampant. Despite legal reform, the incidence of violence against women in the domestic space remains high,<sup>37</sup> while sexual violence continues to prevail.<sup>38</sup>

If one wants to study discriminatory sex roles and gender stereotyping, one can go anywhere in the world. Gender arrangements and cultures around the world are essentially patriarchal – “not more or less so, but differently patriarchal.”<sup>39</sup> The historical story of domination-subordination is the story of patriarchal ideologies and relations between women and men worldwide.<sup>40</sup> It is also the story that reinforces and is expressed through gender-based violence against women.<sup>41</sup>

The CEDAW Committee stresses in its Concluding Observations on Jamaica of July 2012 that “gender-based violence is reportedly widespread and underreported

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34 Thomas, D., 2011, *Exceptional Violence. Embodied Citizenship in Transnational Jamaica*, Durham/London: Duke University Press, p. 1.

35 Thomas, 2011, pp. 2-3; UNODC and Latin America and the Caribbean Region of the World Bank, 2007, ‘Joint Report, Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean’, Report No. 37829, pp. iv and 1; Chapter 4 brings insights into the Jamaican context, including the levels of contemporary violence.

36 United Nations Office on Drugs and Crime (UNODC), ‘Homicides Statistics 2012, Intentional homicide, count and rate per 100,000 population (1995 – 2011)’, available at <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>, last accessed on August 5, 2012. According to the Jamaican social violence anthropologist, in a situation of 30 murders per 100,000 population, the civil war benchmark is reached. A murder rate of 51, however, signals a country that is at war. Researcher’s Interview, University of the West Indies, Jamaica, July 2011, social violence anthropologist; see also, Amandala, 2010, ‘Dr. Herbert Gayle on Belize crime: Belize passed civil war benchmark’, May 21, 2010, available at <http://www.amandala.com.bz>, last accessed on June 30, 2012.

37 CEDAW CO Jamaica, 2012, para. 21.

38 UNDP, 2012, ‘Caribbean Human Development Report. Human Development and the Shift to Better Citizen Security’, p. 26; Jamaica Constabulary Force (JCF), Statistics Information Management Unit, Data available and provided on June 7, 2011 at the request of the researcher; CEDAW CO Jamaica, 2006, para. 15.

39 Volpp, L., 2001, ‘Feminism versus Multiculturalism’, *Colombia Law Review* 101, 1181-1218, p. 1217.

40 See Bhasin, K., 1993, *What is Patriarchy?*, New Delhi: Women Unlimited, p. 5.

41 Beijing Platform for Action, 1993, para. 118.

owing to prevalent social and cultural factors.<sup>42</sup> In these most recent Concluding Observations the Committee reiterates its earlier concerns expressed in 2001 and 2006 about “the persistence of stereotypes and adverse cultural norms and traditional practices concerning the roles and identities of women and men in the family and in society, which undermine women’s social status and hamper their equal participation in all avenues of life.”<sup>43</sup> The Committee further stresses that such negative beliefs and harmful practices underpin discrimination against Jamaican women and contribute to the high levels of violence against them. Similar to its Concluding Observations in 2001 and 2006, the Committee makes a clear connection between the obstruction of the full realisation of women’s human rights, particularly the achievement of non-discrimination, and gender-based violence against women.<sup>44</sup> The CEDAW concerns over the years clearly illustrate a social and cultural context that fosters the persistence of gender-based violence against women in the country.

I chose Jamaica as the location to explore putting Article 5(a) into practice because of my positioning that more attention is required to be paid to the empirical, contextual analysis of women’s human rights for a clear understanding of their implementation and realisation. Entrenched social and cultural beliefs about the construction and reproduction of gender in Jamaica leads to a worrisome normalisation of gender-based violence, which makes this type of violence the norm rather than the “aberration”.<sup>45</sup> Within the case study, the concern of qualitative research with “how and why social phenomena or processes happen in particular circumstances and particular ways can certainly support predictive ideas about how those things might vary in different contexts.”<sup>46</sup> A model for putting Article 5(a) into practice, developed from the case study research in Jamaica, has the potential to be extrapolated to other countries.<sup>47</sup>

I also chose Jamaica because my academic endeavours are inspired by my earlier engagement with the country, which is also my answer to a common question that I keep receiving: *Why is a Romanian conducting research on gender-based violence against women in Jamaica?* The subsequent section explains my personal motivation for conducting this research.

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42 CEDAW CO Jamaica, 2012, para. 21(a).

43 Ibid., para. 17; see also CEDAW CO Jamaica, 2006, para. 13; CEDAW CO Jamaica, 2001, para. 210.

44 CEDAW CO Jamaica, 2012, paras. 17 and 21; CEDAW CO Jamaica, 2006, paras. 13 and 15; CEDAW CO Jamaica, 2001, para. 210.

45 HC of St. Lucia, *Martinus Francoise v AG of St. Lucia* (unreported), May 24, 2001, in Robinson, 2004, pp. 10-11.

46 Mason, J., 2009, *Qualitative Researching*, Sage Publications, 2<sup>nd</sup> edition, p. 175.

47 Yin, R.K., 1993, *Applications of Case Study Research*, Newbury-London-New Delhi: Sage Publications, Applied Social Research Methods Series, Volume 34, p. 5; Gerring, J., 2007, *Case Study Research, Principles and Practices*, Cambridge: Cambridge University Press, p. 37.

## 1.6 PERSONAL MOTIVATION: “*NO WOMAN, NO CRY!*”<sup>48</sup>

During the summer of 2006 I went to Jamaica. To my extreme surprise, it was not the Caribbean paradise that I expected as any newcomer. Little did I know about living in Jamaica. The emblematic Jamaican saying “*No problem mon!*” became nothing but harsh sarcasm to me. Either living in the beautiful touristy town of Negril, teaching Spanish in Lucea at the Esher Primary School or working with a human rights NGO in Kingston, violence in varied forms was common to everyday life. No day passed by without news of murder, random police shootings or battered women, sometimes in a nearby village or close neighbourhood; it was in the Daily Gleaner or in the Jamaica Observer (the local newspapers), on the radio, or even on the phone about somebody who was known. There was a sort of tension inherent to everyday activities, everywhere in the country, for anybody living outside the all-inclusive tourist resorts. The first thing that astonished me were the bars guarding the windows of every house, the locked porches in the middle of the day, apartment complexes guarded by barbed wire and armed security personnel. It did not take too long until I started to feel like I was living in an invisible cage. Jamaica unveiled to me as a country where the streets, the schools and even the houses were no longer safe, and a climate of violence and mistrust dictated life: people dying at random, gang fights, drug-related crimes, deadly sexual orientation, children refused admittance to kindergartens because they were allegedly infected with HIV/Aids; but most of all, women and girls sexually abused in the home, on the streets, at school or at the workplace, trapped in a vicious cycle of unwanted teenage pregnancies, school drop-outs, the spread of HIV/Aids, unemployment, single motherhood and poverty. I came to realise that violence in general, and gender-based violence against women in particular, was accepted to the point that it became normalized.

In Kingston, I collaborated on action-oriented projects that revealed to me that the cycle can be broken. One such project focused on unemployed single mothers living in poverty in a community close to Spanish Town. Some of them could not keep their children in school, but most of them could not afford to send their children to school at all. The project aimed to provide these women with literacy and skills courses, and further employment in order to make it possible for them to educate their children and improve their lives. In the beginning, the women were hesitant; they came to the first meeting in small numbers, forming a mistrustful and gloomy gathering. However, once they were told in their everyday language that they have rights and they were entitled to claim them, that there were possibilities to change their lives, that there were institutions that could help them, their faces, literally, lit

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48 “No woman, no cry” is a well-known song of the Jamaican reggae artist Bob Marley.

up; the entire room vibrated with their enthusiasm and joy when they understood that they could overcome their situation.

The hope of those women in that moment was and is my passion and my motivation for this research. Suffering knows no barriers and trying to fight against it calls for no specific nationality. This is how and why, I, a Romanian, have undertaken research into ways to realise women's rights to live a life free from violence and to enjoy their full equality with men in Jamaica.

## 1.7 STRUCTURE OF THE BOOK

The exploration of the process to put Article 5(a) into practice is structured in four parts: a theoretical part, a contextual and methodological part, an empirical part, and the conclusion.

The first part, comprising Chapters 1, 2 and 3, takes the abstract voice of theory and lays down the conceptual framework of the research. Before delving into in-depth descriptive and analytical endeavours, *this opening Chapter* has situated the research within the existing literature dealing with Article 5(a), gender-based violence against women and issues of implementation. It briefly introduced the issues that this research seeks to untangle and the concepts that are key for the analysis in the subsequent chapters. Finally, this Chapter explained the academic reasons and personal motivation for undertaking this research. *Chapter 2* introduces the reader to Article 5(a) and the concept of social and cultural transformation. It provides an integrated analysis of the provision to explain its content, meaning and scope in the context of CEDAW objectives of non-discrimination and equality. The interface between gender-based violence against women and this provision is explained. In this light, the chapter brings to attention the rights and the obligations under Article 5(a) and discusses “*all appropriate measures*” to modify social and cultural patterns of conduct. *Chapter 3* presents the different existing theories of the implementation of human rights and women's rights in particular. It first presents the well-established legal approach to implementation taken in international human rights law, in which the State appears as the main actor. Next, the chapter describes socio-legal perspectives and presents other actors and strategies that may be instrumental in overcoming the implementation gap between rights *in the book* and the lived realities of individuals. Based on this examination and the previous analysis of Article 5(a), this Chapter provides a conceptual backdrop for the empirical research.

The second part, comprising Chapters 4 and 5, presents the contextual and the methodological backdrop against which the empirical research is conducted. *Chapter 4* brings the voice of history to offer a wider picture of the gender

constructions and violence perpetrated against women in Jamaica. It follows the constructions of gender identities and resultant relations along Jamaica's historical journey of slavery, colonialism and post-independence. The historical background reveals that inequalities and violence constitute a long continuum that shapes the contemporary socio-cultural scene in Jamaica. *Chapter 5* unveils the field research process and the empirical methods used in this research. It gives insights into how the research was conducted, explains the choices of methods and of respondents, and reveals the life of research: the "ups and downs" implicit in fieldwork. This Chapter ensures the transparency of this research and demystifies a *cryptic* process that is still approached with reluctance by legal researchers.

The third part, comprising Chapters 6, 7 and 8, brings the voices of respondents – the identified actors in the process of putting Article 5(a) into practice. This empirical section presents the analysis of the data gathered through interviews, focus group discussions, observations and the questionnaire during the field research in Jamaica. It is structured along the three levels of analysis proposed in this research, i.e. the State, civil society organizations and rights holders. Chapters 6, 7, 8 reveal life itself through stories of gender-based violence and discrimination against women stemming from asymmetric gender constructions, and through accounts of ways to deal with such life realities. *Chapter 6* presents the standpoints and actions of the Government as the duty-bearer in the process of putting Article 5(a) into practice. *Chapter 7* introduces the views and work of civil society organizations as translators of human rights, norms and ideas in this process. *Chapter 8* voices the experiences and perceptions of individuals – both women and men. The Chapter taps into the ways individuals, as rights holders, receive, benefit from and contribute to the actions and strategies to put this Article into practice.

The final part, comprising *Chapter 9*, substantiates the empirical findings and extends the conceptual framework by advancing a synergistic model to put Article 5(a) into practice in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women. In the light of this model, the chapter answers the main question guiding this research and argues that a synergistic approach, which integrates multifaceted actions and strategies, and a variety of actors at the levels of the State, of civil society and rights holders, is essential for putting this provision into practice. A key dimension of this approach is consciousness of the discriminatory nature of sex roles and gender stereotypes, and of the rights and obligations under Article 5(a), at the level of *individuals ranging from Government officials, civil society actors to ordinary people in their everyday life.*

## CONCEPTUAL FRAMEWORK





## CHAPTER 2

# RIGHTS AND OBLIGATIONS UNDER ARTICLE 5(a) CEDAW

*“The fact of the matter is that gender systems are extremely dynamic and fluid and even as driving forces are exerted to improve the rights and self-esteem of women, opposing restraining forces operate to maintain the status quo and ensure that the project of patriarchy is not significantly disrupted. The high levels of violence against women ... particularly sexual violence, is a strong expression of hegemonic masculinity and the power imbalance in gender relations.”<sup>1</sup>*

Barbara E. Bailey

### 2.1 INTRODUCTION

Article 5(a) CEDAW is placed at the heart of this research, which investigates the manner in which this Article can be put into practice at the country level in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women. In order to answer this research question, it is important to first understand the content, meaning and scope of Article 5(a). Pursuant to this Article,

*“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>2</sup>*

- 1 Bailey, B.E., 2011, ‘Assessing the Institutional and Cultural Environments for Gender Equality Programming in the Caribbean’, Paper presented at Regional Advisory Group on Gender & Development, Barbados, December 8-9, 2011, available at [http://car.unwomen.org/ma\\_.cfm](http://car.unwomen.org/ma_.cfm), latest access on July 29, 2012.
- 2 The focus in this research is on Article 5(a). However, Article 5 CEDAW comprises two complementary provisions that reflect a mirror construction of the concepts of non-discrimination and equality. Article 5(b) stipulates: *“To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”* See CEDAW, 1979, Article 5; In Holtmaat’s words, the two parts of Article 5 “are two sides of the same coin”. Article 5(a) endorses the negative statement of non-discrimination. As a counterpart, Article 5(b) endorses the positive approach to ensuring equality. See Holtmaat, 2012, pp. 142 and 152, for a discussion on Article 5(b); The relationship between the two paragraphs of Article 5 is discussed at length also in Holtmaat and Naber, 2011, pp. 28-29.

The text of Article 5(a) indicates that States parties have an international human rights obligation to modify social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping. Scholars who dedicate their studies to Article 5 focus on the obligations that this provision imposes on States.<sup>3</sup> The emphasis is thus on the perspective that Governments as the representatives of States parties must undertake a number of measures in order to comply with their obligations under the international human rights treaties to which they are committed and thus implement them in their domestic legal system.<sup>4</sup> That, however, is only one dimension of Article 5(a). The rights of individuals under this Article cannot be overlooked. Some commentators question the strength of the provisions of Article 5(a)<sup>5</sup> and doubt the Article's justiciability. Most commentators do not raise the question: Are there rights provided for in Article 5(a)? What are these rights?

This chapter first introduces the concept of social and cultural transformation within the objective of CEDAW. Next, it focuses on Article 5(a) as it is stipulated in the Convention. It adopts an integrated analysis to explain the content and meaning of the provision and its scope in the context of CEDAW. It discusses the rights in the context of social and cultural transformation, which is demanded in Article 5(a), and details the obligations that this Article imposes on States. Once the rights and obligations in Article 5(a) are clarified, specific attention is given to the interface between the provision in Article 5(a) and the problem of gender-based violence against women. Finally, the chapter discusses the term "*all appropriate measures*" to modify social and cultural patterns of conduct in the light of this interface. The analysis of Article 5(a) in this chapter draws on the text of the Article, on the CEDAW Committee's General Recommendations, on the Concluding Observations during its thirty years of practice and on its jurisprudence. Valuable insights are brought into the discussion from other international law documents and from relevant literature. The conclusions of this chapter make clear that the social and cultural transformation

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3 See, Holtmaat, 2012; Holtmaat and Naber, 2011; Holtmaat, 2004; Cook and Cusack, 2010; Sepper, 2008.

4 In the discussion on the implementation of women's human rights, authors like Sally E. Merry for instance shift attention from the State as the main actor in the implementation of women's human rights to other actors, such as non-governmental organizations (NGOs). These actors are instrumental in the implementation process, as vernacularizers or translators of norms, rights and of the global discourse on women's human rights. However, the discussion in Merry's work is not situated in the light of the rights under Article 5(a). See, Levitt and Merry, 2009; Merry, 2006; Merry, 2003.

5 See Baretto, M. and Ellemers, N., 2005, 'The Burden of Benevolent Sexism: How it Contributes to the Maintenance of Gender Inequalities', *European Journal of Social Psychology* 35, 633-642; Gross, A.M., 2008, 'Sex, Love and Marriage: Questioning Gender and Sexuality Rights in International Law', *Leiden Journal of International Law* 21, 235-253.

agenda in Article 5(a) requires efforts of both the implementation and realisation of rights and obligations under this provision.

## 2.2 SOCIAL AND CULTURAL TRANSFORMATION WITHIN THE NON-DISCRIMINATION AND EQUALITY OBJECTIVES OF CEDAW – OBLIGATIONS AND RIGHTS

*“The Convention, targets discriminatory dimensions of past and current societal and cultural contexts which impede women’s enjoyment of their human rights and fundamental freedoms.”*<sup>6</sup>

In order to discuss the obligation of social and cultural transformation in CEDAW, this section first places the underlying concept of transformative equality within the threefold understanding of the non-discrimination and equality objective of CEDAW. In this way, it lays the ground for understanding the requirements of social and cultural transformation and the obligations and rights stemming from such calls in the larger context of the Convention.

Essential to CEDAW are the general principles of law of non-discrimination and equality. These principles mirror each other and imply complementary rights and obligations: they afford to individuals rights to be free from discrimination and to be treated on the basis of equality between women and men; correspondingly, they place the obligation on States to combat discrimination and to guarantee equality.<sup>7</sup> This rights and obligations arrangement is embedded in the inherent dignity of every human being, which is the core value on which human rights are founded.<sup>8</sup> Drawing on the 1945 Charter of the United Nations<sup>9</sup> and the 1948 Universal Declaration

6 CEDAW GR 25, 2004, para. 14.

7 See Bayefsky, 1990, p. 5; While *non-discrimination* has a negative implication as in the need to eliminate any categorizations, conducts, practices which lead to distinction, exclusion or restriction; *equality* represents the positive side, pointing to the need to take positive steps towards such a distinction, exclusion, or restriction. For a general discussion on the principles of non-discrimination and equality, see Byrnes, 2012, pp. 51-70; Fredman, S., 2003, ‘Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights’ in Boerefijn, I. et al (ed.), *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4 (1) UN CEDAW Convention*, Antwerp: Intersentia; Fredman, S., 2002, *Discrimination Law*, Oxford: Oxford University Press; Bayefsky, A.F., 1990, ‘The principle of Equality or Non-discrimination in International Law’, *Human Rights Quarterly* 11.

8 As De Gaay Fortman explains, “*human dignity, refers to the inherent worth of each and every human being, simply as an innate consequence of human existence ... ‘Inherent’ is indeed the adjective used in the pramble of the UDHR, meaning that human dignity is a matter of being rather than having, and hence implying that it cannot be taken away.*” Yet, it can be violated. See, De Gaay Fortman, B., 2012, ‘Human Rights as *Regulae Iuris*: An Inquiry into the Dialectics of Legality versus Legitimacy’, *European Review of Private Law*, 20 (2), Kluwer Law International, 409-424, p. 415.

9 See Charter of the United Nations, 1945.

of Human Rights (UDHR),<sup>10</sup> which reaffirm the faith in universal human dignity, CEDAW recalls that “discrimination against women violates the principles of equality of rights and respect for human dignity”.<sup>11</sup>

As also reflected in its title, the elimination of discrimination against women in all its forms represents the core objective and scope of CEDAW. This objective is based on a three-pronged understanding of the concept of non-discrimination, which emerges clearly from General Recommendation No. 25 (2004). In this Recommendation, the CEDAW Committee lays out the underlying obligations of States parties to eliminate discrimination against women comprised in the general interpretative framework of the Convention (Articles 1 to 5 and 24).<sup>12</sup> Accordingly, States parties are obliged to: 1) “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; 2) to “improve the *de facto* position of women through concrete and effective policies and programmes;” 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 institutions”.<sup>13</sup>

This threefold interpretation of the non-discrimination objective in CEDAW is mirrored by a threefold interpretation of the principle of equality.<sup>14</sup> Three types of State obligations correspond to this interpretation, as follows:

1. The obligation to ensure non-discriminatory laws and women’s protection from discrimination 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, and represents the principle of *de jure* or *formal equality*.<sup>15</sup> The complementary obligation here is to provide women with the right to equal treatment before and in the law. *Formal* equality is expressed in Articles 2 and 7 to 16 of the Convention.
2. The obligation to improve the *de facto* situation of women corresponds to the principle of *de facto* or *substantive equality*.<sup>16</sup> Given the various differences

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10 See UDHR, 1948.

11 See CEDAW, 1979, Preamble, paras. 1, 2 and 7.

12 CEDAW GR 25, 2004, para. 6; see also, Byrnes, A., 2012, ‘Article 1’, in Freeman, M.A., Chinkin, C., Rudolf, B. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women*, New York: Oxford University Press. pp. 62-32.

13 CEDAW GR 25, 2004, para. 7.

14 Holtmaat and Naber, 2011, p. 25; Byrnes, 2012, p. 53.

15 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.

16 If *de jure* equality stresses the similarities between human beings, the principle of *de facto* or

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 *de facto* 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”, in the words of the Committee in General Recommendation No. 25.<sup>17</sup> These results, according to this General Recommendation, “may be quantitative and/or qualitative in nature” and includes, inter alia, women enjoying freedom from violence.<sup>18</sup> *Substantive* equality is expressed in Articles 3, 4 and 24 of the Convention.

3. The obligation to address prevailing gender relations and gender-based stereotypes 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>19</sup> The principle of transformative equality embodies a *change* stance. Equality is achieved only when social structures and power relations that perpetuate subordination are modified.<sup>20</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>21</sup> A full realization of the goals of non-discrimination and equality in the Convention requires a structural change. General Recommendation No. 25 states: “The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed.”<sup>22</sup> Transformative equality challenges social and institutional structures and requires the removal of the causes of entrenched forms of discrimination.<sup>23</sup> This implies a process-oriented endeavour that focuses on social and cultural transformation. The text and the objective of the Convention embody the idea of social and cultural transformation. CEDAW affirms in the Preamble: “a change in the traditional role of men as well as the role of women in society and in the family

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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.

17 CEDAW GR 25, 2004, para. 8.

18 Ibid., para. 9.

19 See Fredman, 2003, p. 115.

20 Ibid, p. 111.

21 CEDAW GR 25, 2004, para. 10.

22 Ibid.

23 According to Byrnes, transformative equality “might also be seen as a form of substantive equality with systemic and structural dimensions.” See Byrnes, 2012, p. 56.

is needed to achieve full equality between men and women.”<sup>24</sup> *Transformative equality* is expressed in Article 5 of the Convention.

The discussion in this section has so far focused on the complementary, underlying obligations of States parties to CEDAW to eliminate discrimination against women and ensure equality between women and men. As aforesaid, these obligations are mirrored by rights. Such obligations are imposed on States with the complementary purpose of guaranteeing women’s human rights and fundamental freedoms.<sup>25</sup> Consequently, State obligations under CEDAW to protect women from discrimination and ensure equality between women and men are paralleled by women’s rights to be free from discrimination and to be treated on an equal basis with men. According to the threefold understanding of equality, women are entitled to formal equality and thus, have a right to be treated equally with men before and in the law. Women are also entitled to substantive equality and thus have a right to equal opportunities. Furthermore, women are entitled to transformative equality and thus they have the right to be free from discrimination which stems from “*prevailing gender relations and gender-based stereotypes*”.<sup>26</sup>

### 2.3 ARTICLE 5(a) CEDAW – CONTENT, MEANING AND SCOPE

The strength of Article 5(a) has been put under question. The wording of the provision does not provide a full grasp of its meaning and scope. Some scholars consider it a softer provision since its key concepts, such as “*the idea of the inferiority or the superiority of either of the sexes*” or “*stereotyped roles*”, are not clearly defined.<sup>27</sup> So far, the CEDAW Committee has not given an explanation of this provision in a General Recommendation. This section takes a close look at concepts in the text of Article 5(a) with the aim being to clarify the content and meaning of this provision, and its scope in the framework of the Convention’s underlying trine model of non-discrimination-equality explained above.

Article 5 is a core substantive provision of CEDAW, which forms the general interpretative framework of the Convention together with Articles 1 to 4 and 24.<sup>28</sup> While it is a self-standing article, it is also an overarching provision, which colours each of the substantive Articles of the Convention, from 6 to 16 inclusively. The

24 CEDAW, 1979, Preamble, para. 14.

25 See also Byrnes, 2012, p. 53.

26 CEDAW GR 25, 2004, para. 7.

27 Packer, C., 2002, *Using Human Rights to Change Tradition*, Antwerp, Oxford, New York: Intersentia, p. 54; see also Baretto and Ellemers, 2005; Gross, 2008; See Holtmaat, 2012, pp. 143 and 166-167 for a detailed discussion.

28 CEDAW GR 25, 2004, para. 6.

Travaux Préparatoires of CEDAW indicate that Article 5 originates in Article 3 of the Declaration on the Elimination of Discrimination against Women (DEDAW).<sup>29</sup>

At the time of drafting CEDAW, the distinction between *sex* and *gender* was not used on the international arena; nor was the distinction made by the drafters of the Convention. It was only in 2010 that the CEDAW Committee distinguished between these two terms in the General Recommendation No. 28. Accordingly, “*sex* refers to biological differences between men and women”, while

*“‘Gender’ refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.”*<sup>30</sup>

A definition of gender is thus established in the CEDAW interpretative documents, in which the Committee stresses that gender is a social and cultural construction, susceptible to be changed by society and culture.<sup>31</sup> General Recommendation No. 28 further specifies that Article 5 read in conjunction with Article 1 and Article 2(f) make gender a ground for discrimination prohibited under CEDAW.

### 2.3.1 Interpretation of Article 5(a) CEDAW

Even if the Committee expressly indicates that Article 5 covers gender-based discrimination, the concepts underlying the provision in Article 5(a) still need to be clarified. Since the Committee has not yet adopted a General Recommendation specifically dedicated to this Article, its content and meaning is discerned in this section by breaking down the text along its main formulations and by analysing them in the light of the Travaux Préparatoires of the Convention, of the Committee’s interpretative documents, i.e. General Recommendations No. 25 and No. 28 and

29 See Rehof, L.A., 1993, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women*, Dordrecht: Martinus Nijhoff Publishers, pp. 77-78, for the UN documents related to the drafting history and summary records. Article 3 DEDAW reads: “*All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.*” DEDAW, 1967.

30 CEDAW GR 28, 2010, para. 5.

31 The CEDAW Committee referred to the concept of gender earlier, in 2004, in one of the explanatory endnotes in General Recommendation No. 25. In this document, the Committee makes use of the explanation given by the United Nations 1999 World Survey on the Role of Women in Development, without itself providing a definition. See CEDAW GR 25, 2004, note 2.

Concluding Observations, and of the available literature. The analysis starts from the end of the paragraph, by first taking a close look at “*the idea of the inferiority or the superiority of either of the sexes or ... stereotyped roles for men and women*” and next at “*prejudices and customary and all other practices*”. The intention is to first unravel the concepts at stake in this provision in order to subsequently clarify the nature of the obligations embodied in the verbs “*to modify*” and “*with the view to achieving elimination*”. The formulation “*all appropriate measures*” contained in the chapeau of the Article is discussed in section 2.5 where the content of the obligations are detailed.

***“The idea of the inferiority or the superiority of either of the sexes or ... stereotyped roles for men and women”***

The concept of discrimination based on gender emerges clearly from these formulations in the Article’s paragraph (a). The term “*sex*” is used throughout the Convention as an indicator of the type of “*distinction, exclusion or restriction*”<sup>32</sup> that is prohibited under its provisions. As mentioned above, the drafters of CEDAW did not make an explicit referral to the distinction between sex and gender in its text. However, “*the idea of the inferiority or the superiority of either of the sexes*” acknowledges that sexual differences can be constructed on the basis of domination-subordination structures. The formulation suggests that meanings of a hierarchical nature are given to biological sex differences, which can lead to an asymmetry of power between women and men.<sup>33</sup>

The phrase “*stereotyped roles for men and women*” refers to the social and cultural construction of gender identities within gender relations. Stereotyped roles reveal the expectations, which operate at the individual level, in societal structures and in State institutions. They are indicators of what it means to be a woman or a man; in other words, what is or should be the role and/or the behaviour of women and men in the private and in public sphere. Women and men are ascribed in this way to specific social and cultural boundaries within the binary gender hierarchy.<sup>34</sup> It leads to the understanding of gender roles as inherited identities, socially and culturally constructed on asymmetrical ideas “*of the inferiority or the superiority of either of the sexes*”, as Article 5(a) clearly states. Consequently, they result in unequal relations of power. These specific boundaries usually demarcate a position of control for men while women are ascribed an inherently inferior position which excludes them from public power, confines them to domestic tasks and to nurturing roles, and deprives them of control over their own sexuality and overall over their own

32 CEDAW, 1979, Article 1.

33 See the definition of gender referred to in CEDAW GR 25, 2004, para. 7, note 2.

34 Barriteau, 1998, p. 191.



lives.<sup>35</sup> For example, a common division of roles asserting appropriate attributions along sex differences is that of the woman having a natural, predestined role as a mother/caregiver and homemaker, whereas the man is conceived as the head of the household, engaged in breadwinner tasks outside the home. He is the one in control of women's sexuality and in charge of safeguarding and upholding this *natural* order, patriarchal in essence.<sup>36</sup>

***“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”***

A conjunct reading of this phrase with the above-explained formulations is necessary. The Travaux Préparatoires of CEDAW suggest that the formulation “*which are based*” was added in order to make the wording of the provision stronger.<sup>37</sup> Therefore, this Article does not target the elimination of any kind of prejudice, practice or custom, but of those that are grounded on stereotyped constructions and understandings of masculinity or femininity and on the consequent asymmetrical gender relations that restrict women's enjoyment of their potential and capabilities, and ultimately hinder the realisation of their human rights.

Furthermore, “*prejudices, and customary and all other practices*” must not be understood as addressing *cultural* aspects and *social* wrongs in “some specific ‘exotic’, ‘backward’, ‘traditionalist’, or ‘oppressive’ ‘cultures’”.<sup>38</sup> On the contrary, “*prejudices, and customary and all other practices*” in Article 5(a) address all gender relations, institutions and structures worldwide which uphold attitudes, values, ideologies and understandings that are detrimental to the point that they restrict individuals' dignity and exclude them from the full enjoyment of human rights.<sup>39</sup> Ingrained structural domination and unequal practices are a universal story, as some women voice:

35 See UN General Assembly, 2006, ‘In-depth study on all forms of violence against women’, Report of the Secretary-General, para. 70.

36 For an in-depth discussion on patriarchy as a historical system of structures and practices grounded on the idea of the superiority and inferiority of sexes, with women in the inferior position, see Bhasin, 1993; Tafari-Ama's work on the sexual politics in Jamaica's “below poverty line” communities is also of significance. See Tafari-Ama, I., 2008, *Blood Bullets and Bodies. Sexual Politics Below Jamaica's Poverty Line*, Maastricht: Shaker Publishing BV.

37 Rehof, 1993, p. 80.

38 Holtmaat, 2012, p. 150.

39 Ibid.; Volpp, 2001, p. 1217.

*“Every courageous act we perform to assert ourselves is condemned as ‘unfeminine’. We are called beparda (shameless) as soon as we try to step out of our defined spaces and roles. Norms and practices which define us as inferior to men, which impose control on us, are present everywhere: in our families, social relations, religions, laws, schools, textbooks, media, factories, offices. ... We realize that this subordination is not the fate of a few of us who are unfortunate, nor is it some ‘vicious’ men who exploit or oppress some women. We ... are up against a system, a system of male domination and superiority, of male control, in which women are subordinate.”<sup>40</sup>*

This is just one illustration of what appears to be common to the relations between women and men in most societies and cultures: ideologies of domination and ascription of roles. The CEDAW Committee points out in General Recommendation No. 25 that “[d]espite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between women and men as a pervasive trait.”<sup>41</sup>

***“Social and cultural patterns of conduct of men and women ...”***

This phrase denotes that Article 5(a) refers to behaviour that informs prevailing relations of gender. The “*social and cultural*” dimension is core to gender and gender relations. That is because gender is a signifier of socially and culturally constructed differences between sexes which produce and reproduce identities and relations of power that lead to ascribing roles and stereotyped relations between and among women and men.<sup>42</sup> The formulation “*patterns of conduct*” indicates that the Article refers to gender relations that rest on behaviour that is deeply entrenched and prevailing.

Culture, however, emerges as being central to the understanding of this Article.<sup>43</sup> This is a contentious concept, which needs to be explained for a clear understanding of Article 5(a). A particularly helpful explanation is given by Merry who indicates that culture “does not consist only of beliefs and values but also practices, habits,

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40 Bhasin, 1993, pp. 4-5.

41 CEDAW GR 25, 2004, para. 7, note 2.

42 See, Scott, 1986, pp. 1067-1069; also CEDAW GR 28, 2010, para. 5; CEDAW GR 25, 2004, para. 7, note 2; Barriteau, E., 2001, *The Political Economy of Gender in the Twentieth-Century Caribbean*, Hampshire, New York: Palgrave, p. 26; Barriteau, 1998, p. 189.

43 The language used in relation to Article 5(a) in the CEDAW Concluding Observations, country reports, and during CEDAW sessions heavily relies on notions such as “culture”, “stereotypes/stereotypical”, “patriarchy/patriarchal”, “traditional”, “religious”, “beliefs”, “practices”, “customs”, “norms”, “attitudes”, etc. See for examples, CEDAW CO Tuvalu, 2009, paras. 27-28; CEDAW CO Italy, 2011, paras. 22-24; CEDAW CO Jamaica, 2006, paras. 13-14; CEDAW, 2004, ‘Fifth Periodic Report of States Parties, Jamaica’, p. 23; Author’s observations, CEDAW 44<sup>th</sup> session, July 27-30, 2009, New York.

and commonsensical ways of doing things.”<sup>44</sup> Other authors, such as Austin-Broos view culture as “our very mode of existence”.<sup>45</sup> Similarly, Holtmaat emphasizes that “culture is intrinsic to human existence”.<sup>46</sup> The concept of *culture* thus refers to symbols, rituals, customs, practices, understandings of life and world-views which are historically inherited, situated in time and space, and to institutional, legal and political arrangements. These elements form a cultural “*tool-kit*”, as Swidler explained, or a “store of knowledge and an entire system of coping skills”, as Fisher explained, from which individuals select different arrangements in order to shape their line of actions.<sup>47</sup> Therefore, these elements profile a cultural system and at the same time shape the normative structure of a society – sanctioning social and cultural behaviour, informing it and motivating it.<sup>48</sup> Article 5(a) is concerned with that human behaviour that is entrenched in and shaped by the normative societal structures and habitual ways of understanding and doing things that mould unequal relations between and among women and men.

**“To modify ... with the view to achieving elimination”**

The verbs used in this paragraph indicate that States have an obligation under Article 5(a) to take a transformation stance in order to eliminate gender-based discrimination, i.e.: *to modify* social and cultural patterns of conduct that embrace and cultivate discriminatory gender relations; and, *to achieving elimination of* prejudices, customary and practices based on stereotyped ideas and ascription of roles that are discriminatory to either women or men.

*To modify* social and cultural behaviour *with the view to achieving the elimination of* gender-based discrimination is a challenging and broad obligation for States. Originally, the drafters of the Convention intended to use the verb *to educate public*

44 S.E. Merry, 2003, p. 22.

45 Broos’ view of culture is described in An – Na’im, A. and Hammond, J., 2002, ‘Cultural Transformation and Human Rights in African Societies’ in An – Na’im, A. (ed.), 2002, *Cultural Transformation and Human Rights in Africa*, London, New York: Zed Books, p. 24.

46 Holtmaat, 2012, p. 150.

47 Swidler, A., 1986, ‘Culture in Action: Symbols and Strategies’, *American Sociological Review*, 51, 273-286, p. 277; Similarly Fisher explains culture as “*a pre-tested design, a store of knowledge and an entire system of coping skills that has been crafted by preceding generations, a design that has been socially created, tested and shared, and one that can be transmitted to the next generation. In other words, culture is learned and shared behaviour, which is important because it systematizes the way people do things.*” Fisher, 1988, *Mindsets: the role of culture and perception in international relations*, Yarmouth, ME: Intercultural Press, pp. 45-46.

48 For a detailed discussion about the socio-cultural system, see Hofstede, G. and Hofstede, G.J., 2005, *Cultures and Organizations, Software of the Mind*, New York, etc.: McGraw-Hill, pp. 7-8; Trompennars, F. and Hampden-Turner, C., 1998, *Riding the Waves of Culture, Understanding Cultural Diversity in Global Business*, New York, etc.: McGraw-Hill, pp. 21-24.

*opinion*. In the final text of the Article this was replaced with the verb *to modify*.<sup>49</sup> In Holtmaat's view, this replacement gives strength to the provision, since *to modify* behaviour imposes a "very compelling and difficult" obligation on States.<sup>50</sup> *To educate public opinion* would give a clear and specific instruction to States from the text of the Article itself. Instead, the formulation *to modify social and cultural patterns of conduct of men and women* broadens the provision. It captures the dynamics within a society, namely the process of "active making of culture, society and institutions ... grounded ... in specific places and moment[s]." <sup>51</sup> In this way, Article 5(a) alludes to the constructed, fluid and thus changing nature of culture and gender, and makes the challenge of the hegemonic gender status quo more forceful and far-reaching.<sup>52</sup> In a number of Concluding Observations, the CEDAW Committee accentuates the idea of culture as dynamic and susceptible to change when it addresses this Article. The Committee recommends to State parties "to view culture and tradition as dynamic aspects of the country's life and social fabric and therefore as subject to change."<sup>53</sup> Similarly, the CEDAW Committee makes clear in its General Recommendation No. 28 that gender is a social and cultural construction that can be changed.<sup>54</sup>

The understanding of gender and culture as constructed, dynamic and changing structures that interrelate clarifies the meaning of the provision *to modify social and cultural patterns of conduct of men and women* and grounds the framework of action under this provision: social and cultural transformation. As explained above, the Committee recommends to States parties, in a number of Concluding Observations, to view culture as a dynamic and changing dimension of the social fabric in order to create an environment, which is conducive to the elimination of discriminatory sex roles and gender stereotyping.<sup>55</sup>

The formulation *social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping* is used throughout this book to encompass and

49 Rehof, 1993, pp. 81-82.

50 Holtmaat, 2012, p. 152; This view is opposed to Rehof's position who concludes in his analysis of the Travaux Préparatoires of CEDAW that the use of the formulation "*modify social and cultural patterns of conduct of men and women*" in the final text of Article 5(a) makes the provision weaker; Rehof, 1993, p. 84.

51 Merry, 2003, p. 23.

52 The idea of *culture* as a dynamic and flexible structure that is subject to change is brought into the discussion in Chapter 3, which focuses on the actors of social and cultural transformation. The concept of *gender* as a process of constructing identities and determining roles and relations between and among women and men according to social and cultural norms is introduced in Chapter 1.

53 CEDAW CO Tuvalu, 2009, para. 28; CEDAW CO Timor Leste, 2009, para. 28; CEDAW CO Cook Islands, 2007, para. 23.

54 See the introduction of this section for the definition of gender as provided by the CEDAW Committee in GR 28, 2010, para. 5.

55 See note 53.

refer to the key concepts in Article 5(a) that have been explained in the analysis. The formulation *sex roles* encapsulates the ascribed fixed identities, tasks and expectations according to the social and cultural construction of sex differences. *Gender stereotyping* encapsulates the prevailing gender relations resulting from the social, cultural and institutional construction of binary categories of *women* and *men*.

### **2.3.2 The discriminatory nature of sex roles and gender stereotyping: both forms and root causes of discrimination**

Women's diverse experiences of predestined inferiority lead to "their de-valuation and objectification", destroy their self-respect and limit their aspirations.<sup>56</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; they foster generalised judgment, which denies the assertion of women's actual characteristics, potential and capabilities. For that reason, one can state that social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping strip women of agency and power to make and take independent decisions and hold control over their own lives as rational human beings. They lead to women's marginalization and exclusion. Such conduct runs against the core value of human rights: the dignity and worth of the human beings who "are endowed with reason and consciousness" and "are born free and equal in dignity and rights".<sup>57</sup> The United Nations Committee on Economic, Social and Cultural Rights affirmed the negative nature of such social and cultural patterns of conduct:

*"Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality."*<sup>58</sup>

In its Concluding Observations the CEDAW Committee interprets sex roles and gender stereotyping as both forms and causes of discrimination against women. The Committee expresses both perspectives in the same paragraph in a number of

56 Perceptions of women's inherent, thus natural, subordination "extends to their intellectual, spiritual, physical, sexual and emotional lives." Salter, 2003, p. 2.

57 UDHR, 1948, Article 1 and Preamble; The Charter of the United Nations, 1945, Preamble; see also Holtmaat and Naber, 2009, p. 35.

58 CESCR GC 16, 2005, para. 14.

Concluding Observations. One such example is the Concluding Observations on New Zealand of 2007,

*“The Committee expresses concern that such attitudes and stereotypes present significant impediments to the implementation of the Convention and are a root cause of the disadvantaged position of women in a number of areas, including in the labour market and in political and public life.”*<sup>59</sup>

### *Structural discrimination or the operational levels of sex roles and gender stereotyping*

The analysis of the concepts in Article 5(a) renders it explicit that sex roles and gender stereotyping form a systemic problem, which lies at the heart of gender relations prevailing to this date, and is common to all parts of the world. They can be considered as discriminatory against women and impeding their right to be free from discrimination. Moreover, they inevitably lead to sustaining structural gender inequality.<sup>60</sup> As scholars explain, gender and gender constructions operate at three levels of society, such as the “individual consciousness, the symbolic order and the structure and organization of society.”<sup>61</sup> Consequently, sex roles and gender stereotyping operate at the level of the individual’s consciousness, manifest through behaviour and are further reflected in societal institutions and structures, in law and in policy.<sup>62</sup> From the mental level (individual consciousness) of the legislator, the policy-maker, the bureaucrat or the ordinary individual, gender understandings permeate through language/discourse, opinions (symbolic representations), attitudes,

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59 CEDAW CO New Zealand, 2007, para. 22; See also CEDAW CO Burundi, 2008, para. 17; CEDAW CO Timore Leste, 2009, para. 27: *“The Committee is concerned about the prevalence in the State party of a patriarchal ideology with firmly entrenched stereotypes and the persistence of deep rooted adverse cultural norms, customs and traditions, including forced and early marriage, polygamy and bride price or dowry (barlake), that discriminate against women, result in limitations to women’s educational and employment opportunities and constitute serious obstacles to women’s enjoyment of their human rights.”*

60 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.

61 Holtmaat, R., 2004, p. 99; Sevenhuysen, S., 1998, *Citizenship and the Ethics of Care. Feminist Considerations on Justice, Morality and Politics*, London/New York: Routledge, pp. 79-82; Schaapman, 1995, M., *Ongezien Onderscheid naar sekse. Een Analyse van de Verboden Machtswerking van Sekse*, Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, pp. 22 and 24.

62 See Gherardi, S., 1994, ‘Gender We Think, the Gender We Do in Our Everyday Organizational Lives’, *Human Relations*, 6, 591-610; Gherardi brings to attention the relation between social structures and gender; For a discussion about the relation between law and gender see Smart, C., 1992, ‘The Women in Legal Discourse’, *Social and Legal Studies* 1, 29-44.

practices and actions, and surface through the institutions and structures that the individual creates, including legislation.<sup>63</sup>

The CEDAW 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>64</sup> In its decision on Communication No. 28/2010, *R.K.B. v. Turkey*, the Committee indicates that actors from all branches and levels of the government as well as private actors can perpetuate gender stereotyping.<sup>65</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 might continue to promote inequality and traditional roles within the family."<sup>66</sup>

Clearly, the social and cultural transformation approach provided in Article 5(a) to fulfil the Convention's objective to eliminate discrimination against women targets multiple actors at the multiple levels of society where sex roles and gender stereotyping operate. This enables the efforts to ensure transformative equality, which is the core of this provision.

### 2.3.3 Rights under Article 5(a) CEDAW

Freedom from discrimination is a fundamental human right of women. As mentioned previously in section 2.3.2, sex roles and gender stereotyping deny individual women "the right to full personhood; that is: the possibility to be a person in their own right and to utilize all their human capacities and capabilities in order to lead a meaningful life as a human being."<sup>67</sup> In this way, ascribed sex roles and gender stereotyping represent "one of the most significant challenges threatening the promise of substantive equality".<sup>68</sup> Correspondingly, they impede the right of women not to be subjected to discrimination. Freedom from discrimination coming from ascribed sex

63 See also UN General Assembly, 2006, 'In-depth study on all forms of violence against women', Report of the Secretary-General, para. 70.

64 See CEDAW GR 25, 2004, para. 7; CEDAW CO Luxembourg, 1997, para. 404.

65 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.

66 CEDAW CO Mexico, 1998, para. 398.

67 Holtmaat and Naber, 2009, p. 35.

68 Cusack, S. and Cook, R., 2009, 'Combating Discrimination Based on Sex and Gender', in Krause, C. and Scheinin, M., (eds.), *International Protection of Human rights: A Textbook*, Abo Akademi University Institute, p. 222.

roles and gender stereotyping – one of the most entrenched and pervasive forms or causes of discrimination against women – underpins women’s enjoyment of equality in rights, of opportunities and of results.<sup>69</sup> Consequently, it is argued here, women have a right under Article 5(a) to be ensured freedom from discrimination emerging from ascribed sex roles and gender stereotyping. Such rights call for ensuring transformative equality, hence a social and cultural transformation approach.

Article 5(a) is significant in indicating in individual cases what stands for discrimination against women. The jurisprudence of the Committee under the Optional Protocol to CEDAW, such as CEDAW Communication No. 2/2003, *A.T. v. Hungary*;<sup>70</sup> CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Philippines*;<sup>71</sup> CEDAW Communication 20/2008, *V.K. v. Bulgaria*;<sup>72</sup> CEDAW Communication No. 22/2009, *T.P.F./L.C. v. Peru*;<sup>73</sup> CEDAW Communication No. 28/2010, *R.K.B v. Turkey*<sup>74</sup> stand as evidence for invoking Article 5 in individual claims. In these communications, the Committee considers the merits and decides under this Article. In the recent CEDAW Communication *T.P.F./L.C. v Peru*, for example, “the Committee considers that the State Party ... has violated the rights of L.C. established in article 5”<sup>75</sup> among others.

These decisions are indicative of the Committee’s view on the justiciability of Article 5(a), making the rights under this provision operational. It is noteworthy that following findings of violations of Article 5 in individual communications, the Committee makes recommendations to States parties that take into consideration both the individual and society at large. It divides these recommendations into 1. positive measures to be taken towards the individual, author of the communication, in order to remedy the violation of her rights, and 2. measures be taken generally in order to remedy the societal harm caused by the entrenched sex roles and gender stereotyping. It becomes clear that, as Holtmaat stresses, “the article helps to strengthen women’s legal and de facto positions in terms of their right not to be subjected to any form of discrimination, including gender stereotyping.”<sup>76</sup>

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69 CEDAW GR 25, 2004, para. 9.

70 CEDAW Communication No. 2/2003, *A.T. v. Hungary*, pp. 27-39.

71 CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Philippines*.

72 CEDAW Communication No. 20/2008, *V.K. v. Bulgaria*.

73 CEDAW Communication No. 22/2009, *T.P.F./L.C. v. Peru*.

74 CEDAW Communication No. 28/2010, *R.K.B v. Turkey*.

75 CEDAW Communication No. 22/2009, *T.P.F./L.C v. Peru*, para. 9.

76 Holtmaat, 2012, p. 167.



### 2.3.4 Obligations to bring about social and cultural transformation: challenging the gender hegemony

*“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>77</sup>*

To paraphrase Merry, the demands for cultural and social transformation are unambiguous in Article 5(a).<sup>78</sup> The rights of women to be ensured freedom from the pervasive discrimination that stems from sex roles and gender stereotyping render social and cultural transformation essential. By requiring a social and cultural modification of patterns of conduct based on sex roles and gender stereotyping, this Article challenges gender systems which “contemporary ... are unjust because there are inequalities built into, and continuously reinforced in, their structures and practices.”<sup>79</sup> The invisibility and systemic nature of ascribed gender roles and gender stereotyping makes combating the discrimination carried with them most challenging. Because of their entrenched nature, their elimination requires a structural change in order to ensure transformative equality – the corollary of social and cultural transformation. Fredman explained such endeavour as,

*“a re-structuring [of] society so that it is no longer male-defined. Transformative requires a redistribution of power and resources and a change in the institutional structures which perpetuate women’s oppression. It requires a dismantling of the public-private divide and a reconstruction of the public world so that child-care and parenting are seen as valued common responsibilities of both parents and the community. It aims to facilitate the full expression of women’s capabilities and choices, and the full participation of women in society ... This shows that equality as transformation requires not just the removal of barriers, but also positive measures to bring about change.”<sup>80</sup>*

The situation that led to the *Ciudad Juarez* phenomenon, for example, illustrates that addressing sex roles and gender stereotyping and bringing about social and cultural transformation is critical for the achievement of equality for women and sustainable social change.<sup>81</sup> In the Report on Mexico that the CEDAW Committee produced

77 CEDAW GR 25, 2004, para. 10.

78 Merry, S., 2003, ‘Human Rights Law and the Demonization of Culture’, *PoLAR*, p. 11.

79 Barriteau, 2001, p. 31.

80 Fredman, 2003, p. 115.

81 See CEDAW Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, 2005.

following an inquiry into the country's situation,<sup>82</sup> the CEDAW rapporteurs stated that the creation of jobs primarily for women, without providing alternatives for men, has shifted the traditional unequal dynamic of relations between sexes; this raised a situation of conflict towards women, especially towards the ones employed in the new jobs. The CEDAW Committee states in its Report that “[t]his social change in women’s roles has not been accompanied by a change in traditionally patriarchal attitudes and mentalities, and thus the stereotyped view of men’s and women’s social roles has been perpetuated.”<sup>83</sup>

Only effective action focused on entrenched forms and root causes of discrimination against women will lead to the improvement of women’s position.<sup>84</sup> Action that effectively combats the forms of discrimination encompassed by gender stereotyping, would require addressing: the law and the equal treatment before and in the law (*de jure* equality); the substantive situation of women and the opportunities for a meaningful life (*de facto* equality); and the institutions and structures, ranging from the family, the school, the church, to the community and the State in order to tackle entrenched mentalities (*transformative* equality). CEDAW General Recommendation No. 25 and the Committee’s Concluding Observations and jurisprudence indicate that the three forms of equality should interact in a complementary “integrated fashion”.<sup>85</sup> In General Recommendation No. 25, the Committee states its view that “a purely formal legal or programmatic approach is not sufficient to achieve women’s *de facto* equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of result. It is not enough to guarantee women treatment that is identical to that of men.”<sup>86</sup> Furthermore, the Committee brings to attention in its Concluding Observations that “[p]olicies to promote equality within the family are insufficient, since stereotyped roles are perpetuated in the family by deeply rooted traditions of men’s superiority.”<sup>87</sup> In its decision on Communication No. 28/2010, *R.K.B v. Turkey*, the Committee states that “full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the *de facto* position of women, but also to modify and transform gender stereotypes and eliminate wrongful

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82 The inquiry procedure under CEDAW is established in Article 8 of the Optional Protocol to the Convention; Optional Protocol to CEDAW, 1999, Article 8.

83 CEDAW Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, 2005, para. 25.

84 See CEDAW GR 25, 2004, para. 10.

85 *Ibid.*, para. 6.

86 *Ibid.*, para. 8.

87 CEDAW CO Mexico, 1998, para. 398.

gender stereotyping, a root cause and consequence of discrimination against women.”<sup>88</sup>

Accordingly, transformative equality is essential for a full achievement of equality for women. At the same time, ensuring *de jure* and *de facto* equality are necessary in order to take the transformative approach and to effectively combat the forms of discrimination encompassed by gender stereotyping. Therefore, the social and cultural transformation approach underlying the provision of Article 5(a) requires a holistic approach in order to permeate and strategize at all the levels where gender and gender constructions operate. Within the tripartite typology of State obligations-*to respect, to protect and to fulfil*,<sup>89</sup> the social and cultural transformation provided for in Article 5(a) embodies the State obligation to fulfil the central objective of CEDAW.<sup>90</sup> Social and cultural transformation is a fundamental endeavour, which aims at *achieving the elimination* of discrimination, as the text of the Article stipulates. It addresses all the levels where in practice discriminatory sex roles and gender stereotyping operate, i.e. individual consciousness, law and policies, and the institutions and structures of society. This places at the heart of the obligation under this Article 5 the far-reaching task of fulfilment. The obligation to fulfil focuses on the achievement of non-discrimination and equality<sup>91</sup> and thus requires an integrated, comprehensive approach to create conditions, which “ensure the development and advancement of women in order to improve their position to one of *de jure* as well as *de facto* equality with men.”<sup>92</sup> In other words, the provision to bring about social and cultural transformation and to ensure transformative equality encompasses the “forward-looking” obligation to fulfil.<sup>93</sup>

88 CEDAW Communication No. 28/2010, R.K.B v. Turkey, para. 8.8.

89 CEDAW GR 25, 2004, para. 4.

90 The obligation to fulfil is discussed in more detail in Chapter 3, at pp. 60-62.

91 CEDAW GR 28, 2010, para. 37(d).

92 CEDAW GR 25, 2004, para. 4; see also, Byrnes, 2012, pp. 74-75; For a general discussion on the nature of State obligations, see Chapter 3, section 3.2.1.

93 Chinking and Freeman, 2012, p. 20.

## 2.4 THE INTERFACE BETWEEN ARTICLE 5(a) AND GENDER-BASED VIOLENCE AGAINST WOMEN

*“In the collective imagination, the acceptance of scorn, inequality, unworthiness and violence is linked to the roles that give a ‘natural’ form to what must be accomplished in order to be a woman.”<sup>94</sup>*

Gender-based violence against women is a systemic issue, rooted in historical relationships of structural inequality and power imbalances between women and men. Male authority and control over women is perpetuated through the punitive functions of violence, which come into play when the socio-cultural boundaries of roles and expectations are transgressed. In this way, gender-based violence against women reinforces prevailing gender constructions and relations. The CEDAW Committee takes an all-encompassing approach to the issue of discrimination against women, including gender-based violence against women in the scope of the definition of discrimination in Article 1.<sup>95</sup> This section highlights the interconnected relation between the problem of gender-based violence against women and Article 5(a).

### 2.4.1 Gender-based violence against women: a form of discrimination under CEDAW

*“The male view of women as inferior led to their de-valuation and objectification, which it could be argued has led to a variety of practices including rape, wife capture, infibulations and wife battering.”<sup>96</sup>*

The Convention is a dynamic instrument, whose substantive content is continuously interpreted, clarified and brought forward by progressive thinking. Although Article 5(a) or any of the Convention’s articles do not explicitly mention gender-based violence, the Committee interprets the Convention as covering the phenomenon of gender-based violence against women as a form of discrimination that occurs pervasively around the world.<sup>97</sup> In 1989, the CEDAW Committee affirmed in its General Recommendation No. 12 that a number of articles of the Convention, more precisely Articles 2, 5, 11 and 16, require State Parties to act in order “to protect women against violence of any kind occurring within the family, at the work place, or in any other areas of social life.” The Committee further stresses

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94 Mexico Shadow Report to CEDAW, 2006, ‘Shadow Report to the Convention for the Elimination of All Forms of Discrimination against Women in Mexico (CEDAW) 2002-2005, To Eradicate Discrimination in Mexico: a Deceit’, p. 22, available at [http://www.iwraw-ap.org/resources/pdf/Mexico\\_SR.pdf](http://www.iwraw-ap.org/resources/pdf/Mexico_SR.pdf).

95 See CEDAW GR 12, 1989; CEDAW GR 19, 1992.

96 Salter, 2003, p. 2.

97 CEDAW GR 12, 1989.

in General Recommendation No. 19 (1992) that “gender based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>98</sup> It explicitly makes the issue of gender-based violence against women a component of the Convention’s definition of discrimination in Article 1. In this regard, the Committee asserts:

*“The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”*<sup>99</sup>

The CEDAW Committee has had an abundant practice of affirming the connection between gender-based violence against women and patriarchal constructions of gender relations, which have at heart stereotyped assumptions of gender roles and gender stereotyping ideologies. In that regard, General Recommendation No.19 states:

*“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.”*<sup>100</sup>

The comments provided by the Committee in Concluding Observations furthermore emphasize the mutually reinforcing relation between sex roles and gender stereotyping and gender-based violence against women. The Committee, in its Concluding Observations on Jamaica of 2006, points to the persistence of “... of strong patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, which are discriminatory of

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98 CEDAW GR 19, 1992, para. 1.

99 Ibid., para. 6.

100 Ibid., para. 11.

women, underpins discrimination against women in many spheres, and condones gender-based violence and promiscuous behaviour by men.”<sup>101</sup>

In many societies, as the Special Rapporteur on violence against women, its causes and consequences ascertains in her Report (2002), the construction of masculinity is associated with the “violent regulation of female sexuality ... notions of masculinity are integrally linked to policing the behaviour of women”<sup>102</sup> ensuring control of women’s sexuality and maintaining them in a subservient position.<sup>103</sup>

#### **2.4.2 Addressing gender-based violence against women: rights under Article 5(a)**

Article 5(a) deals with gender-based violence against women since it represents a cause and a consequence of sex roles and gender stereotyping. Thus, the calls for social and cultural transformation in this Article inevitably imply the consideration and addressing of gender-based violence against women. Moreover, since women have a right to be free from discrimination stemming from adverse sex roles and gender stereotyping and since gender-based violence is a form and a consequence of such discrimination, it can be argued that women have a right under Article 5(a) to be free from violence emerging from or condoned by sex roles and gender stereotyping.

In its decisions on Communication No. 2/2003, *A.T. v. Hungary*, Communication No. 18/2008, *Karen Tayag Vertido v. Philippines*, and Communication No. 20/2008, *V.K. v. Bulgaria*, the CEDAW Committee builds its consideration of the merits on *inter alia* Article 5, making a clear connection between this Article and gender-based violence against women. The Committee affirms in these decisions that it “... addressed articles 5 and 16 together in its General Recommendation No. 19 in dealing with family violence.”<sup>104</sup> It underlines that ideas of the inferiority of women bring about gender-based violence against women. “... traditional attitudes by which women are regarded as subordinate to men contribute to violence against women.”<sup>105</sup>

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101 CEDAW CO Jamaica, 2006, para. 13; See also, CEDAW CO Tuvalu, 2009, para. 27.

102 CHR 2002, Report of Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49, ‘Cultural practices in the family that are violence towards women’, para. 105.

103 *The rule of thumb* is such an example. It has been preserved in the Statutes of British Common Law, and practised also in Jamaica, until twenty-first century. Salter, 2003, pp. 2-3; see also Cook and Cusack, 2010, p. 2.

104 CEDAW Communication No. 2/2003, Ms. A.T. v. Hungary, para. 9.4; See also CEDAW Communication No. 20/2008, V.K. v. Bulgaria, para. 9.15; CEDAW Communication No. 18/2008, Karen Tayag Vertido v. Philippines, para. 8.9.

105 CEDAW Communication No. 2/2003, Ms. A.T. v. Hungary, para. 9.4; see also CEDAW Communication No. 20/2008, V.K. v. Bulgaria, para. 9.11.

This is indicative that the Committee views Article 5 as instrumental in the realisation of the rights of women to be free from gender-based violence. To the extent that social and cultural conduct leads to the manifestation of, or embodies instances of gender-based violence against women, such violence is an issue that States are bound to address under the provision of Article 5(a).

## 2.5 OBLIGATIONS UNDER ARTICLE 5(a) IN RELATION TO GENDER-BASED VIOLENCE AGAINST WOMEN

The language of Article 5(a) is not clear about its implementation. A sole reading of the text of the Article would not provide for a clear and full understanding of the nature and content of its obligations under its provision. The phrase “*all appropriate measures*” in the chapeau of the Article concedes the different contexts of States parties. It indicates that the provision allows a great deal of flexibility to the State to discern and decide on the measures, which are appropriate to take according to its national context.<sup>106</sup> As Byrnes notes, the word “*all*” suggests that the measures undertaken must be a comprehensive set of measures aimed at achieving the full realisation of the rights of women under the Convention.<sup>107</sup> However, the following question still emerges: what exactly is the meaning of *all appropriate measures to modify social and cultural patterns of conduct*? In other words, how does one need to go about social and cultural transformation in order to eliminate gender-based violence against women?

This section investigates the concrete steps that States parties must take to address, modify and eliminate sex roles and gender stereotyping that perpetuate gender-based violence against women. While the Committee has not adopted a comprehensive General Recommendation on Article 5 per se, measures to be taken under Article 5(a) can be derived from the study of General Recommendations No. 3, 19, 25 and 28, and the interpretations of the Committee in its numerous Concluding Observations and in its jurisprudence.

### 2.5.1 Naming the harm embodied by sex roles and gender stereotyping

CEDAW General Recommendation No. 19 makes it explicit that States parties “should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women”.<sup>108</sup> The invisibility and pervasiveness of the ascribed sex roles and gender stereotyping makes them difficult to grasp and

106 CEDAW GR 28, 2010, para. 23.

107 Byrnes, 2012, p. 77.

108 CEDAW GR 19, 1992, para. 24(e).

consequently to deal with, i.e. *modifying them* and *achieving their elimination*. Such resilience makes them resistant to change or eradication, such as the case of the stereotyped assumptions of women as domestic, mothers and caregivers. For that reason, identifying and acknowledging the harm, such as violence against women, produced by asymmetric constructions of gender identities, and resulting sex roles and gender stereotyping underlies the obligations in Article 5(a) *to modify* behaviour and *achieve elimination* of discrimination. A close diagnosis of the ascribed sex roles and gender stereotyping is thus required in order to *name* the wrong behind them. *Naming* involves identifying and publicly exposing “an otherwise hidden harm, explaining its implications, and labelling it as a human rights concern, grievance, or possible human rights violation.”<sup>109</sup> The Committee’s Concluding Observations and jurisprudence are illustrative of identifying and naming the social harm embodied by sex roles and gender stereotyping. The Committee *names* the harm embedded in sex roles and gender stereotyping when it refers to “patriarchal attitudes and deep-rooted stereotypes concerning women’s roles and responsibilities that *discriminate against women* and *perpetuate* their subordination within the family and society”<sup>110</sup> (emphasis added).

### *Karen Tayag Vertido v. Phillipines*

CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Phillipines* is a clear illustration of naming the social damage and prejudice embodied and caused by gender stereotyping, in this case the revictimization of the author through the gender stereotyping relied upon in a Court decision.<sup>111</sup> In this Communication, the author, a victim of rape, bases her complaint on expressly naming 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>112</sup> “the fact that the accused and the victim are ‘more than nodding acquaintances’ makes the sex consensual;”<sup>113</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>114</sup> The author explains how the gender stereotyping through the court decision harmed and revictimized not only her and but also other victims.<sup>115</sup> The author argues that the

109 Cook and Cusack, 2010, p. 39.

110 CEDAW CO Botswana, 2010, para. 23; see also CEDAW CO Jamaica, 2006, para. 383.

111 CEDAW Communication No. 18/2008, *Vertido v Philippines*, paras. 8.5-8.8.

112 *Ibid.*, para. 3.5.2.

113 *Ibid.*, para. 3.5.4.

114 *Ibid.*, paras. 3.5.5 and 3.5.1.

115 *Ibid.*, para. 3.7.



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>116</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>117</sup>

In the consideration of the merits of the case, the Committee identifies that “gender-based myths and stereotypes” emerge from the judgment, which contains “several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the credibility of the victim.”<sup>118</sup> One of the guiding principles for reviewing rape cases used in the judgment according to which “‘an accusation for rape can be made with facility’ is named by the Committee as revealing “in itself a gender bias.”<sup>119</sup> The Committee further indicates that “[o]ther factors taken into account in the judgment, such as the weight given to the fact that the author and the accused knew each other, constitute a further example of ‘gender-based myths and misconceptions’.”<sup>120</sup>

### *Consciousness of the discriminatory nature of sex roles and gender stereotyping*

As Cook and Cusack note, the law/legal system can be a powerful tool in the process of identifying and naming sex roles and gender stereotyping. It enables an authoritative transformation of the covert negative experience of stereotyping into a recognized wrong and thus it helps determine its remedy.<sup>121</sup> Yet, it can also publicly acknowledge and encourage, as in the *Karen Tayag Vertido v. Phillipines* case, gender stereotyping and implicitly condone gender-based violence with the result of revictimizing the claimant. Through the Court decision, the judge institutionalized the ascription of women and men to specific social and cultural boundaries within the binary gender hierarchy. As Barriteau observed, “[t]he statements of public officials, the bureaucratic and social practices of institutions, and representations in popular culture, provide evidence of what is expected of, or appropriate for, the socially constituted beings, *women* and *men*.”<sup>122</sup> The operation of gender at the symbolic level comes into play and needs to be acknowledged. As Mossink and Nederland point out, gender and gender expectations occur through explicit statements about the position of women and men. From this level ideas can be “distilled” about the roles of and

116 Ibid., para. 3.9.

117 Ibid., para. 3.8.

118 Ibid. para. 8.6.

119 Ibid., para. 8.5.

120 Ibid., para. 8.6.

121 Cook and Cusack, 2010, p. 46.

122 Barriteau, 1998, p. 191.

relations between and among women and men.<sup>123</sup> Therefore, a court case, such as the one concerning Karen Tayag Vertido, has the power to convey an authoritative message that institutionalizes, in this case, the adversity of gender stereotyping and of the harm endorsed by the patriarchal nature of society.<sup>124</sup>

The law and the legislator/legal measures are, evidently, important tools to name and expose the harm, and ensure *de jure* equality. Consciousness/awareness of the social harm carried by sex roles and gender stereotyping is of the essence however. Without such consciousness at both individual level and at the level of those with authority to name and expose the harm, naming, exposing, and addressing cannot be carried out. The fact that the individual, both as the legislator/decision-making authority and as the person subjected to the harm perpetuated by sex roles and gender stereotyping, has a consciousness of these forms of discrimination, enables the fulfilment of States' obligations under Article 5(a). In the *Karen Tayag Vertido v. Phillipines* case, the author is aware of the gender stereotyping in the court decision and the harm it had caused her; she names it and exposes it. In other words, there is great emphasis on what States are required to do in order to take action at the macro, societal level and challenge structural wrongs. However, this cannot be done without an individual consciousness of the structural and systemic harm and action at the individual level as well. The importance of the consciousness of the discrimination embodied by entrenched stereotyping is further discussed in subsequent chapters of this book. Yet, Halperin-Kaddari's observation is important to already emphasize here, as it sums up the ideas in this section:

*“Unless something is named as an injury, it cannot lead to a dispute. Unless the injured person knows that her experience is recognized as an injury, she cannot proceed with ‘blaming’ and ‘claiming’. [Thus] [t]he first stage in the process, naming, requires information which is essential to mobilize the process of demanding rectification and amelioration.”*<sup>125</sup>

Recognizing hidden social wrongs, naming and publicly acknowledging them is of great importance. This substantiates the endeavour to reshape gender norms and reconstruct societies. Individual consciousness/awareness is a crucial level where gender operates. It informs the other symbolic and societal structures and institutional levels (explained earlier in this chapter). Thus, it can be argued here that

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123 Mossink, M. and Nederland, T., 1993, *Beeldvorming in beleid. Een analyse van vrouwelijkheid en mannelijkheid in beleidsstukken van de rijksoverheid*, Vrije Universiteit Amsterdam/Vuga Den Haag, pp. 3-4, in Holtmaat, 2004, p. 95.

124 See Barriteau, 1998, p. 191.

125 Halperin-Kaddari, R., 2004, *Women in Israel: A State of Their Own*, Philadelphia: University of Pennsylvania Press, p. 7, in Cook and Cusack, 2010, p. 38.

consciousness underlies the nature of the obligation to bring about social and cultural transformation under Article 5(a).

### 2.5.2 “All appropriate measures” under Article 5(a) to eliminate gender-based violence against women

Notwithstanding the legal nature of CEDAW, it becomes clear that *all appropriate measures* under Article 5(a) to bring about social and cultural transformation are not merely legal. In General Recommendation No. 3 (1987), the Committee specifically refers to “stereotyped conceptions of women, owing to socio-cultural factors, that perpetuate discrimination based on sex”. It states that the adoption of education and public information programmes “help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women”.<sup>126</sup>

General Recommendation No. 19 (1992) reiterates General Recommendation No. 3<sup>127</sup> and stresses that “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles” may perpetuate gender-based violence against women. In this recommendation, the Committee points out and details legal measures, preventive measures and protective measures as the measures deemed to be appropriate to deal effectively with gender-based violence against women.<sup>128</sup> Therefore, these measures also fall within the scope of Article 5(a).

In its Concluding Observations, the Committee indicates that besides legal measures, social and cultural transformation requires States parties to take proactive, comprehensive endeavours in areas such as public policy and programmes, education and awareness, media and advertising. The Committee makes reference to measures such as the setting up of a national machinery for women; collaboration and coordination of actions between Government and women’s organizations and non-governmental organization (NGOs); collaboration with international institutions and conducting data collection measures. However, none of these measures can be effectively put into practice without an adequate legislative framework, which would give the authoritative legal ground for such initiatives.<sup>129</sup> The Committee indicates that law reform, information, education and communication “encourage a change in

126 CEDAW GR 3, 1987.

127 CEDAW GR 19, 1992, para. 24(f).

128 Ibid., para. 24(t), (i), (ii), (iii); see also Boerefijn, I., 2000, ‘The prevention and elimination of Violence against Women; An in-depth study of Dutch Policy in the light of the obligations following from the Women’s Convention’ in Boerefijn, I. et al, *Report Commissioned by the Dutch Ministry of Social Affairs and Employment*, The Hague: Elsevier Bedrijfsinformatie BV, section 5.3.3.

129 CEDAW CO Luxembourg, 2000, para. 405; CEDAW CO Cook Islands, 2007, para. 23; CEDAW CO Switzerland, 2009, para. 26.

people's way of thinking and accelerate the process of the emancipation of women ... so that a change takes place in women's view of themselves and society as whole recognizes that the participation of women is necessary for development."<sup>130</sup> Such measures need to be taken by the State in collaboration with civil society actors, intellectuals, religious leaders and the media.<sup>131</sup>

### *Law, policy and programme measures*

The international law character of CEDAW imposes an obligation on State parties to adjust their domestic legal and policy system to the norms in the Convention, as an essential first step for safeguarding the rights guaranteed by it at the national level.<sup>132</sup> In line with the provisions of Article 5(a), States must establish a legislative and programmatic environment, which is conducive to the transformation of social and cultural behaviour based on sex roles and gender stereotyping.

Assumptions about women and men and the relations between and among each other are "baked" into the legal and the programmatic systems: the structure and content of legislation and policy.<sup>133</sup> As Schaapman observes, institutions such as the law are gender biased, and the government itself is part of the problem.<sup>134</sup> Laws, public policies and programmes may debunk the idea of the inherent inferior or superior nature of either of the sexes.<sup>135</sup> At the same time, they may endorse such discriminatory ideas. The Committee recognizes that "... policies to promote equality within the family are insufficient, since stereotyped roles are perpetuated in the family by deeply rooted traditions of men's superiority. In addition, the Committee notes that certain legal provisions might continue to promote inequality and traditional roles within the family."<sup>136</sup>

For that reason, States parties must scrutinize their laws and policies for discriminatory provisions based on sex roles and gender stereotyping. In addition, they must assess the impact of such provisions on the reinforcement of unequal relations between women and men, and institute change if necessary. Such scrutiny uncovers "the invisible

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130 CEDAW CO Burkina Faso, 2000, para. 266.

131 Ibid.

132 The 1969 Vienna Convention on the Law of Treaties stipulates that State parties are bound to bring their domestic laws and policies into conformity with the terms of the Conventions they are party to. See Articles 26 and 27 of the 1969 Vienna Convention on the Law of the Treaties in United Nations, 1969, *Vienna Convention on the Law of Treaties*, Treaty Series, vol. 1155, p. 331.

133 Schaapman, 1995, in Holtmaat, 2004, p. 95.

134 Ibid.

135 See Appiah, 2000, pp. 47-48.

136 CEDAW CO Mexico, 1998, para. 398.

area of the self-evident ideas about men and women in policy-documents.”<sup>137</sup> This is a necessary step for redressing situations of discrimination and creating a gender sensitive legal and policy climate, which is conducive to the transformation of social and cultural behaviour.<sup>138</sup>

### *Prevention measures under Article 5(a)*

Yet, as CEDAW General Recommendation No. 25 emphasizes, “... purely formal legal or programmatic approach is not sufficient to achieve” substantive equality for women.<sup>139</sup> This is just one of the steps within the holistic approach to modifying social and cultural patterns of conduct and achieving the elimination of gender-based violence against women.<sup>140</sup> Sustainable efforts to eliminate gender based violence against women emerging from patterns of behaviour based on sex roles and gender stereotyping call for embarking on its prevention.

CEDAW General Recommendation No. 19 puts emphasis on preventive measures, including public information and education, in order to “overcome” social and cultural behaviour that is harmful.<sup>141</sup> Prevention measures enable States to intervene early enough and deter the occurrence of gender-based violence against women. As the UN Special Rapporteur on Violence against Women, its Causes and Consequences (2002) has stressed, prevention approaches are more feasible when they focus on change, whereas “the State obligation to protect and take prosecutorial and punitive measures remains relevant in combating violations” that have already manifested themselves.<sup>142</sup> The findings of the UN Secretary-General study on violence against women show that “[primary] prevention requires changing attitudes and challenging stereotypes in society and assisting communities that seek to end the acceptance of violence against women.”<sup>143</sup> It is illustrative that the CEDAW Committee has recommended to the

137 Mossink and Nederland, 1993, pp. 3-4, in Holtmaat, 2004, p. 95.

138 CEDAW CO Germany, 2009, para. 30; CEDAW CO the Netherlands, 2010, para. 25.

139 CEDAW GR 25, 2004, para. 8.

140 CEDAW CO Slovenia, 1997, para. 89; see also, CEDAW CO Zimbabwe, 1998, para. 139.

141 CEDAW GR 19, 1992, para. 24(f), 24(t) (ii).

142 HRC, 2009, ‘15 Years of United Nations Special Rapporteur on Violence against women, its Causes and Consequences (1994-2009)-A Critical Review,’ available at <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>, p. 29; also CHR, 2003, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2002/52, ‘Violence against Women; International, regional and national developments in the area of violence against women 1994-2003’, 67-69.

143 UN General Assembly, 2006, ‘In-depth study on all forms of violence against women’, Report of the Secretary-General, p. 121; The UN General Assembly Resolution 61/143 stresses that States should “[t]ake positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms” and “hold up to public

Government of Jamaica, in the context of preventive measures, to link the efforts to combat prevailing gender-based stereotypes with efforts to combat violence against women.<sup>144</sup>

The enactment of specific laws on specific forms of violence, such as domestic violence, sexual harassment or incest, and the penal responses, such as criminalization, prosecution and punishment, go along with positive action by the State.<sup>145</sup> Such action encompasses the provision of coordinated policies and programmes, public education campaigns and the sensitization of existing State structures and coordinated services; human rights education and the involvement of men and boys in education programmes and in combating gender-based violence against women; combating the objectification of women and pornography and promoting non-stereotyped images of women and men by the media; the creation of mechanisms such as ombudspersons or commissions; and the collection of data to assess the *de facto* situation of women.<sup>146</sup> A number of cases from CEDAW jurisprudence are subsequently highlighted in order to illustrate how the Committee uses the preventive measure of gender-sensitive training for violations of Article 5.

Gender-sensitive training: Ciudad Juárez; Karen Tayag Vertido v. Philippines; R.K.B. v. Turkey

In the *Ciudad Juárez* inquiry case, the CEDAW Committee pointed out the obligation of Mexico to promote and guarantee education and training for all public officials involved in the investigations of violence against women as well as in the technical aspects of the investigations.<sup>147</sup> Gender-sensitive training, guidelines and manuals on violence against women increase the capacity to deal with such an issue. As the UN Secretary-General stressed in his “In-depth study of all forms of violence against women”, it is imperative for “all those who respond to violence against women, such

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*scrutiny and eliminate those attitudes that foster, justify or tolerate violence.”* See UN General Assembly Resolution 61/143, para. 8, f and i.

144 CEDAW CO Jamaica 2006, para. 16.

145 See generally CHR, 2006, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, ‘The Due Diligence Standard As A Tool For The Elimination Of Violence Against Women’; UN General Assembly, 2006, ‘In-depth study on all forms of violence against women’, Report of the Secretary-General.

146 See HRC, 2009, ‘15 Years of United Nations Special Rapporteur on Violence against women, its Causes and Consequences (1994-2009)-A Critical Review’, p. 26; CHR, 2006, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, ‘Mission to the Russian Federation’, p. 12.

147 CEDAW, 2005, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico, para. 278.

as law enforcement officers, immigration, judicial and medical personnel and social workers” to know how to deal with violence against women in a gender-sensitive fashion.<sup>148</sup> Moreover, *Ciudad Juárez* stands as an example of the urgency to integrate a gender perspective in all public policies in order to combat “the root causes of gender violence in its structural dimension and in all its forms — whether domestic and intra-family violence or sexual violence and abuse, murders, kidnappings, and disappearances.”<sup>149</sup>

Similarly, in CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Philippines* (detailed at section 2.5.1), which concerns legal procedures in cases involving crimes of rape that endorse and perpetuate discriminatory gender stereotyping, the Committee recommends training and education to change discriminatory attitudes towards women. According to the Committee, concrete measures include, *inter alia*, “appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimization of women having reported rape cases and to ensure that personal mores and values do not affect decision-making.”<sup>150</sup>

In Communication No. 20/2008, *R.K.B. v. Turkey*, a case of spousal violence, the refusal of the District Court to issue a permanent protection order against the author’s husband coupled with the unavailability of shelters constituted the State’s failure to provide the author effective protection against domestic violence. The Committee considers that the Court’s lack of gender sensitivity in assessing the author’s situation and issuing the protection order led to her further harm.<sup>151</sup> In its recommendations to the State party, the Committee places emphasis, *inter alia*, on mandatory training for judges, lawyers and law enforcement personnel on domestic violence and gender stereotypes, as well as on appropriate training on the Convention, its Optional Protocol and the Committee’s General Recommendations, in particular General Recommendation No. 19.<sup>152</sup>

Generally, the Committee places great emphasis on gender sensitization, human rights training and the raising of legal consciousness as measures to address the discrimination perpetuated by fixed ideas of sex roles and gender stereotyping and

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148 UN General Assembly, 2006, ‘In-depth study on all forms of violence against women’, Report of the Secretary-General, para. 273.

149 CEDAW, 2005, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico, para. 35.

150 CEDAW Communication No. 18/2008, *Vertido v Philippines*, para. 8.9(b) (iv).

151 CEDAW Communication No. 20/2008, *R.K.B. v. Turkey*, para. 9.12.

152 *Ibid.*, para. 9.16(b) (iv).

to ensure adequate response to all forms of discrimination, including violence. In General Recommendation No. 19, the Committee stresses the essential nature of gender-sensitive training for judicial and law enforcement officers and other public officials for the effective implementation of the Convention's objectives.<sup>153</sup> In its Concluding Observations, the Committee recommends using of all forms of education, formal, non-formal and informal, including the socialization process through parenting and community social interaction. These measures are meant to target all societal strata, i.e. from the common individuals, women and men, girls and boys, teachers and educators, to health-service providers, law enforcement officers, judges, lawyers, prosecutors and other public officials.<sup>154</sup> The Committee also brings to attention the gender sensitization of and through the media. It stresses in General Recommendation No. 19 and in its Concluding Observations that over-sexualized depictions of women in the media promote the stereotyped portrayal of women as sex objects and confirm ideas of women's inferiority.<sup>155</sup> In that regard the Committee encourages media to undertake cultural transformation and "to project a positive image of women and of the equal status and responsibilities of women and men in the private and public spheres."<sup>156</sup>

Sensitization about entrenched mentalities is necessary in order to address the very personal level where gender operates: individuals' consciousness. As Holtmaat observes, civil servants, policy-makers, legislators and public officials are human beings who design or discern on the application of policies or legislation from their own mental framework. Their understandings, opinions, biases come into play when dealing with policy documents or the application of the law. These actors create a certain image of the problem at hand and connect this to possible solutions based on their understandings.<sup>157</sup> As explained in section 2.5.1, individual consciousness informs all the other levels, i.e. symbolic and structural levels. Evidently, taking this level of consciousness into consideration is of great importance.

### *Protection measures under Article 5(a)*

In addition to preventive measures, protection measures are necessary for "the State to establish or promote institutional arrangements that provide services vital to respond

153 CEDAW GR. 19, 1992, para. 24(b).

154 CEDAW CO Democratic Republic of the Congo, 2000, para. 216; CEDAW CO Fiji, 2002, paras. 31-32; CEDAW CO Cape Verde, 2006, para. 18; CEDAW CO Republic of Moldova, 2006, para. 19; CEDAW CO Azerbaijan, 2007, para. 16; CEDAW CO El Salvador, 2008, para. 24; CEDAW CO Tuvalu, 2009, para. 28.

155 CEDAW GR 19, para. 12.

156 CEDAW CO Republic of Korea, 2007, para. 26; CEDAW CO United Republic of Tanzania, 2008, para. 118; CEDAW CO Madagascar, 2008, para. 17; CEDAW CO Tuvalu, 2009, paras. 27-28.

157 Holtmaat, 2004, pp. 99-100.



to violence against women.”<sup>158</sup> State obligation to protect women from gender-based violence is clearly expressed in General Recommendation No. 19.<sup>159</sup> Criminalizing the varied forms of gender-based violence against women and stereotyping, and thus combating impunity is an imperative for dealing with this problem. Putting into place effective systems of punishment and the prosecution of perpetrators while facilitating the civil sanctions of issuing protection orders and providing for immediate means of redress and compensation to victims is a duty the States should fulfil in order to effectively address and protect women from violence.

Condemning discriminatory sex roles and gender stereotyping that cause and perpetuate violence against women through police investigations, prosecutorial and punitive actions conveys to society the message that such forms of violence cannot be tolerated. “... prosecutors and judges can be considered to be the ‘mouth pieces’ of society, and strong statements condemning violence against women made on behalf of society through the judiciary or prosecutorial service will make that society less patriarchal.”<sup>160</sup> The Communications *Karen Tayag Vertido v. Philippines* and *RKB v. Turkey* exemplify that legal measures, that are protective by nature, have the potential to influence (in these cases in negative ways) the underlying unequal gender relations that condone gender-based violence against women.

#### Remedies and support services: A.T. v. Hungary

Concurrently with judicial action and providing access to justice, protective action by the State also requires the establishment of a sufficient number of shelters provided with adequate financial resources and expert personnel. Counselling services where legal, medical and psychological services are provided to victims are core to protecting against gender-based violence against women. These measures need to be accompanied by putting in place crisis centres and 24-hour free hotlines and rehabilitation programmes for victims and also for perpetrators.

Therefore, putting in place a system protecting women from violence reveals the States’ commitment to give adequate attention to women’s issues and consider their important position in society. In turn, failure to provide adequate protection from violence (through shelters, access to justice, efforts to combat impunity for violence) allows the occurrence of gender-based violence against women. In other words, the

158 HRC, 2009, ‘15 Years of United Nations Special Rapporteur on Violence against women, its Causes and Consequences (1994-2009)-A Critical Review’, p. 26.

159 CEDAW GR 19, 1992, para. 24.

160 CHR, 2006, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, ‘The Due Diligence Standard as a Tool for the Elimination of Violence Against Women’, para. 90.

State acknowledges and enforces the historically subordinate position of women in society and sustains the endurance of those forms of gender stereotypes and patriarchal attitudes that legitimize, exacerbate or tolerate violence against women.

The CEDAW Committee's consideration of the merits in Communication 2/2003 *A.T. v. Hungary* is a relevant example in this respect. In *A.T. v. Hungary*, the author, a woman who had been battered by her former common law husband, had been unsuccessful through either civil or criminal proceedings to keep him away from the apartment where she continued to reside together with her children. Requesting a restraining or protection order was no option for her, as they were not available at the time, while the existing shelters were not adequately equipped to accommodate her and her children (one of whom was disabled).

Such lack of adequate shelters and the impossibility of issuing a protection order amount to a clear example of the lack of priority given to cases of gender-based violence against women by some States. Such situations indicate the subordinate, minor position that women occupy in the respective society; hence the indifference with which their experiences of violence is treated by the State. This attitude by the State induces the normalization of violence and a climate of impunity, while being an overt indicator of a lack of commitment to women's issues. In relation to the *A.T. v. Hungary* case, the Committee concluded that the State Party had failed to fulfil its obligations and had thereby violated the rights of the author under inter alia Article 5(a).<sup>161</sup>

To conclude, the CEDAW jurisprudence, General Recommendations and the Concluding Observations studied in this section point us towards a common-sense, yet challenging endeavour: that changing "a structural situation and a social and cultural phenomenon deeply rooted in the consciousness and customs of the population", as the Committee found in the Ciudad Juárez inquiry, "requires a global and integrated response ... aimed at transforming existing socio-cultural patterns" and "eradicating the notion that gender violence is inevitable."<sup>162</sup> Such an integrated response would mean targeting all levels where gender and gender constructions operate. An infrastructure of appropriate measures needs to be embedded in a consciousness of the harm caused by discriminatory sex roles and gender stereotyping and a consciousness of the provision of the Article that addresses this harm. Therefore, the level of the individual is a useful unit of the study of social and cultural transformation, as is the structure and organization of society.

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161 CEDAW Communication No. 2/2003, *A.T. v. Hungary*, paras. 9.4 and 9.6.

162 *Ibid.*, CEDAW, 2005, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico, para. 287.

## 2.6 CONCLUSION

Evidently, Article 5(a) is instrumental in setting the social and cultural transformation agenda expressed from the outset of CEDAW in its Preamble:

*“[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>163</sup>

In the light of a threefold understanding of the underlying concepts of non-discrimination and equality in CEDAW, this chapter has established the content and the meaning of the key concepts in Article 5(a) and its scope in the context of the Convention. On that basis, the chapter discussed social and cultural transformation as core to Article 5(a). In that context it has clarified the rights and detailed the obligations that this Article entails. The chapter brought gender-based violence against women into the discussion to give specific attention to the interconnection between the rights and obligations in Article 5(a) and the problem of gender-based violence against women. Given that the CEDAW Committee has not so far adopted a General Recommendation to pin down the implications of this Article and to elucidate the challenges of its implementation, the analysis in this chapter is based on the Committee’s interpretations in General Recommendations, Concluding Observations and its jurisprudence, and on the available literature.

Even if some commentators have doubted the strength of Article 5(a), describing it as being “of a softer character”,<sup>164</sup> the contrary can be stated. The open-endedness of the language in this provision leaves room for *a posteriori* interpretations of the objective of non-discrimination of the Convention. It is a clear illustration of the dynamic, progressive nature of the Convention.<sup>165</sup> Article 5(a), in fact, enhances the legal understanding of discrimination and, as an overarching general provision of CEDAW, gives strength to the Convention’s substantive articles. Discrimination under Article 5(a) encompasses: discriminatory social and cultural behaviour on the ground of ascribed sex roles and gender stereotyping, and also, gender-based violence in all its forms including domestic violence, sexual violence, sexual harassment. This understanding of the concept of discrimination under Article 5(a) indicates that women have a right to be free from discrimination and to be treated in all dignity

163 CEDAW, 1979, Preamble, para. 14.

164 Packer, 2002, p. 54.

165 CEDAW GR 25, 2004, para. 3 in which the Committee points to the dynamic nature of the Convention by which “the Committee, as well as other actors at the national and international levels, have contributed through progressive thinking to the clarification and understanding of the substantive content of the Convention’s articles and specific nature of discrimination against women and the instruments for combating such discrimination.” The dynamic nature of the Convention is reiterated in CEDAW GR 28, 2010, para. 2.

and equality with fellow human beings. As far as Article 5(a) points to sex roles and gender stereotyping as forms of discrimination, it is argued in this chapter that there are *rights* under Article 5(a): to be free from discrimination stemming from discriminatory sex roles and gender stereotyping. Equally, women have a right under Article 5(a) to be free from gender-based violence.

Moreover, Article 5(a) expresses the concept of transformative equality and makes social and cultural transformation an obligation under its provision. This places on States parties the duty to challenge hegemonic patriarchal arrangements and to eradicate systemic, mostly hidden forms of discrimination, including gender-based violence. That calls for holistic approaches. Various CEDAW documents, case law and United Nations instruments emphasize that sustainable efforts to eliminate gender-based violence against women, emerging from sex roles and gender stereotyping, call for ensuring the prevention of such violence. Moreover, providing for protection is fundamental in securing women's freedom from violence. Criminalizing the varied forms of gender-based violence against women, and taking all steps to combat impunity is imperative in order to deal with violence that is rooted in and perpetuated by sex roles and gender stereotyping. The consideration of all these obligations and taking consequent concrete action requires an integrated endeavour in order to bring about social and cultural transformation.

Yet, this cannot be pursued without an individual consciousness of the structural and systemic harm and an endeavour targeting the individual level. Women's studies theory reveals that gender and gender constructions operate at different levels, from the individual consciousness, to the symbolic level and the societal structures and institutions. All these levels are instrumental in both perpetuating discrimination emerging from sex roles and gender stereotyping, but also in eliminating gender-based discrimination in its varied forms. CEDAW interpretative documents and jurisprudence lead us to conclude that all levels where gender and gender constructions operate need to be targeted, including the level of individual consciousness in the efforts to bring about social and cultural change and to eliminate gender-based violence against women. From a theoretical point of view it is argued in his chapter that the level of individual consciousness should be addressed in order to intervene in the structure and organization of society and to bring about the social and cultural transformation provided for in Article 5(a).

However, the question that emerges is in what manner can the rights and obligations under Article 5(a) be realised so that social and cultural transformation as a project on paper becomes a lived reality? Let us turn in the next chapter to the issue of putting Article 5(a) into practice.

## CHAPTER 3

# PUTTING ARTICLE 5(a) INTO PRACTICE WITHIN NATIONAL SETTINGS: FROM IMPLEMENTATION TO REALISATION – THEORETICAL PARADIGMS

*“In many, if not most, countries of the world, translating that which one is entitled to on paper (whether that is a Constitution, a law, or any legal document) to that which one can actually achieve is in itself a major challenge. ... this is not just a feature of women’s rights, but actually one of all human rights issues.”<sup>1</sup>*

Azza M. Karam

### 3.1 INTRODUCTION

The demands for social and cultural transformation in Article 5(a) are evident. The previous chapter examined this international human rights provision as it is *in the books*. This chapter develops a theoretical framework for a challenging undertaking: making rights and obligations under the provision of social and cultural transformation in Article 5(a) operational in relation to the lived realities of people.

While the arena of human rights norms is largely international, as Donnelly notes, “their implementation, however, remains almost exclusively national.”<sup>2</sup> Action at the national level is the catalyst for the translation of international human rights norms into reality, according to the United Nations High Commissioner for Human Rights.<sup>3</sup> The national implementation of Article 5(a), however, has not yet been elucidated. The Article’s language does not give clear guidance. The Committee has not yet adopted a General Recommendation on this Article and its Concluding Observations take a rather general, hence vague, approach in this respect. According to the well-established paradigm of international human rights law, implementation is

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1 Karam, A.M., 1999, ‘Women’s Political Participation. Meeting on Women and Political Participation: 21<sup>st</sup> Century Challenges’, in United Nations Development Programme *Background Paper No. 1, Beijing +5: Women’s Political Participation: Review of Strategies and Trends*, New Delhi, India, March, 24-26, 1999, available at <http://www.undp-pogar.org/publications/gender/karam1/index.html#intro>, accessed on April 19, 2012.

2 Donnelly, J., 2003, *Universal Human Rights in Theory and Practice*, Ithaca and London: Cornell University Press, p. 34.

3 UN General Assembly, 2005, ‘Annex, Plan of Action Submitted by the United Nations High Commissioner for Human Rights’, in Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, para. 22. It is stated in the Plan of Action that “It is through action at the national level that international human rights obligations can be translated into reality”, UN General Assembly, 2005, Annex, para. 22.

achieved once States fulfil their obligation to align their domestic laws, policies and programmes with the international human rights standards they have agreed upon.

Yet experiences of gender-based violence against women are prevalent across the world and discriminatory sex roles and gender stereotyping persist in feeding into such violence. Obviously, there are “fissures between the global settings where human rights ideas are codified into documents and the local communities where the subjects of these rights live and work.”<sup>4</sup> The inadequacy in the implementation of women’s human rights at the national level is apparent. States parties still lag far behind the international standards put forward in CEDAW. The emerging question is then, how do we mend the implementation “fissures” and bridge the gap between women’s human rights under CEDAW and their lived realities so that they are not discriminated against in the most harmful way – through violence. More precisely, how do we go about the implementation of obligations under Article 5(a) so that women’s rights to non-discrimination and freedom from violence are realised at the country level?

In answering this query, this chapter explores different paradigms of the national implementation of international human rights. It first presents the well-established legal approach to implementation taken in international human rights law and it focuses on the main actor – the State. This approach is referred to as the “top-down” or “*from above*” approach. Next, the chapter takes a socio-legal perspective and explores a “bottom-up” approach to implementation. It thus presents other actors and strategies that may be instrumental in overcoming the implementation gap so that individuals benefit from the progressive provision of Article 5(a). Finally, the chapter proposes the paradigm of a holistic approach to putting Article 5(a) into practice, in which these two approaches and their respective actors and strategies interface.

### **3.2 NATIONAL IMPLEMENTATION OF ARTICLE 5(a) – THE INTERNATIONAL HUMAN RIGHTS LAW PARADIGM**

This section focuses on the international human rights law approach to the implementation of women’s rights at the country level. It introduces the obligation of States parties to implement international human rights treaties in their domestic legal order and practice. Accordingly, it concentrates on the State as the main actor in the implementation process. For that reason, the legal approach is referred to in this research as the “top-down” or “*from above*” approach. The term “*from above*”<sup>5</sup> is used as a spatial indication of the locus where action to put Article 5(a) into practice

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4 Merry, 2006, pp. 2-3.

5 Goodale, 2007, p. 14.

is taken from and the resultant strategies. It also alludes to a potential disconnect between high-level decision making and realities of daily life.

### 3.2.1 International human rights law: obligation of States parties to implement international human rights treaties – “*pacta sunt servanda*”

Pursuant to international law, States have a duty to comply with their commitments under international treaties. The 1969 Vienna Convention on the Law of Treaties lays down in Article 26 the fundamental principle of international law: “*pacta sunt servanda*”.<sup>6</sup> International treaties are binding and must be executed in good faith.<sup>7</sup> By virtue of their ratification of international human rights treaties, States consent to be bound by these treaties.<sup>8</sup> They legally commit themselves to implement in their national systems the human rights norms laid down therein. The legal paradigm thus imposes on States parties the obligation to bring their domestic legislation and practice into conformity with the international human rights norms that they have agreed upon. Consequently, States parties have the duty “to incorporate standards as contained in the international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.”<sup>9</sup>

A variety of approaches may be used in State practice to undertake this task. The Committee on Economic, Social and Cultural Rights, for example, specifies in General Comment No. 9 (1998) that States parties may achieve the implementation of human rights treaties either through direct *incorporation or adoption* or through the *transformation* of treaty provisions into domestic law.<sup>10</sup> The direct incorporation

6 See Vienna Convention on the Law of the Treaties, 1969, Article 26.

7 See Vienna Convention on the Law of the Treaties, 1969, Article 27. By no means can internal law be invoked for failure to implement an international treaty. The Human Rights Committee specifies in its General Comment No. 24 (1994) that States parties may not avoid taking necessary steps at the domestic level to implement the rights of a Covenant. See CCPR GC 24, 1994, para. 9. See also CESCR GC 9, 1998, para. 3.

8 According to the Vienna Convention on the Law of the Treaties, 1969, States may express their consent to be bound by a treaty by means of signature (Articles 11, 12), ratification, acceptance or approval (Articles 11, 14) or accession (Articles 11, 15). See Vienna Convention on the Law of the Treaties, 1969, Articles 11, 12, 14, 15.

9 World Conference on Human Rights, Vienna, June 14-25, 1993, Vienna Declaration and Programme of Action, section E, para. 83.

10 CESCR GC 9, 1998, para. 6. Legal scholars have categorized the various implementation approaches into adoption incorporation, transformation, passive transformation and reference. Scheinin, M., 1999, ‘International Human Rights in National Law’, in Hanski, R. and Suksi, M. (eds.), 1999, *An Introduction to the International Protection of Human Rights: A Textbook*, Turku, Institute for Human Rights, Abo Akademi University, p. 417-428; Sepulveda, M., Van Banning, T., Gudmundsdottir, G.D., Chamoun, C., Van Genugten, W.J.M. (eds.), 2004, *Human Rights*

or adoption approach allows that the terms of the treaty “are retained intact and given formal validity in the national legal order”.<sup>11</sup> This approach ensures a basis for the direct invocation of treaty rights by individuals in national courts.<sup>12</sup> The transformation approach requires “supplementing or amending existing legislation”.<sup>13</sup> In that regard, States parties are obliged to scrutinize and review legislation, repeal legislation when necessary and adopt new laws in order to facilitate the implementation of international human rights norms.<sup>14</sup> States are allowed a margin of discretion in choosing the implementation approach, which is suitable for their legal systems.<sup>15</sup> Whichever approach States parties undertake, it is the results that attest to their compliance with the obligation to implement.<sup>16</sup>

Accordingly, States parties are expected to be “consistent with the full discharge”<sup>17</sup> of their obligations under international human rights treaties. The norms therein must become an integral part of national law and practice. As a result, human rights norms can be used either as a source of law, with direct applicability in courts, or as “an interpretative guide” in applying national law.<sup>18</sup> This would provide for domestic remedies, and ultimately enable “individuals to seek enforcement of their rights before national courts and tribunals”.<sup>19</sup> International human rights law may thus be used “as the minimum standard of protection that national law should attain”.<sup>20</sup>

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*Reference Handbook*, Costa Rica: University for Peace, p. 68; Shany, Y., 2006, ‘How Supreme is the Supreme Law of the Land? A Comparative Analysis of the Influence of International Human Rights Conventions upon the Interpretation of Constitutional Texts by Domestic Courts’, *Brooklyn Journal of International Law*, 31, 341-404, pp. 356-376.

- 11 CESCR GC 9, 1998, para. 6. Such legal systems are referred to as *monistic* systems. An example of a State with a monistic legal system would be the Netherlands.
- 12 CESCR GC 9, 1998, para. 8.
- 13 CESCR GC 9, 1998, para. 6. Such legal systems are referred to as *dualistic* systems. The Commonwealth countries are examples of dualistic legal systems.
- 14 See Chapter 2 where the legal measures under the CEDAW Concluding Observations on sex roles and gender stereotyping, and on gender-based violence against women are examined and categorized.
- 15 See CCPR GC 3, 1981, adopted at the 13<sup>th</sup> Session of the Human Rights Committee, para. 1; CESCR GC 9, 1998, paras. 6-8; International Commission of Jurists (ICJ), 1997, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, para. 8, available at <http://www.unhcr.org/refworld/docid/48abd5730.html>, accessed on June 27, 2012.
- 16 See Boerefijn, I., 2009, ‘International Human Rights in National Law’, in Krause, Catarina and Scheinin, Martin (eds), 2009, *International Protection of Human Rights: A Textbook*, Abo Akademi University Institute for Human Rights, p. 578 and 580.
- 17 CESCR GC 9, 1998, paras. 5 and 7.
- 18 Scheinin, 2009 (b), ‘International Mechanisms and Procedures for Monitoring’ in Krause and Scheinin (eds), 2009, p. 601.
- 19 CESCR GC 9, 1998, paras. 4 and 8.
- 20 Sepulveda, Van Banning, Gudmundsdottir, Chamoun, Van Genugten (eds.), 2004, p. 68.



Taking legislative measures at the domestic level is an essential step to ensure protection and to guarantee the enjoyment of human rights. Yet, it represents a formal guarantee and only an initial step towards States parties' compliance with their human rights obligations. Ensuring that individuals within particular State jurisdictions do benefit in their actual lives from the rights stipulated under international human rights treaties is the ultimate result that evidences the implementation of human rights norms.<sup>21</sup> The human rights monitoring bodies, in their interpretative documents, point to the multi-layered nature of States' obligation to implement human rights norms.<sup>22</sup> The CEDAW Committee, for example, emphasizes in General Recommendation No. 5 that a "purely legal or programmatic approach is not sufficient" to improve the situation of women.<sup>23</sup> States must go beyond their obligations to eliminate direct or indirect discrimination from their laws and improve the *de facto* situation of women, and address prevailing gender relations.<sup>24</sup> In several Concluding Observations, the CEDAW Committee points out that despite legislative guarantees of women's *de jure* equality, discrimination against women still persists in practice.<sup>25</sup> Even though legal measures are indisputably crucial for the realisation of human rights, endeavours to guarantee women's equality in practice should transcend the formal boundaries of the law. Similarly, the Human Rights Committee acknowledges that "constitutional and legislative enactments ... in themselves are often not per se sufficient".<sup>26</sup>

A tripartite typology of State obligations – *to respect, to protect and to fulfil* – has been developed and applied by some human rights bodies to assess States' compliance with human rights norms.<sup>27</sup> The obligation to respect encompasses a negative State

21 CCPR GC 3, 1981, paras. 1-2.

22 The general recommendations, the concluding observations, the views and opinions, the statements issued by human rights bodies mandated to supervise the application of human rights treaties are such interpretative documents. Although their status as a source of international human rights law is open to discussion, they are considered as "more or less authoritative statements of interpretation". See Chinkin and Freeman, 2012, p. 24 citing Steiner, H., Alston, A., Goodman, R., 2007, *International Human Rights in Context: Law, Politics, Morals*, Oxford: Oxford University Press in Freeman, Chinkin and Rudolf (eds.), 2012.

23 CEDAW GR 25, 2004, para. 8.

24 *Ibid.*, para. 7.

25 CEDAW CO Nicaragua, 2001, para. 294; CEDAW CO Cyprus, 2006, para. 31; CEDAW CO Azerbaijan, 2007, para. 29; CEDAW CO Belize, 2007, para. 25; CEDAW CO Guinea, 2007, para. 24; CEDAW CO Timor-Leste, 2009, para. 94.

26 CCPR GC 3, 1981, para. 1.

27 See CESCR GC 12, 1999, para. 15; CEDAW GR 25, 2004, para. 4; CESCR GC 16, 2005, paras. 18-21; CESCR GC 18, 2005, para. 22; See also Scheinin, M., 2009 (a), 'Characteristics of Human Rights Norms', in Krause, Catarina and Scheinin, Martin (eds), 2009, pp. 27-28; also, Chinkin, C., Freeman, M.A., 2012, 'Introduction', in Freeman, Chinkin, Rudolf, (eds), 2012, pp. 19-20. This typology of State obligations is inspired by the Special Rapporteur on the right to food. See UN Special Rapporteur Eide, A., 1987, 'Report on the Right to Adequate Food as a Human Right', paras. 66-70 and 112-116.

obligation and requires States to refrain from interfering directly or indirectly with the enjoyment of rights by individuals. This obligation can also be classified as a State obligation of conduct. The obligation to protect encompasses a positive obligation of States to prevent violations of human rights by third parties. It can also be understood as an obligation to ensure respect.<sup>28</sup> Similar to the obligation to respect, it refers to the conduct of the State.<sup>29</sup> The obligation to fulfil represents the positive obligation of States to take legal, policy and programmatic steps towards the full realisation of rights. The obligation to fulfil is “forward looking”<sup>30</sup> in that it places emphasis on results when assessing compliance.<sup>31</sup> Within this paradigm, international human rights law efforts attempt to bridge international human rights norms and the reality on the ground.

All branches of the State apparatus – executive, legislative and judicial – must carry out the domestic implementation of human rights norms and link them to people’s reality. The responsibility to fully implement a State party’s obligations under international human rights treaties rests primarily with the government.<sup>32</sup> Nevertheless, legislatures,

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28 Chinkin, and Freeman, 2012, p. 20.

29 For detailed explanations of the obligations of conduct and result, see CESCR GC 3, 1990, paras. 9-10; see also, Goodwin-Gill, G., 1984, ‘Obligations of Conduct and Result’ in Alston, P., and Tomasevski, K., (eds.), 1984, *The Right to Food*, Dordrecht: Martinus Nijhoff.

30 Chinkin and Freeman, 2012, p. 20.

31 Scheinin, M., 2009 (a), p. 28. See also International Commission of Jurists (ICJ), 1997, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, paras. 6-7, available at <http://www.unhcr.org/refworld/docid/48abd5730.html>, accessed on June 27, 2012. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted on the occasion of the 10<sup>th</sup> anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, explain the typology of State obligations as follows: “Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. ... The obligation to protect requires States to prevent violations of such rights by third parties. ... The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. ... The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. ... The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard.”

32 See CCPR GC 31, 2004, para. 4. See also, UN General Assembly, 2005, ‘Annex, Plan of Action Submitted by the United Nations High Commissioner for Human Rights’ in Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, para. 22; CEDAW CO The Netherlands, 2010, para. 9; CEDAW CO Montenegro, 2011, para. 7; CEDAW CO Grenada, 2012, para. 8; CEDAW CO Norway, 2012, para. 8; According to international law, the Government has the responsibility to represent the State party internationally, before the different human rights treaty bodies.

courts of law, judges, law enforcement personnel and “other public or governmental authorities, at whatever level –national, regional or local – are in a position to engage the responsibility of the State party”<sup>33</sup> and carry out its obligations to respect, protect and fulfil human rights.

### **3.2.2 Implementation of Article 5(a) “from above”: the State as the main implementation actor**

In its chapeau, Article 5(a) explicitly provides that it is the obligation of the State to take appropriate measures to modify social and cultural patterns of conduct. The international human rights law paradigm is clearly premised on the State as the essential actor/institution for the implementation of Article 5(a). Since the State is the contractual party to CEDAW, it is expected to ensure women’s human rights under this Article.<sup>34</sup> During the CEDAW review process, governments are the principal interlocutors in the constructive dialogue with the members of the CEDAW Committee. Governments have the obligation to take the CEDAW Committee’s recommendations “home”,<sup>35</sup> to convert them into appropriate measures and to *stream them down* through their domestic system to the ultimate implementation target – the individual, in order to achieve social and cultural transformation. The bridge between CEDAW norms and the CEDAW Committee’s recommendations, and women’s realities on the ground, is thus expected to be ensured through the conduct of States by which they carry out their obligations to protect and fulfil under Article 5(a) (discussed at length in Chapter 2).

Unquestionably, governmental recognition of Article 5(a) in national legislation and the incorporation of CEDAW recommendations in public policies and programmes provide the groundwork for the effective implementation of the obligations under this Article and the realisation of the rights provided therein. However, they are at the same time only one facet of the implementation process.

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33 CCPR GC 31, 2004, para. 4; see also Scheinin, 2009 (b), p. 601.

34 See CEDAW GR 25, 2004, para. 4.

35 *To take or to bring human rights home* is an expression used within the framework of the United Nations, i.e. by the Office of the United Nations High Commissioner for Human Rights (OHCHR), and by scholars to refer to the processes entailed by human rights implementation. The OHCHR has produced a DVD entitled “The Treaty Bodies: Bringing Human Rights Home” to serve as a tool for training on the work of the supervisory bodies of human rights treaties. See HRC, 2010, ‘Report of the Secretary-General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for the further improving the effectiveness of harmonizing, and reforming the treaty body system’, para. 7. See also, Oomen, B., 2011, ‘Small places: the home-coming of human rights’, *Inaugural lecture delivered on the occasion accepting the Chair of Sociology of Rights at Utrecht University*, Middleburg, December 2, 2011.

The focus on the State as the main actor in the national implementation of Article 5(a) demarcates a rather classic, top-down<sup>36</sup> or “*from above*” perspective, by which the implementation process is centred on a vertical, hierarchical relation between the State and the individual citizen.<sup>37</sup> This can lead to a disconnect between human rights and everyday life. Notwithstanding the crucial position of the State in implementing measures for social and cultural transformation,<sup>38</sup> viewing the implementation of Article 5(a) only as an obligation of the State is limiting. The implementation of this Article may become dependent only on State’s actions. However, other structures, mechanisms or actors may also be instrumental in realising such transformation and putting Article 5(a) into practice at the domestic level. According to An – Na’im and Hammond, the dynamics of change imply “internal processes of societal adaptation by a variety of actors in response to a wide range of stimuli at different levels, rather than simply the product of internal hegemonic or external imposition.”<sup>39</sup> This explanation points to the complex nature of change. It suggests that it would be limited to view the intricate process of social and cultural change as brought about by the unilateral action of a single actor. As early as 1959, Dror suggested that social change is a multifaceted process.<sup>40</sup> Hence, the demands for social and cultural transformation in Article 5(a) should be understood as multifaceted, involving more than one actor and more than the ensuing unilateral strategies.

Even the progressive approach to implementation put forward by the CEDAW Committee points to the centrality of States in the implementation of Article 5(a).

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36 Top-down analysis (also known as the down-stream approach) follows the implementation of law, policy, political decisions, etc. down through the system. For an extensive discussion on top-down models, see earlier bodies of literature, such as: Sabatier, P.A., 1989, ‘Top-Down and Bottom-Up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis’, *Journal of Public Policy*, 6 (1), p. 21-48; Mazmanian, D.A., and Sabatier, P.A. (eds.), 1981, *Effective Policy Implementation*, Lexington, MA: Lexington Books; Kirst, M. and Jung, R., 1982, ‘The Utility of a Longitudinal Approach in Assessing Implementation: A Thirteen Year View of Title 1, ESEA’, in Williams, W., Elmore, R.F., Hall, J.S. et al. (eds.), 1982, *Studying Implementation*, Chatham, NJ: Chatham House, pp. 119-148.

37 See Donnelly, 2003, p. 35. Donnelly notes that the role of the State vis-à-vis international human rights treaties “is strikingly similar to ... the contractarian notion of the state as an instrument for the protection, implementation, and effective realization of natural rights”.

38 According to An – Na’im, the State manages significant tools for change. “The State, with its juridical sovereignty, extensive powers and relatively much larger resources is a key element in the context of cultural transformation everywhere.” See An – Na’im and Hammond, 2002, p. 29.

39 An – Na’im and Hammond, 2002, p. 13.

40 Although Dror’s argument concentrates on the role of the law in bringing about social change, he indicates that various social institutions shaped by the law have a direct role in inducing social change. Therefore, social change is not the product of a sole actor or strategy, but of multiple ones that play direct or indirect roles. See Dror Y, 1959, ‘Law and Social Change’, *Tulane Law Review* 33, pp. 787-802, cited in Cotterrel, R., 1984, *The Sociology of Law: An Introduction*, London: Butterworths, pp. 61-63.

The Committee calls for collaboration between national governments and civil society organizations in order to implement this Article, and designates governments as being in charge of taking a variety of implementation measures targeted at all strata of society.<sup>41</sup> It is evident that the legal paradigm of implementation places the emphasis on the State and on its legal and policy apparatus in putting into practice human rights in general and women's human rights in particular. This top-down perspective, however, confines the understanding of implementation to the States' obligations to transpose international human rights norms into domestic ones via the legal and policy measures taken by their national governmental machinery.

### 3.3 NATIONAL IMPLEMENTATION OF ARTICLE 5(a) – A SOCIO-LEGAL PARADIGM

Based on the existing literature, this section introduces the idea of human rights in practice from a socio-legal perspective. It presents multiple discursive frameworks for putting Article 5(a) into practice, and represents a bottom-up approach to the implementation of women's human rights. Having explored in the previous section the State's centrality in implementation endeavours, this section presents other actors and strategies that may be instrumental in overcoming the implementation deficit so that individuals benefit from the progressive provision of Article 5(a). This approach embodies perspectives *from the middle*<sup>42</sup> and *from below*.<sup>43</sup> The term *from the middle* is borrowed from Merry's depiction of social actors who translate human rights into daily situations. This is a spatial representation of the middle layer of the social fabric embodied by civil society actors. At the same time, it alludes to the liminal position and consequent strategies that these actors take between global, national and local spaces for the production, diffusion and reception of human rights. Therefore, this section first explains the process of vernacularisation or translation of international women's human rights norms undertaken at the level of civil society, and then presents civil society organizations as potential actors in the endeavours to put Article 5(a) into practice. Next, Rajagopal's work inspires the use of the term *from below*.<sup>44</sup> In his research, the perspective *from below* indicates a spatial representation of the rights holders' localities. It is also used as a metaphor to enable visibility to the usually obscured voices in the hegemony of legal and policy decision-making – the rights holders. Therefore, the section presents the position of rights holders in the process of putting Article 5(a) into practice.

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41 See CEDAW CO Jamaica, 2006, para. 14; CEDAW CO Timor-Leste, 2009, para. 28; CEDAW CO Singapore, 2011, para. 22.

42 Merry, 2007, 'Introduction: States of Violence' in Goodale and Merry (eds.), 2007, p. 41.

43 Rajagopal, 2003, p. 14.

44 Rajagopal, 2003; See also, Goodale, 2007, p. 14.

### 3.3.1 The idea of human rights in practice: the socio-legal perspective

As mentioned in the previous section, the enjoyment of human rights by every person is the objective of human rights implementation. The disconnect between human rights and the everyday realities of many people is where the real challenge of human rights implementation lies. In the words of de Gaay Fortman, it is about the “tribulations of realization” rather than human rights standard-setting concepts.<sup>45</sup>

An interdisciplinary socio-legal paradigm understands human rights as a multifaceted social institution, by which human rights standards are articulated through legal as well as other strategies, mechanisms and social actors within the social milieu of daily life.<sup>46</sup> As Goodale clearly points out, human rights’ “meanings are constituted most importantly by a range of social actors – cosmopolitan elites, government bureaucrats, peasant and other organic intellectuals, transnational nongovernmental organizations (NGOs) and their national collaborators – within the disarticulated practices of everyday life.”<sup>47</sup> Because human rights emerge in social spaces,<sup>48</sup> it is in such spaces that the investigation of putting human rights into practice needs to be situated.

The normative nature of society, namely societal expectations as to how people are supposed to behave, has a bearing on the way human rights norms, values and standards are adopted and practised.<sup>49</sup> Notwithstanding the necessity of adequate law, adequate institutional arrangements and infrastructure, and just procedures, a prevalent culture of human rights is crucial for putting human rights into practice.<sup>50</sup> The *idea of human rights in practice* connotes that people have an understanding of human rights ideas, and endorse and comply with human rights norms and principles in the various activities of their daily life: they should talk about, translate, advocate,

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45 De Gaay Fortman, 2011, p. 39.

46 Human rights implementation is abundantly addressed from across varied disciplinary perspectives. Authors such as Merry in legal anthropology, Goodale in conflict studies, De Gaay Fortman in political economy and human rights law, Oomen in the sociology of human rights, Ignatieff in international relations, An – Na’im in law, Rajagopal in international law, to name a few, engage in their studies with *global* conceptualizations and *local* practices of human rights and the transpiring disjunctures. As Goodale puts it, “human rights ... claims are projected across the broadest of analytical and phenomenological boundaries” see Goodale, M., 2007, p. 5.

47 Goodale, 2007, p. 5.

48 Ibid., p. 17.

49 Halliday, S. and Schmidt, P., 2004, *Human Rights Brought Home. Socio-Legal Perspectives on Human Rights in the National Context*, Oxford/Portland Oregon: Hart Publishing; Goodale, 2007, p. 24; Merry, 2006, p. 6; Cowan, J.K., Dembour, M-B., Wilson, R.A., (eds), 2001, *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press, pp. 13-14.

50 Eijkman, 2007, p. 16.

enact and claim “ideas of human rights in its different forms”.<sup>51</sup> Understanding human rights ideas means making sense of the abstract ideas embodied in human rights and generating meanings that resonate socially and culturally with the people. Understanding is acquired through learning or internalisation, on which the idea of consciousness rests.<sup>52</sup> Hence, consciousness and the enforcement of rights are intertwined, having the potential to operate in a mutually reinforcing way conducive to the realisation of human rights. As Merry asserts, “[i]f human rights are to have an impact, they need to become part of the consciousness of ordinary people around the world. Considerable research on law and everyday social life shows that law’s power to shape society depends not on punishment alone but on becoming embedded in everyday social practices, shaping the rules people carry in their heads.”<sup>53</sup> Key dimensions of the process of implementing human rights (implicitly, women’s human rights), therefore, are a consciousness of rights and their operationalization by *individuals ranging from government officials, civil society representatives to ordinary people in their every day life*.<sup>54</sup>

The everyday practice of human rights anchors the process of the implementation of human rights obligations and renders this process conducive to the realisation of rights.<sup>55</sup> An essential element for the process of putting human rights into practice is people’s internalization of human rights ideas. Especially in the context of State obligations under Article 5(a) to bring about social and cultural transformation, this internalisation dimension is fundamental. It provides a sense of ownership of such transformation, instead of being an imposition from outside. According to An – Na’im and Hammond, internally driven and systematic change adopted and internalised by people sustains the implementation of human rights in all societies. That is because such change incorporates an entire process of “an indigenous expression of a people’s rights to self-determination.”<sup>56</sup> In this way, change is legitimate and sustainable, as it is propelled by neither “internal hegemonic nor external impositions”;<sup>57</sup> rather, it is informed by the social milieu that is affected by it.

51 Goodale, 2007, p. 24; Merry, 2007, p. 41.

52 Emerencia, L., 2012, ‘Cultural Meaning and Good Governance, The Role of the State and of the People in the Creation of Strong Governance’, School of Human Rights Research Lecture June 4, 2012, Utrecht University, the Netherlands.

53 Merry, 2006, p. 3.

54 Merry suggests in her article ‘Rights Talk and the Experience of Law: Implementing Women’s Human Rights to Protection from Violence’ that rights-defined selves are created through individuals’ encounters with the law. Experiences with the police, judges, the court, probation officers define a consciousness of rights. See Merry, 2003, pp. 346, 354, 381.

55 This idea emerges from a number of authors, such as Ignatieff, 2001; Merry, 2007; Goodale, 2007.

56 An – Na’im and Hammond, 2002, pp. 13-14.

57 The authors further explain that “externally initiated change is unsustainable except to the extent that it is internalized by the people concerned.” An – Na’im and Hammond, 2002, p. 13.

Thus, the socio-legal paradigm for implementing human rights indicates a multifaceted process that engages deeply with a variety of societal actors and mechanisms. Human rights need to be internalised and practised, creating cognisant individuals situated in different positions within the social milieu. In other words, human rights practice interlaces with having a consciousness and an understanding of rights and of the situations and issues that may lead to their violation. This paradigm opens a relevant way of thinking about putting into practice the demands of social and cultural transformation in Article 5(a), by which discriminatory sex roles and gender stereotyping that lie at the root of gender-based violence against women must be modified. This framework is particularly relevant since this type of violence is “part of taken-for-granted social practices.”<sup>58</sup> It is an insidious type of violence, which “causes injuries that impact the everyday lives of people yet remains invisible and normalized.”<sup>59</sup>

### 3.3.2 Putting Article 5(a) into practice: vernacularising women’s human rights

*“There is no social world except as it is lived and experienced, and events become socially meaningful only when they are interpreted.”<sup>60</sup>*

Human rights ideas that resonate with local social realities lay the ground for internalised human rights that are practised by cognisant individuals. In other words, the rooting of human rights standards and norms in “preexisting relations of meaning and production”<sup>61</sup> creates the groundwork for the implementation process to reach its goal of realising rights. Attempts to address concerns about the “failure of the human rights project to deliver results for billions of the world’s most vulnerable people” have so far focused on the elaboration of the theoretical foundations, and on the international legal standard-setting and monitoring, of human rights.<sup>62</sup> Yet, human rights remain “so abstract as to be irrelevant to its subject: the victim of human rights abuses.”<sup>63</sup> This book approaches the problem of human rights implementation by complementing the legal perspective with the socio-legal one. It centres on the understanding that “human rights become more meaningful to people when they are linked to the contents of their world-views, beliefs and religious practices and related to specific contexts, including serious constraints to their realization.”<sup>64</sup>

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58 Merry, 2007, p. 43.

59 Ibid.

60 Merry, S., 1986, ‘Understanding of the Law in Working-Class America’, *American Ethnologist*, 13 (2), pp. 252-270, p. 254.

61 Goodale, 2007, p. 24.

62 de Gaay Fortman, 2011, p. 3.

63 Ibid.

64 Ibid., p. 2.



The everyday use of human rights by a range of social actors shapes meanings of international human rights standards and norms, and renders them pertinent for the particular social context. As Merry explains, in order for human rights ideas, values and norms to become part of social practices “they need to be translated in local terms and situated within local contexts of power and meanings”.<sup>65</sup> This implies a translation of human rights *into the vernacular*, by which internationally generated human rights ideas, values and norms are translated locally so that they connect with and become meaningful in different cultures, political and legal contexts.<sup>66</sup> This process of translation, termed by Merry as *vernacularization*, embodies two dimensions: appropriation and local adoption of ideas, values, norms, programmes or strategies. *Appropriation* implies a replication of international human rights ideas, values and norms or programmes in national settings. A concrete example would be the incorporation of international human rights into domestic legal instruments as they are. *Local adoption* implies an adaptation of the rhetoric of international human rights ideas, values and norms, and of the structure of human rights programmes and strategies to local perspectives and circumstances, thus making them more popular.<sup>67</sup>

Merry’s seminal studies on *vernacularisation*, which explore the local use of international women’s human rights, make clear that vernacularisation is “a widespread practice that takes different forms in different kinds of organizations and in different cultural and historical contexts.”<sup>68</sup> The process implies deploying women’s human rights ideas, values, norms, programmes or strategies in a way that connects with a certain locality. During this process, international women’s human rights acquire “some of the ideological and social attributes of the place, but also retain some of their original formulation.”<sup>69</sup> Thus, a bridge is created between local values and international women’s human rights values, and social practices have the potential to embrace women’s rights norms and values. In this way, social practices become the catalyst for a transformation of international women’s human rights into social knowledge, rather than “simply the testing ground on which the idea of universal human rights encounters actual ethical or legal systems.”<sup>70</sup> The vernacularisation approach therefore enables international women’s human rights norms to become tangible for the women whose lives they aim to influence.

By going beyond the formal recognition of rights at the level of law and policy-making and targeting the achievement of transformative equality for women, the demands for

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65 Merry, 2006, p. 1.

66 Levitt and Merry, 2009, pp. 441-443; See also Merry, 2006, pp. 1-6.

67 Levitt and Merry, 2009; Merry, 2006.

68 Levitt and Merry, 2009, p. 441 and 458.

69 Ibid., p. 446.

70 Goodale, M., 2007, pp. 8-9.

social and cultural transformation in Article 5(a) resonate with the vernacularisation paradigm. Putting Article 5(a) into practice would entail that ideas, values, norms and programmes of social and cultural transformation are translated to the extent of galvanizing social knowledge, guiding behaviour and being embraced in everyday life. Daily attitudes, behaviour and practices in the community, at home, at work and in school are currently supported by, and consequently reflect, internalized patriarchal attitudes, stereotypes, values and prejudices. These have the potential to cause gender-based violence against women. Conversely, internalization by individuals of other/positive values could challenge the entrenchment of negative attitudes, behaviour and practices, and lead to their modification.<sup>71</sup> Women/individuals would become cognizant of the ideas, values and provisions of Article 5(a), and consequently benefit from them in their daily life. Article 5(a) would thus be embodied in social practices.<sup>72</sup>

### 3.3.3 Putting Article 5(a) into practice “from the middle”: civil society organizations as vernacularising actors

International human rights norms are translated into local realities and practices by *vernacularizers* or *translators*. Vernacularisers are people in liminal spaces *in the middle*,<sup>73</sup> moving across “borders of ideas and approaches”.<sup>74</sup> They “stretch from the sites of the global production of human rights documents and ideas (New York, Geneva and Vienna) to localities where ordinary people around the world adopt them.”<sup>75</sup> In the international arena, vernacularizers “participate in the production of documents in New York and Geneva.”<sup>76</sup> Within the national arena, these actors engage in action that targets the *above*, that is, the governmental level. Through advocacy initiatives backed by international women’s rights documents, on the one hand, and the everyday experiences of people on the ground, on the other, they strive to mobilize legal reform and influence the adoption of new policies concerning women’s human rights.<sup>77</sup> They also engage in raising awareness about women’s human rights among governmental officials through sensitization training. Besides these roles, actors *in the middle*

71 For an extensive discussion on the entrenched dimensions of the socio-cultural system, see generally Hofstede and Hofstede, 2005; Trompenaars and Hampden-Turner, 1998; see also Parsons’ normative structure of social systems in Parsons, T., 1960, *Structure and Process in Modern Societies*, Glencoe: The Free Press.

72 Levitt and Merry, 2009, p. 447.

73 Merry, 2007, p. 41.

74 Levitt and Merry, 2009, p. 449.

75 *Ibid.*, p. 447.

76 *Ibid.*, p. 449; CHR, 2002, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49, ‘Cultural practices in the family that are violent towards women’, para. 10.

77 Holtmaat and Naber, 2009, p. 17.

engage in action that targets the *below*, that is, the level of common individuals *on the ground*. On the ground, vernacularisers contribute to developing a human rights culture through educating people about their rights, about State obligations, and about the possibilities of redress for rights violations, including legal aid.<sup>78</sup> At the same time, vernacularisers learn *from the ground* about people's realities, needs and resultant ideas of rights, and translate them to the *above* level of the State. As such, vernacularisers are in dialogue with both the international human rights monitoring bodies and the national and local contexts, and communicate ideas from one context to the other by interpreting, adapting and reframing these ideas so that they resonate with their receivers.<sup>79</sup>

Vernacularisers are “a chain of actors”<sup>80</sup> ranging from transnational non-governmental organizations (NGOs) to national NGOs, local women's organizations and social movement activists that use the women's human rights framework. Governmental bureaucrats, intellectuals and academics can also be vernacularisers and contribute to fostering international and national human rights ideas and norms into practices of everyday life.<sup>81</sup>

In an effort to ensure that women's human rights do not remain words on paper, vernacularisers “wrestle with the dilemma of presenting [human rights] ideas in terms that resonate with local justice theories and at the same time are sufficiently different that they will challenge local inequalities and appeal to the imagining of the ‘new’.”<sup>82</sup> They strive to connect internationally provided women's human rights norms to national and local realities by seeking to capture the “necessary local variations” in putting human rights into practice while preserving “the universal validity of these rights.”<sup>83</sup> The means used to translate and communicate international women's human rights ideas could include various techniques, from “mobilization strategies like street plays, documentary forms that mimic law, organizational forms like women's village collectives, and bureaucratic forms like counselling and record keeping” to posters, fund-raising, collaboration with the media, participation in

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78 Brett, R., 2009, ‘Non-governmental Organizations and Human Rights’ in Krause and Schenin (eds), 2009, p. 621.

79 Levitt and Merry, 2009, p. 449; Merry, 2006, p. 3.

80 Levitt and Merry, 2009, p. 447.

81 Goodale 2007, p. 5.

82 Levitt and Merry, 2009, p. 447.

83 See An – Na'im and Hammond, 2002, p. 15. It is important to mention here that vernacularisation is not an approach to human rights that takes either of the sides of the *universalism versus cultural relativism* debate. As translators of universal human rights principles, ideas and norms, vernacularisers' approach keeps a middle ground by which they build on national and local specificities in order to facilitate human rights implementation endeavours, ensuring at the same time that they are consistent with universal human rights.

workshops and conferences.<sup>84</sup> As An – Na'im and Hammond note, these social actors are “openly active” stakeholders who strive for social and cultural change through overt and “articulate forms of interaction”.<sup>85</sup>

The CEDAW Committee also envisions the instrumentality of social actors such as women's organizations, NGOs and other civil society groups in the process of realizing the provisions in the Convention. The CEDAW Concluding Observations make apparent that the Committee moves beyond a focus on the government as the main actor in the implementation process to stress the necessity of collaboration between governmental branches and civil society organizations. It is the Committee's view that civil society should play a contributing role in the elimination of gender-based violence against women by tackling its social and cultural root causes. The Committee's Concluding Observations thus abound with recommendations for States to involve and collaborate with a variety of stakeholders across all sectors of society.<sup>86</sup>

Civil society organisations are the actors “*in the middle*”<sup>87</sup> – the ones that make the connection between global sites of human rights production and local sites of translation. Authors talk about “cosmopolitan elites”<sup>88</sup> or “peasant and other organic intellectuals” in their studies.<sup>89</sup> The CEDAW Committee acknowledges that various civil society organizations play a significant role in the process of putting Article 5(a) into practice.<sup>90</sup> The rights holders, however, seem to be perceived as mere recipients of international rights, norms and ideas and of implementation efforts. They emerge as passive recipients of CEDAW implementation. Studies tend to place emphasis on the rights holders as the beneficiaries of vernacularisation initiatives or as cognisant subjects of rights in court claims.<sup>91</sup> It appears that rights holders only become visible

84 Levitt and Merry, 2009, pp. 453-454.

85 An – Na'im and Hammond, 2002, p. 13.

86 CEDAW CO Jamaica, 2006, para. 14; CEDAW CO Ghana, 2006, para. 22; CEDAW CO Liechtenstein, 2007, para. 22; CEDAW CO Belgium, 2008, para. 24; CEDAW CO Montenegro, 2011, para. 17. Collaboration between the Government and the civil society organizations is discussed as a State obligation under CEDAW in the previous section 3.1 of this chapter. See also Chapter 2 of this book. For a general position of the CEDAW Committee vis-à-vis the role of national, regional and international non-governmental organizations in the implementation of CEDAW, see also CEDAW GR 10, 1989, para. 2, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom10>.

87 Merry, 2007, p. 41.

88 Goodale, 2007, p. 5; see also An – Na'im and Hammond, 2002, p. 13.

89 Goodale, 2007, p. 5.

90 See CEDAW Committee's position vis-a-vis NGOs in CEDAW, 2010, 'Statement by the Committee on the Elimination of Discrimination against Women on its relationship with non-governmental organizations', 45<sup>th</sup> session, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/statements/NGO.pdf>.

91 See studies such as Goodale and Merry (eds.), 2007; Merry, 2003; Merry, 1990, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*, Chicago: University of

once they lodge a police report or make a court claim. Otherwise, the attention afforded to rights holders within the process of implementation and putting human rights into practice appears to be marginal. The following question arises: what is actually the place and role of the rights holders in the process of putting human rights into practice? Perhaps the human rights implementation deficit is rooted in the apparent omission of rights holders as instrumental actors who can take an operational position in the process of implementing and realising human rights. It is in this light that the next section presents the position and the contribution of rights holders in the process of putting Article 5(a) into practice.

### 3.3.4 Putting Article 5(a) into practice “from below”: rights holders as a useful category of study

*“Born free in dignity and with reason as well as a conscience, people ought to be respected and protected in their individual capacities.”<sup>92</sup>*

Rights holders can be active actors in the process of putting Article 5(a) into practice. Moore notes that “although everyone acknowledges that the enforceable rules stated and restated in legal institutions, in legislatures, courts and administrative agencies also have a place in ordinary social life, ... that normal locus is where they are least studied.”<sup>93</sup> In order to understand the mechanisms for putting Article 5(a) into practice, an exploration of the manner in which rights holders understand and demand socio-cultural transformation within their own specific contexts is required. Rights holders within their localities, being engaged in the daily life of their communities, have a better understanding of the needs and interests of the individuals within that context. Hence, they must be acknowledged as the custodians of knowledge of their own contexts, “endowed with reason and consciousness” as stated in Article 1 of the Universal Declaration of Human Rights. Furthermore, Nabudere’s concept of local people and communities as representing sites of knowledge indicates that in the production of knowledge, understanding is achieved through engaging in a dialogue with those “who know”.<sup>94</sup> This also provides an understanding of rights holders and their communities as key informants in the implementation process. Rights holders are instrumental in making the implementation process resonate with their daily

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Chicago Press.

92 De Gaay Fortman, 2011, p. 10.

93 Moore, S. F., 1973, ‘Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study’, *Law and Society*, 7 (4), pp. 719-746, p 720; also Bohannan, P., 1965, ‘The Differing Realms of the Law’ in *The Ethnography of Law*, Nader, L., (ed.) Special publication of the *American Anthropologist*, Part 2, 67 (6), pp. 33-42, in Moore, 1973, p. 720.

94 Nabudere, D.W., [year of publication unavailable], ‘Towards an Africology of Knowledge Production and African Regeneration’, p. 24 and 32, available at [http://store.blackherbals.com/Africology\\_and\\_Renewal.pdf](http://store.blackherbals.com/Africology_and_Renewal.pdf), last accessed on May 21, 2012.

lives in their contexts, because they have the best capacity to interpret their own environments. Therefore, rights holders should be involved in ensuring their own dignity. Their voices need to be considered in order to bring about positive rights outcomes in their localities.

Both the international forum of the CEDAW Committee and the macro-level national legislator and policy-maker, located far away from these local contexts, might fail to gain insights and appreciation of the intricacies of micro-level local dynamics. Thus, such knowledge encompassed in local initiatives could inform international or national legislators or policy-makers in their macro-level demands for social and cultural change. Weber's analysis of the effectuation of successful legislative impositions in the economic area supports the rationale of this exploration:

*“... those that continuously participate in the market intercourse with their own economic interests have a far greater rational knowledge of the market and interest situation than the legislators and enforcement officers whose interest is only ideal.”<sup>95</sup>*

A number of scholars, such as Weber, Pospisil and Moore, stress that the capacity of the State to induce compliance by means of legal norms or “statutory coercion” should not divert attention from other actors, means and mechanisms to induce compliance.<sup>96</sup> Proper attention must be paid to the internally driven capacity and agency of individuals within the social contexts where they operate and interact, such as groups, neighbourhoods and communities.<sup>97</sup> As Moore indicates, within these contexts, individuals “can generate rules and customs and symbols internally”, while still being impacted by State actions and/or civil society actions.<sup>98</sup>

Rights holders at the community level usually do not possess knowledge of the norms, documents or agreements of the international human rights system. However, situations such as social discontent, extreme violence or substantive social exclusion<sup>99</sup>

95 Weber, M., 1954, *On Law in Economy and Society*, Rheinstein, M. (ed.) translation by Rheinstein, M. and Shils, E., New York: Simon and Schuster, p. 38; Moore, 1973, p. 721.

96 Weber, 1954, p. 15; Pospisil, L., 1971, *Anthropology of Law*, New York: Harper and Row, pp. 193-232; Moore, 1973, p. 721.

97 See Moore, 1973, pp. 57-58; See also Eijkman, 2007, p. 24.

98 Moore, 1973, pp. 720-721.

99 Situations of social exclusion obstruct people's participation in acknowledged societal arrangements. This could be the case in remote rural areas or in areas below the poverty line also known as ghettos or slums, such as *garrison communities* in Jamaica, *favelas* in Brazil, *shanty towns* in South Africa, *slum settlements* in India, etc. The State usually has little entry points into such settlements, leaving their dwellers with the option to find alternative remedies for security, subsistence, and livelihood outside of the ambit of governmental support. For example, female dwellers of Jamaican *garrison communities* are compelled to use their bodies as negotiation territories for survival (Tafari-Ama, 2008). Brazilian *favelas* are far away from the power of the police; a lack of confidence in the State's

could drive communities or individuals to take action, to strive for their fundamental freedoms and rights, and/or to try to alter the dominant structuring of social norms by negotiating their own informal rules for compliance. For instance, processes of socialization occurring through the family, the school, the neighbourhood, peers, community radio/media, the church, and so on, create such rules and norms. Through pressure or encouragement, they induce attitudes and standpoints in order to conform to the established social and cultural values and expectations.<sup>100</sup> Notwithstanding that some internal compliance rules could have negative outcomes such as inducing risky behaviour among young men through peer influence,<sup>101</sup> it is important to bear in mind that they also have the potential to mobilize individuals and communities to fulfil their needs in a positive fashion or to comply with legal norms. In this regard, communities or groups of rights holders might mobilize for changing values, attitudes and behaviours that are violent or cause gender-based violence against women. Although not specifically taken in the light of CEDAW, these initiatives at the community level are part of processes and mechanisms that contribute to putting women's rights' ideas, values and norms into practice.<sup>102</sup>

Under this approach, rights holders represent sites of knowledge and generation of norms and compliance that have the potential to drive action to realise rights. They cannot therefore be ignored in processes of putting Article 5(a) into practice. The mechanisms occurring at the level of rights holders have the potential to expand understanding of the implementation of Article 5(a) so that the right to be free from violence stemming from sex roles and gender stereotyping is realised. Presumably,

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ability to guarantee peoples' rights prevails in such areas, compelling people to guarantee for their own security. See Tafari-Ama, 2008; also, Eijkman, 2007; Husein, S., 2007, *In War, Those Who Die Are Not Innocent. Human Rights Implementation, Policing, and Public Security Reform in Rio de Janeiro, Brazil*, Amsterdam: Rozenberg Publishers.

100 According to Parsons' normative structure of social systems, collectives/communities indicate the normative expectation attached to actions of collectives and define, in this way, patterns of required action in specific situations. See generally, Parsons, 1960.

101 For example the Common Country Assessment for Jamaica prepared by United Nations Country Team and Government of Jamaica indicates that "for young men, gender stereotyping manifests in direct relation to their peers/ 'crews' though a strong social influence to adopt certain competitive and negative gender roles and sexual behaviour;" United Nations Country Team and Government of Jamaica, 'Common Country Assessment for Jamaica', 2006-2010, p. 75, available at [www.jm.undp.org/files/CCA\\_Jamaica\\_3-final-unct.pdf](http://www.jm.undp.org/files/CCA_Jamaica_3-final-unct.pdf), last accessed on July 5, 2012. Another example could also be the engagement of Jamaican male youths in gang activities.

102 Local needs or interests in correcting instances of inequalities and violations of rights generate local initiatives that are not necessarily informed by the international standards, documents and processes such as CEDAW; yet they are generated by the needs, specificities of or possibilities in the social contexts to take action and effectuate similar values, ideas and norms. Local initiatives (of rights holders within communities) could express the same ideas, which are at the core of Article 5(a) and could circumscribe a process of putting into practice those same norms and ideas, albeit not demarcated as the implementation and realisation of women's human rights under CEDAW as such.

power dynamics at this level influence the process of implementation at a macro level.<sup>103</sup> As De Gaay Fortman remarks, “a determined endeavour to involve those whose dignity is at stake as principal actors may serve as a driving force in efforts to overcome institutional obstacles through more participatory governance.”<sup>104</sup> This book interrogates the position of rights holders as instrumental actors in rendering effective the processes of putting human rights into practice. This perspective is especially relevant to a process of bringing about social and cultural transformation that would contribute to the elimination of gender-based violence against women.

### 3.4 PUTTING ARTICLE 5(a) INTO PRACTICE – A THREE-TIERED PARADIGM

Since violence is a multifaceted issue, as Yakin Ertürk, the UN Special Rapporteur on violence against women, notes, and ascribed sex roles and gender stereotyping are also multifaceted issues to address, strategies for the effective implementation of women’s human rights must be multifaceted as well.<sup>105</sup> Based on existing theory, human rights implementation paradigms consisting of multiple strategies, mechanisms and actors have been proposed in order to develop an adequate methodology for putting Article 5(a) into practice. Although the State, through its legal and policy instruments, has a crucial role in putting this Article into practice, the relevance of other national and local social actors and their various strategies cannot be disregarded. The usually marginalized voices of rights holders within hegemonic discourses of international law need to be considered in frameworks for women’s human rights implementation in order to adequately strategise the ways of putting Article 5(a) into practice at the country level.

For that reason, this section presents a holistic and multi-layered approach, which complements perspectives *from above* with perspectives *from the middle* and *from below*. This approach is premised on the existing multi-layered paradigm of the implementation of international norms put forward by the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk.

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103 Eijkman, 2007, p. 44.

104 De Gaay Fortman, 2011, p. 12.

105 CHR, 2003, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, ‘Towards an effective implementation of international norms to end violence against women’, para. 55.



### **3.4.1 A three-tiered paradigm for an effective implementation of international human rights norms: the UN Special Rapporteur on violence against women, its causes and consequences<sup>106</sup>**

A multiple approach to the implementation of women's human rights, mindful of the various strategies, mechanisms and actors that can be relevant, is prominent in the report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Towards an Effective Implementation of International Norms to End Violence Against Women*. According to the Special Rapporteur,

*“While the universal human rights standards provide the guiding principles for the struggle to end violence against women, multiple discursive frameworks need to be employed at each level of intervention.”<sup>107</sup>*

Thus, the Special Rapporteur proposes a three-tiered model of implementation strategies. A first strategy involves the international human rights approach to implementation. The State and its agents should ensure protection for women, the prevention of violence against women, the investigation and punishment of perpetrators of violence, and the provision of protective and supportive services to affected women in collaboration with NGOs and other relevant actors.<sup>108</sup> The second implementation strategy involves the community and/or non-State actors. This strategy implies a “*cultural negotiation*” approach, which complements the human rights discourse “in order to understand the root causes of violence present in everyday life”.<sup>109</sup> This means awareness-raising strategies that draw on positive elements of a given culture. The aim of the *cultural negotiation* approach is to replace oppressive cultural practices with “alternative expressions of masculinity that are respectful of women's rights”.<sup>110</sup> The key actors to undertake this strategy are “civil society actors – academicians, the media and national and international NGOs” in collaboration with the State.<sup>111</sup> Additionally, intellectuals and “enlightened community leaders, including religious leaders”, according to the Special Rapporteur, have “an ethical responsibility to challenge that repressive representation [of culture] and to demonstrate the compatibility of culture and religion with the universal human rights of women.”<sup>112</sup> The third proposed strategy lies at the level of the individual woman, by means of “an empowerment approach supported by protective and compensatory

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106 CHR, 2003, paras. 55-56.

107 Ibid., para. 55.

108 Ibid., para. 55(a).

109 Ibid., para. 55(b).

110 Ibid., para. 55(b).

111 Ibid., para. 55(b).

112 Ibid., para.55(b).

mechanisms”.<sup>113</sup> It is important to note that this third empowerment strategy regards individual women as passive receivers or targets of State measures and programmes, and of civil society support initiatives.<sup>114</sup> This again confirms the tendency in the implementation of international women’s human rights to focus on the top-down actions of the State, complemented by civil society initiatives. Women’s own potential to actively contribute to the process of the implementation and realisation of their human rights tends to be ignored.

### **3.4.2 The three-tiered research approach in this book: putting Article 5(a) into practice “from above”, “from the middle” and “from below”**

The research presented in this book is developed against the backdrop of multiple discursive frameworks for human rights implementation. It expands on the UN Special Rapporteur’s three-tiered model, coupled with the implementation paradigms explained in this chapter, in order to investigate ways and means to put Article 5(a) into practice. In addition, it takes the third approach in the Special Rapporteur’s model a step further. It proposes an exploration of the active role that ordinary individuals, both women and men,<sup>115</sup> can play in empowerment strategies and their potential to take cultural negotiation further in their everyday social practices. The underpinning of this approach is the belief in every individual’s potential to contribute to the process of the implementation of international human rights. This aligns with the position taken by De Gaay Fortman vis-à-vis overcoming constraints such as exclusion and the lack of realisation of human dignity:

*“The starting point in the endeavour to overcome ... constraints is the conviction, first, that human beings qua persons are distinctive in having the capacity to value their own existence while making own judgments and taking their own decisions. Realization in this sense implies an uplifting of human self-reliance, in other words,*

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113 Ibid., para. 55(c).

114 The UN Special Rapporteur stresses: “While the State, through the legal system and various programmes, must ensure women’s access to alternative sources of livelihood, information and justice, civil society actors (through national and international networks) must work towards the creation of a demand for justice and provide support to individual or collective women’s initiatives in that regard.” CHR, 2003, UN Special Rapporteur, para. 55(c).

115 In the model proposed by the UN Special Rapporteur, reference is only made to individual women. This book uses the term of rights holders to refer to both women and men to accentuate the standpoint that men must be involved in the elimination of gender-based violence and putting women’s human rights into practice. Moreover, as mentioned in Chapter 2, Article 5(a) is a provision that concerns the interests of both women and men. Although this research focuses on women’s rights to be free from gender-based violence, the choice to frequently refer to rights holders supports the author’s belief that the patriarchal nature of gender constructions is detrimental to both women and men.

*empowerment. Born free in dignity and with reason as well as a conscience, people ought to be respected and protected in their individual capacities.”*<sup>116</sup>

The intention in this research is to allow an investigation of the implementation and realisation of women’s human rights in general, and of Article 5(a) in particular, from the lenses of all interacting actors whose interests are at stake in this process. Therefore, a holistic approach structured along the lines of three tiers of actors and strategies is proposed: 1) the State as the duty bearer; 2) Civil society organizations as vernacularisers/translators; 3) and individuals as rights holders. Based on the existing theoretical paradigms presented above, this three-tiered approach investigates the corresponding strategies undertaken by these actors, i.e. top-down or *from above*, and bottom-up or *from the middle* and *from below* strategies. From a methodological perspective (detailed in Chapter 5) the study of *from above* strategies has the ability to explore the norms of Article 5(a), as they are addressed from the perspective of the State down the system to the societal level. This approach corresponds to the international human rights law approach elaborated in section 3.1. The exploration of the strategies *from the middle* examines the initiatives undertaken by civil society organizations, either downstream to the level of rights holders by trickling down norms, ideas and values through vernacularisation strategies, or upstream to the State level through advocacy strategies built on the perspectives of the rights holders. *From below* strategies depart from social practices and map implementation activities and mechanisms from the local operational level to the governmental level.<sup>117</sup> By means of converging these three seemingly disparate levels of intervention, a combination of the top-down and bottom-up approaches arguably has the potential to fill in gaps and provide new understandings of the possibilities and challenges in the modification of social and cultural patterns of behaviour and the elimination of sex roles and gender stereotyping. At the heart of this holistic approach lies a belief that

*“It is a mistake to overlook focus on one side in favour of exclusive concern with the other (rejecting the local and particularity, for instance, in favour of exclusive concern with the global, or rejecting the global and all macrostructures for exclusive concern with the local).”*<sup>118</sup>

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116 De Gaay Fortman, 2011, p. 9.

117 Winter, S.C., 2003, ‘Implementation Perspectives: Status and Reconsideration’ in *Handbook of Public Administration*, Sage Publications; website location [http://www.sage-ereference.com/hdbk\\_pubadmin/Article\\_n16.html](http://www.sage-ereference.com/hdbk_pubadmin/Article_n16.html), accessed on September 27, 2009.

118 See Goodale, M., 2007, p. 10; also Cvetkovich and Kellner who explain that “*it is a mistake to overlook focus on one side in favor of exclusive concern with the other (rejecting the local and particularity, for instance, in favor of exclusive concern with the global, or rejecting the global and all macrostructures for exclusive concern with the local)*”. Cvetkovich, A and Kellner, D., (eds.), 1997, *Articulating the Global and the Local: Globalization and Cultural Studies*, Boulder: Westview Press, pp. 1-2.

### 3.5 CONCLUSION

Local realities where human rights violations occur are rather far removed from the macro-level actors who articulate norms to regulate such realities.<sup>119</sup> The CEDAW Committee issues Concluding Observations to guide States in implementing Article 5(a), to which States are meant to abide. Although the Concluding Observations are context-oriented, they are not sufficiently country-specific. The Committee has not yet provided precise and thorough guidelines in a General Recommendation as to how to put Article 5(a) into practice in order to eliminate gender-based violence. This diminishes the Committee's capacity to actually give concrete directions to the States parties,<sup>120</sup> rendering it rather easy to be overlooked by State actors in their national actions.<sup>121</sup> Furthermore, other implementation measures, strategies and initiatives that escape the sight of the Committee might be suitable and effective for the specificities of particular contexts. As S. Merry stressed,

*“[d]iscussions in transnational settings rarely deal with local situations in context. There is an inevitable tension between general principles and particular situations. Transnational reformers must adhere to a set of standards that apply to all societies if they are to gain legitimacy.”*<sup>122</sup>

Moreover, the focus on State obligations under CEDAW might conceal the role of other social actors and the contribution of initiatives from the ground that have not been envisioned in the Committee's work. A proper consideration of such actors and initiatives could expand the understanding of Article 5(a) and its implementation in concrete and specific settings. Civil society actors complement State strategies of implementation, and may indeed become main implementers. Therefore, other actors and strategies should not be disregarded if we want to have a complete view of what renders implementation effective. Moreover, during the *vernacularisation* process, international human rights norms and ideas might take a form on the ground that is different from the way they are articulated in CEDAW or in the CEDAW Committee's Concluding Observations. Rights holders might contribute with their own views and initiatives to the implementation process without having an awareness of international

119 “Yet, there is a great distance between the global sites where these ideas are formulated and the specific situation in which they are deployed. We know relatively little about how individuals in various social and cultural contexts come to see themselves in terms of human rights.” See Merry, 2006, pp. 2-3.

120 This point of view was confirmed by a CEDAW expert during the CEDAW Committee Seminar on Musawah Framework of Action and Islam and Women's rights,, Office of the High Commissioner for Human Rights, Geneva, Palais Wilson, October 16, 2010; Research diary, Author's observations, October 16, 2010; see also Musawah for Equality in the Muslim Family website available at [www.musawah.org/about-musawah/our-journey-0](http://www.musawah.org/about-musawah/our-journey-0), last accessed on July 5, 2012.

121 See the discussion on CEDAW Concluding Observations in Chapter 2.

122 Merry, 2006, p. 3.

or national women's human rights norms. Nonetheless, their mobilization strives for the realisation of the same goals, i.e. the transformation of social and cultural patterns of behaviour in order to eliminate gender-based violence against women. In this way, they provide an understanding of how people relate to the implementation of Article 5(a) and bring about change from within their own social contexts. Rights holders might also produce novel implementation strategies and mechanisms. It would be unnecessarily restrictive not to take them into consideration.

Going beyond the top-down approach to study bottom-up approaches to the implementation of women's human rights could contribute to a deeper understanding of putting Article 5(a) into practice. Three levels of actors are of significance: 1. At the State level, the international law approach to norms diffusion locates and explores initiatives by the governmental machinery. 2. At the civil society level, the vernacularisation approach voices initiatives and strategies that civil society actors use in order to engage rights holders and other actors in the process of translating ideas in Article 5(a). 3. The level of the rights holders opens up an understanding of local possibilities and mechanisms conducive to social and cultural transformation that resonates with the rights holders and their contexts. In this way, such strategies gain potential to bring about change in adverse sex roles and gender stereotyping. By taking such a holistic approach, it is intended to give proper consideration to all actors that might be relevant to the process of putting Article 5(a) into practice. Furthermore, by proposing this holistic approach, this research stresses that while universal human rights standards are essential guiding principles for the implementation process, multi-levelled interventions employing socially and culturally relevant frameworks must not be overlooked if women's human rights norms are to be put into practice within a country.<sup>123</sup> Full appreciation of the articulation of international human rights norms in local social and cultural terms<sup>124</sup> ensures that "the necessary local variations in the implementation of human rights are consistent with the universal validity of these rights."<sup>125</sup>

The identification of the position of different actors within these strategies of transformation sheds light on the manner and extent to which the State and other social actors have the potential to bring about social and cultural transformation. Being subject to locality and the transitory, culture cannot be discussed and understood only in the abstract.<sup>126</sup> Conversely, the locality of a particular social and cultural site (be it

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123 CHR, 2003, para. 55.

124 Merry, 2006, p. 28.

125 An – Na'im and Hammond, 2002, p. 15.

126 Following the working definitions of culture as a people's historical inheritance (Geertz, 1973) built on evanescent terrain, (Comaroff and Comaroff 1999, p. 295) it helps to grasp the dynamics within a society, namely the process of "active making of culture, society and institutions ... grounded ...

a country, community or organization) provides concrete material for understanding relations of power within a society and possibilities for change. This also reveals the voices, positions and strategies that are privileged or disregarded in the selection of actions for possible change, and which would influence the internal social and cultural discourses of a locality.<sup>127</sup> Paralleling Hoebel's statement on the positioning of law in society, "we must have a look at the society and culture at large in order to find the place of the State within the total structure."<sup>128</sup>

Having explored *the books* for paradigms for putting Article 5(a) into practice, let us turn to *life realities* and allow *practice* (social and professional) to teach us about bringing about social and cultural transformation, which is conducive to the elimination of gender-based violence against women. We do that by first putting on historical lenses to understand the concrete context of Jamaica.

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in specific places and moment." Merry, 2003, p. 23; see also, Geertz, C., 1973, *The interpretation of Culture*, New York; Comaroff and Comaroff, 1999; Merry, 2003. Culture is not a fixed, monolithic block. It is constantly contested and defines meanings that have the potential to facilitate change.

127 Merry, 2003, p. 23.

128 Hoebel, E.A., 1954, *The Law of Primitive Man*, Massachusetts: Cambridge, p. 5.

## THE CONTEXT





# CHAPTER 4

## GENDER CONSTRUCTIONS AND GENDER-BASED VIOLENCE AGAINST WOMEN IN JAMAICA: LEGACIES OF THE PAST, ISSUES OF THE PRESENT

### 4.1 INTRODUCTION

During my field research in Jamaica I was constantly asked about the purpose of my visit to the island. To my general answer, “*I came to conduct research on gender-based violence against women*”, people commonly responded: “*Well, my dear, you came to the right place!*” That was soon confirmed. Over a period of only one month (in April 2011), I witnessed the Jamaican public being bombarded by media reports of inter-spousal related murder-suicides or attempted murder followed by suicides. On April 8, 2011, in the parish of St. Mary, a policeman shot dead four members of his wife’s family, gravely injured his wife and then committed suicide. On April 19, 2011, the print media announced that in the parish of Manchester, a policewoman, her son and the father of her son had been shot dead by her former boyfriend, an ex-police sergeant who subsequently committed suicide. On April 30, 2011, another man committed suicide after attempting to murder the son, boyfriend and grandmother of his ex-girlfriend. A month and a half later, on June 13, 2011, *The Observer* newspaper reported that a man allegedly murdered his common-law wife and committed suicide. What these cases had in common, apart from violence resulting in death, were the decision of the woman to walk out of the relationship and move on, and the jealousy and anger of the male partner. In the local newspaper the *North Coast Times* of July 15-21, 2011, one headline stated: “*Jealous man stabs lover of woman he ‘owned’.*”<sup>1</sup> A man from the parish of St. Ann responded in a similar manner to his former girlfriend moving on with her life: he wounded her current boyfriend with intent while the couple were walking down the road. The Ann’s Bay Criminal Court held him responsible. On July 7, 2011, he pleaded guilty to wounding with intent and justified his act before the Court by declaring: “*A mi baby mother and we have two kids together. Mi own her for nine years*” (emphasis added). In response to the man’s declaration, the Senior Resident Magistrate made the point that “most men have in their minds the misconception that they ‘own’ the women with whom they have a relationship” (emphasis added). However, the punishment in this case amounted only to a fine, as the newspaper documented.<sup>2</sup>

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- 1 North Coast Times, July 15-21, 2011, ‘Jealous man stabs lover of woman he ‘owned’’, p. 5, accessed in print July 15, 2011.
  - 2 I read about this story while I was flipping through the pages of the local newspaper I found by chance on my way back to Kingston after conducting a focus group discussion with women from St. Ann parish. News of women’s deaths was frequent: “Two Women killed by lovers buried” on the front page, “Jealous man stabs lover of woman he ‘owned’”, p. 5, “Outpouring of grief as woman slain by common-law husband buried”, pp. 2 and 15, and “Sasha’s death sparks massive march against domestic violence”, p. 5; The North Coast Times, July 15-21, 2011, pp. 1, 2, 5 and 15.

The sense of ownership over his former female partner is obvious in the man's declaration above. He uses it in an attempt to justify his violent behaviour. As the Resident Magistrate noted, this incident reveals an underlying belief in and the attitude of the male ownership of women, implicit to gender relations in Jamaica. The study conducted by Salter in 2003 indicates that what Jamaican males like about being a male is the idea that men "run tings".<sup>3</sup> Salter connects the incidence of gender-based violence against women in Jamaica with the fact that "many males feel it is their ordained right to exert power and control over subordinates – including/mainly women."<sup>4</sup> The above examples of gender violence occurring within a very short time span are illustrative of what is named in some Caribbean jurisprudence, "the norm rather than the aberration" in the region.<sup>5</sup> Such normalization of gender-based violence against women operates within a resilient gender status quo underpinned by "fairly rigid private/public-reproductive/productive work dichotomy", male control and consequent unequal relations of power between women and men.<sup>6</sup>

Gender constructions are interlinked with the deprivation of rights and brutal treatment on which the lives of the large masses of enslaved population and the state formation in Jamaica were founded.<sup>7</sup> The history of the island, since European colonial forces started to distort the destiny of peoples and countries through the transatlantic slave trade, is a history of harsh colonial domination, oppression and violence, which became structural. This has led to a present in which violence in its varied forms is accepted to the point of being normalized.<sup>8</sup> As Thomas explains,

*"the ways the colonial state – and therefore also the postcolonial state – legitimized the reproduction of its own authority through the 'miniaturization' of violence, the arbitrary and everyday forms of 'micro-actions' that were designed to socialize the population into a constant state of fear and vulnerability also holds true within the context of Jamaica."*<sup>9</sup>

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3 Salter, V.A., 2003, p. 9.

4 Ibid.

5 HC of St. Lucia, *Martinus Francoise v AG of St. Lucia* (unreported), May 24, 2001, in Robinson, 2004, pp. 10-11; see also Clarke, R., 1998, 'Violence Against Women in the Caribbean. State and Non-State Responses', United Nations Development Fund for Women (UNIFEM), Inter-American Commission of Women, p. 10.

6 Bailey, 2011, p. 10.

7 Thomas, D.A., 2011, *Exceptional Violence. Embodied Citizenship in Transnational Jamaica*, Durham and London: Duke University Press, p. 15.

8 Charles, S., 2009, 'No Woman, No Cry. Exploring Gender Based Violence in Jamaica', Presentation at the Caribbean Studies Association (CSA) Conference, Barbados, St.Peter, May 24-28, 2009, slide no. 9.

9 Thomas, 2011, p. 12; Mbembe, A., 2001, *On the Postcolony*, Berkeley: University of California Press, pp. 25-28.

This chapter engages with history to gain a wider picture of and illustrate the formation of gender identities and subsequent relations between women and men, and of gender-based violence in Jamaica. First, the chapter introduces Jamaica by pinpointing the historical milestones in the country's past and by sketching its contemporary violence profile within the current context of the Caribbean. Having located Jamaica in history and the region, the chapter goes back to the periods of slavery and post-Emancipation to trace the development of gender constructions and the incidence of gender-based violence against women in the colonial Jamaica. Next, through the consideration of the recent election of a female Prime Minister, the chapter engages with the post-colonial present (marked by Independence) and notes the contemporary constructions of gender. Data from United Nations entities and the Jamaica Constabulary Force are used to illustrate Jamaica's current profile of gender-based violence against women. Finally, the chapter presents an overview of the framework of action initiated in the 1970s in response to gender-based discrimination and violence against women in Jamaica and in the larger Caribbean context.

#### **4.2. LOCATING JAMAICA IN HISTORY: MILESTONES**

Jamaica, the largest English-speaking Caribbean island, is a young independent state.<sup>10</sup> Formerly a Spanish colony (1509-1655), the island was under British colonial rule for 307 years (1655-1962). The British organized it as a sugar plantation economy sustained through the labour of large masses of enslaved black Africans. The passing by the British Parliament of the Slavery Abolition Act in 1833 marked the Emancipation era in most British colonies.<sup>11</sup> Free slave labour was officially abolished on August 1, 1834. However, such freedom applied only to slaves of six years of age and younger. As for all older slaves, the working duties were redesigned to a period of apprenticeship during which they 'became' apprenticed labourers and continued working for their masters for three-quarters of each week (40.5 hours of work). Unrestricted freedom arrived in 1838.

Jamaica gained its independence from the British Crown on August 6, 1962. It became a parliamentary democracy modelled on the British system of government. The British monarch remains the titular Head of State and is represented in the country by a Governor-General with limited powers. The ruling powers are in the hands of a Prime Minister. Since December 2011, such powers are held by a woman, Mrs. Portia Simpson-Miller.

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10 Jamaica is the third largest island in the Caribbean. Its population is a mixture of persons of African, European, East Indian and Chinese origin. The people of African descent form the largest percentage of the population. See Jamaica Information Service (JIS) available at <http://www.jis.gov.jm>.

11 Slavery Abolition Act 1833, 3<sup>o</sup> & 4<sup>o</sup> Gulielmi IV, cap. LXXIII, August 28, 1833, available at <http://www.anti-slaverysociety.addr.com/huk-1833act.htm>, last accessed July 30, 2012.

### 4.3 LOCATING JAMAICA WITHIN A VIOLENT CARIBBEAN REGION

Gender systems in the Caribbean are embedded and operate in contexts where aggression and violence are modes of society. Sky-rocketing levels of crime and violence scourging Caribbean countries put the region near the top of the crime and violence statistics around the world. The overall Caribbean murder rate is 30 per 100,000, which, according to the United Nations Office on Drugs and Crime (UNODC) and Interpol, is “higher than for any other region of the world”.<sup>12</sup> The vulnerability of the Caribbean islands to crime and violence is associated with their location at the “crossroads of the Americas”<sup>13</sup> – on the drug trafficking route between the Latin American source countries and the North market consumers.<sup>14</sup> Additionally, political competition, the formation of gangs,<sup>15</sup> globalization and the impact of neo-liberal economic ideologies and financial adjustments had an inevitable detrimental impact on the small, developing countries in the Caribbean.<sup>16</sup>

Within these high levels of violence scourging the Caribbean, Jamaica is highlighted as an “*exceptional case*”.<sup>17</sup> The security landscape of the country has been challenged in the post-independence period by political nationalism and intense political violence accompanied by the formation of political gangs and violence related to drug trafficking. All of these factors have led to escalating levels of violence. Currently, transnational organized crime and gang conflict, within an overall environment of economic miscarriages and poverty, feed into the violent climate of the country.<sup>18</sup> Jamaica is notorious as one of the most violent countries in the world, “with a per capita murder that is rivalled only by those of South Africa and Colombia.”<sup>19</sup> According to UNODC, the homicide rate in Jamaica is among the highest in the Caribbean. Since 2007, the rate has not fallen below 52 per 100,000 population; on

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12 Joint Report by the United Nations Office on Drugs and Crime (UNODC) and the Latin America and the Caribbean Region of the World Bank, 2007, p. 1. This is also confirmed by the primary data that I collected during my field research in Jamaica in December 2010-August 2011 mainly through interviews with academic experts in social violence.

13 Nettleford, R., 1995, *Inward Stretch, Outward Reach. A Voice from the Caribbean*, New York: Caribbean Diaspora Press, Inc. at Caribbean Research Centre Medgar Evers College (CUNY).

14 Joint Report by the United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank, 2007, p. i.

15 UNDP, 2012, ‘Caribbean Human Development Report. Human Development and the Shift to Better Citizen Security’, p. 20.

16 Bailey, 2011, p. 8.

17 Thomas, 2011, p. 2; see also Jamaica Observer, January 20, 2005, Abrahams-Clivio, T., ‘Let’s Renounce the Title of Murder Capital’, in Thomas, 2011, p. 2; UNDP, 2012, p. 20.

18 Thomas, 2011, pp. 2-3 and 8; UNDP, 2012, p. 20. See also Francis, A., Harriott, A., et al., 2003, *Crime and Development: The Jamaican Experience*, Jamaica: University of the West Indies.

19 Thomas, 2011, p. 2.

the contrary, it reached as high as 61.6 per 100,000 in 2009.<sup>20</sup> In this worrying social climate, gender-based violence perpetrated against women is spiralling.<sup>21</sup>

Attempts to understand gender-based violence against women in Jamaica should not disregard the country's historical journey of oppression and colonial impositions: from slavery and a plantation economy to a "deepening colonialism" following Emancipation, which, according to Nettleford, served to further the marginalization of the mass of the population.<sup>22</sup> Jamaica's past rooted in brutality and denial of rights and the *copy and paste* of the liberalism ideology and Westminster state adaptation contributed to the production of gender identities and the development of relations between and among women and men in the present. The imperialism and racial slavery of the past, as Thomas, Morss, Gilroy, Trouillot emphasise, are foundational pillars for the notions of democracy "throughout Europe and on both sides of the Atlantic" upon which the present is built.<sup>23</sup> Historical perspectives may contribute to the understanding of the existing tensions in gender relations in contemporary Jamaica. Violence in the present Jamaica, as Beckles explains based on a historical analysis, is a manifestation and the discourse of formerly subjugated black masculinities. Referring to expressions of Jamaican masculinities, the historian affirms,

*"The seemingly rudderless quest for an inversion of the dominant agenda has left the streets of communities, the language of social discourse, sexual relations, political dialogues, and lyrics of popular music, shot through violence, virtual and real."*<sup>24</sup>

20 The homicide rates since 2007 are: 58.4/100,000 in 2007, 59.5/100,000 in 2008, 61.6/100,000 in 2009 and 52.2/100,000 population in 2012. See United Nations Office on Drugs and Crime (UNODC), Homicides Statistics 2012, Intentional homicide, count and rate per 100,000 population (1995-2011), available at <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>, last accessed on August 5, 2012; According to the Jamaican anthropologist of social violence, Dr. Herbert Gayle, 30 murders per 100,000 population indicates that the civil war benchmark is reached. A murder rate of 51, however, signals a country that is at war. Interview at the University of the West Indies, July 2011, social violence anthropologist; see the accounts given in the Caribbean newspaper Amandala, 2010, 'Dr. Herbert Gayle on Belize crime: Belize passed civil war benchmark', May 21, 2010, available at <http://www.amandala.com.bz>, last accessed on June 30, 2012.

21 UNDP, 2012, p. 20; Bailey, 2011, p. 10; UNODC and Latin America and the Caribbean Region of the World Bank, 2007, Joint Report, Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean, Report No. 37829, pp. iv and 1; see also United Nations Office on Drugs and Crime (UNODC), 2002, 'Crime Trends in the Caribbean and Responses', Report submitted to UNODC by Harriot, A., 1996, Vienna, UNODC.

22 Nettleford, R., 1989, 'Introduction. Fledging Years', in Nettleford, R. (ed.), *Jamaica in Independence. Essays on the Early Years*, Kingston: Heinemann Caribbean/London: James Currey, p. 2.

23 Thomas, 2011, p. 5; see generally Morss, S.B., 2000, 'Hegel and Haiti', *Critical Inquiry* 26(4), 821-865; Gilroy, p., 1993, *The Black Atlantic: Modernity and Double Consciousness*, Cambridge: Harvard University Press; Trouillot, M.R., 1995, *Silencing the Past: Power and the Production of History*, Boston: Beacon.

24 Beckles, 2011, p. 809.

#### 4.4 LOCATING GENDER CONSTRUCTIONS AND GENDER-BASED VIOLENCE AGAINST WOMEN IN JAMAICAN HISTORY – LEGACIES OF THE PAST

Jamaica's violent profile finds its roots in the colonial history of brutality and the denial of people's dignity and rights. Violence has operated as "an organizing principle of state formation in Jamaica."<sup>25</sup> The construction of gender identities and the manifestation of gender-based violence in Jamaica operate also at the intersection of slavery, colonialism and the post-independence historical journey of state and society formation. Therefore, the gender constructions and their manifestations in relations between women and men mirror a series of contradictions and tensions in contemporary Jamaican society.<sup>26</sup>

##### 4.4.1 Slavery: 1655-1838

*"People think that blood red, but blood don't got no colour. ... Not when blood spurt from the skin, or spring from the axe, the cat-o'-nine, the whip, the cane and the blackjack and every day in slave life is a day that colour red. It soon come to pass when red no different from white or blue or black or nothing."*<sup>27</sup>

The colony of Jamaica was organized to serve European interests of "mercantile capitalist development ... within a broader system of Atlantic exploration and exploitation."<sup>28</sup> The island was established as a sugar plantation economy: used as a sugar factory for the British Crown and based on the work of large numbers of enslaved black African men, women and children, imported to the island from West African shores.<sup>29</sup> By the eighteenth century, Jamaica had become "the jewel of the British crown" – Britain's most profitable colony in the New World with a

25 Thomas, 2011, p. 18.

26 See Barriteau, 1998, pp. 191-193, who argues that the manner in which gender ideologies are constructed reveals ideologies operating at the level of the state and in society.

27 James, M., 2009, *The Book of Night Women*, Riverhead Books, p. 3.

28 Thomas, 2011, p. 48; see also, Hornsby, S., 2005, *British Atlantic, American Frontier: Spaces of Power in Early Modern British America*, Hanover, N.H.: University Press of New England.

29 By 1700, 88,000 enslaved Africans had been brought to Jamaica. In only seven years after the British overtook the island from the Spanish, enslaved Africans formed one sixth of the population on the island. As compared to the other British colonies, Jamaica had received the largest numbers of enslaved Africans by mid of the eighteenth century; compared to the Americas, the enslaved population in Jamaica represented 25% of the Africans brought to this part of the world. See Mathurin-Mair, L., 1974, *A Historical Study of Women in Jamaica from 1655 to 1846*, PhD thesis, Beckles, H. and Shepherd, V.A. (eds.), *Jamaica-Barbados-Trinidad and Tobago*: University of the West Indies Press, p. 84; see also Shepherd, V.A. (ed.), 1999, *Women in Caribbean History. The British Colonized Territories*, Kingston: Ian Randle Publishers; Oxford: James Currey; Princeton: Markus Wiener, p. 37; Thomas, 2011, p. 46.

tremendous potential to produce wealth at the expense of the enslaved labourers.<sup>30</sup> The few white plantation owners often resorted to violence to control the large masses of enslaved black population. The “*bakra massa*” (white master) had “ownership of their bodies and labour, and the power ... to dispose of them and their children at will”.<sup>31</sup> The enslaved population was considered and treated as chattel. This was established through a number of laws, such as the Jamaica Act of 1696 and the “Law for the Government of Negro Slaves” of 1787, which established and reinforced the principle that enslaved women and men were possessions of the planters, and that being black and enslaved was “synonymous with inferior”.<sup>32</sup> No specific protection was afforded to women under these laws. Only in the nineteenth century did the amelioration measures in the British-colonised territories introduce differential forms of punishment for women. However, the planters did not necessarily use the written law in practice.<sup>33</sup> Being subjected to terror and violence perpetrated by the planter was an unavoidable part of being enslaved. “Sexual abuse of enslaved women by white men was a feature of society in the Caribbean.”<sup>34</sup>

Subjected to the demands of the plantation owners, black African slaves, regardless of their sex, were forced to provide free labour. Contrary to the contemporary ideological underpinning of liberalism and its gender implications in Jamaican society, the public-private identity dichotomy and the gendered division of roles were not relevant to the enslaved population: “... based on the racist hierarchy of Empire, the tenets of enlightenment discourse resided only with the white protestant males as plantation owners or overseers.”<sup>35</sup> The colonial master confined slaves’ socio-economic realities to labour exploitation. Slaves could not afford the “luxury” of the liberal ideologies of the public-private divide. The productive functions of women were highly valued in the plantation economy, so they produced along with men. In fact, although a number of women, usually creole, were household labourers, women dominated the

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30 Brown, V., 2008, *The Reaper’s Garden: Death and Power in the World of Atlantic Slavery*, Cambridge: Harvard University Press, pp. 16 and 57.

31 French, J., 1995, ‘Women and Colonial Policy in Jamaica after the 1938 Uprising’, in Wieringa, S. (ed.), *Subversive Women. Women’s Movements in Africa, Asia, Latin America and the Caribbean*, London and New Jersey: Zed Books, p. 123; Shepherd, 1999, pp. 40-41.

32 Shepherd, 1999, p. 41.

33 Beckles, H. and Shepherd, V. (eds.), 1991, *Caribbean Slave Society and Economy*, Kingston: Ian Randle Publishers, pp. 346-362.

34 Shepherd, 1999, p. 41. It should be mentioned that men were also abused.

35 Heron, T., 2008, ‘Political Advertising and the Portrayal of Gender, Colour and Class in Jamaica’s General Elections 2007’ in Dunn, L. and Wedderburn, J. (eds.), *Gender and Governance*, Working Paper Series No. 5, Centre for Gender and Development Studies, University of the West Indies and Friedrich Ebert Stiftung, Jamaica and the Eastern Caribbean, 59-104, p. 63.

field labour, while men took up more skilled work.<sup>36</sup> Occupational distribution on the estates reveals that women worked outside of the private sphere as much as men.<sup>37</sup>

Furthermore, the principle of matrilineal reproduction of slave status was introduced by the mid-seventeenth century. Female identity was constructed as a reproduction device to maintain the slave system and its productivity.<sup>38</sup> The production and reproduction roles of women were thus established. Enslaved men did not perform the role of the sole provider, operating freely outside of the domestic sphere, nor did the woman perform only domestic functions. The public-private divides and the gender asymmetries of the free, reasoning, breadwinning man vs. the domestic, emotional woman did not characterise the enslaved society in Jamaica. Actually, enslaved men were stripped of power. They were relegated to submissiveness through fieldwork that they normally considered “woman work”, through subsistence and leisure time allowances within the restrictions imposed by the white man, and through the system of harsh punishment for insubordination.<sup>39</sup> Although the foundational elements of the patriarchal systems, such as masculine authority and power over women, characterised the West African ideologies of gender, in Jamaica, as Beckles emphasizes, the enslaved men’s “inability to ‘live’ this ideology outside the jurisdiction of dominant white authority, confirmed the subordinated status of their masculinity.”<sup>40</sup> Violence was referred to as an act of subversion, the establishment of autonomous masculine identities and empowerment. Violence became a mode of socialization for the black enslaved man.<sup>41</sup>

*“Colonial masculinities, then, took social form within the context of a culture of violence, which embraced all relations of social living and consciousness. It was the principal instrument of all contending parties; it held them together and tore them apart. ... Creole black males were socialised as infants within this crucible of death, blood and suffering. They learnt to use it as it was used against them.”<sup>42</sup>*

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36 Creole women were ‘coloured’, as opposed to black African women, and they were born in Jamaica. They usually assumed household tasks and were considered to be of a higher status than field workers. Shepherd, 1999, pp. 45-47; French, 1995, p. 123.

37 Jamaica Archives, Inventories 1799, Unity Plantation, St. Thomas-in-the-East, Jamaica, 1/B/11/3/93; Jamaica Archives, Inventories 1802, Halse Hall Estate, Clarendon, Jamaica.

38 Beckles, 1999, p. 8.

39 See Patterson, O., 1982, *Slavery and Social Death: A Comparative Study*, Cambridge: Harvard University Press.

40 Beckles, H.M., 2011, ‘Black Masculinity in Caribbean Slavery’, in Shepherd, V.A. (ed.), *Engendering Caribbean History: Cross-Cultural Perspectives*, Kingston/Miami: Ian Randle Publishers, p. 808.

41 *Ibid.*, pp. 803 and 809.

42 *Ibid.*, p. 809.



#### 4.4.2 Emancipation from slavery and the post-Emancipation period: 1838-1962

Following Emancipation in 1838, the newly freed slaves again had life styles and precepts imposed upon them, which did not resonate with their social realities. However, the Emancipation marked a time of reconstruction of masculine identities of black men and a sense of regaining dominance within gender relations, while it undermined women's production agency, and thus their autonomy. In that regard French attests, "the public man/private woman dichotomy and the notion of the male breadwinner and dependent housewife were promulgated with great force, albeit within a racialised framework."<sup>43</sup> Coupled with the dichotomous gender identities rooted in liberal ideology, the European monogamous family type represented another colonial importism of different life outlooks, institutions and structures imposed on the black African population in Jamaica. After all, the people dislocated to West Indian plantations carried with them their own gender identities, ideas about gender and ways to apply relations of gender, besides being units of labour extraction.<sup>44</sup>

The gender order known to the enslaved people was based on polygamous unions and the active production/provider role of the woman.<sup>45</sup> The polygamous unions placed value on the labour which women performed in the fields. Moreover, women had access to land: in fact, agricultural labour was prescribed as "woman work". Beckles notes that "the woman was centred as the principal productive agency within the gender order".<sup>46</sup> This gave women a sense of autonomy that was not characteristic of the European marriage type, which determined that women's appropriate place was in the domestic sphere, deprived of property rights over land. However, as mentioned above, common to both the European and African family systems "was the element of male dominance and the subjection of women to male will."<sup>47</sup>

Despite resistance to the European form of marriage, the asymmetric gender roles of the breadwinner and property-owner male, and the domestic, non-earning housewife dependant on the man spread among the black population. This dichotomous gender model interrelated with the formation of the state, through colonial state policy dictated and reinforced by the imposed model of Christianity. Thus, they became institutionalised; consequently, they facilitated the establishment of these European gender constructions within the young black African society of Jamaica.<sup>48</sup>

43 Heron, 2008, p. 63.

44 Beckles, H.M., 1999, *Centering Woman. Gender Discourses n Caribbean Slave Society*, Kingston: Ian Randle Publishers/Princeton: Markus Wiener Publishers/Oxford: James Currey Publishers, p. 7.

45 Polygamous unions were common among the Ashanti tribes in West Africa, the source of most of the enslaved population in Jamaica.

46 Beckles, 1999, p. 5.

47 French, 1995, p. 125; Beckles, 1999, p. 7.

48 Heron, 2008, p. 63; French, 1995, p. 125.

In the 1860s, for instance, land settlement schemes were issued under Governor John Peter Grant. This institutionalised, through the state police, the decreasing control of women over land. The schemes provided for the concept of the “farm family”, which conditioned the allocation of land on the performance of certain sex roles in the family: the man had to assume the role of the head of the household. Under these land settlement schemes the husband was the one afforded rights over the land, while the wife was deprived of such rights.<sup>49</sup> This led to women’s dependency on men.

The transition to wage labour shifted the workforce, transferring women’s labour to a secondary, supplementary place. Their position became a private one, confined to the private sphere of home making, while “men came to constitute the ‘real’ labour force, with stable jobs and more regular employment on the estates. In practical terms ... it meant that women were increasingly deprived of direct control of the main material base-land-and placed in a subordinate position to men in their earnings. Dependence on a man became a necessity for more and more women.”<sup>50</sup>

The 1938 labour uprising is another episode in Jamaican history, whose effects show how gender relations have been constructed over time and entrenched in the Jamaican political structures and the social psyche. One hundred years after Emancipation, the labour uprising marks a historical momentum, which shook the colonial economy and political ruling in Jamaica, with implications for the wider Caribbean. It was a time for the moribund British colonial ruling to renounce its powers. The uprising prompted the modern nationalist movement in Jamaica and forced a number of major reforms.<sup>51</sup> The West India Royal Commission of 1939, chaired by Lord Moyne, was appointed as a direct result. The Moyne Commission’s mandate was to investigate social and economic conditions in a number of Caribbean colonies, including Jamaica, and issue a report and recommendations to guide colonial policy in response to the 1938 events.<sup>52</sup>

The Commission paid particular attention to women and established, through its recommendations, the concept of womanhood and the gender role divide. The first two pillars mentioned by French as central to the policy proposal are essential to note: “promotion of the ideology of the male breadwinner and dependent housewife, and, as a means to this end, the promotion of ‘stable monogamy’, preferably through

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49 French, 1995, p. 126.

50 Ibid.

51 Ness, I., (ed.), 2009, *The International Encyclopaedia of Revolution and Protest*, Blackwell Publishing, available at <http://www.blackwellreference.com/public/book>, last accessed July 31, 2012.

52 Johnson, H., 1978, ‘The Political Uses of Commission of Enquiry: The Forster and Moyne Commissions’, *Social and Economic Studies*, 27 (3), pp. 256-283.

marriage; promotion of the ideal of voluntary social work as the most laudable and prestigious occupation for the middle-class women.<sup>53</sup> Obviously, dichotomous gender roles, the European family form and class divides were promoted through such recommendations. The central role of the man as the breadwinner and provider for the family was further marked by the Commission's discussion of poverty among women. In cases of an absent father "the whole (financial) responsibility falls on the mother ... In such circumstances cases of extreme poverty are inevitable, for the standard of living must be lower than it would be in a family group where, even if both parents were not employed, more money would be available, since the wages of men are normally higher than those given to women."<sup>54</sup> The following ten years of colonial policy and programmes built on the recommendations of the Moyne Commission.<sup>55</sup> These policy illustrations indicate that the formation of the colonial Jamaican state was built on tensions between traditions of female independence and colonial impositions of European-style dominant masculinities.<sup>56</sup>

The legacy of slavery and the extension of British governance and social standards deepened social categories and hierarchies in post-Emancipation Jamaica. Gender, intertwined with race, class and religion, set the tone for a complex web of social relations founded on wide discrepancies, which continue to influence contemporary life. Jamaican society became a textured fabric where the binary categories of men-women, public-private, ladies-women, brown-black, upper class-lower class, urban-rural, educated-non-educated have come to determine access to power, status, wealth and ultimately societal acceptance and inclusion.<sup>57</sup>

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53 French, 1995, p. 130.

54 Report of the West India Royal Commission (WIRC), 1939, ICS 56, p. 220 in French 1995, p. 131.

55 The gender dichotomies of the breadwinner man-domestic woman proved to have far-reaching impacts. For example, the census figures of 1921 and 1943 show that in agricultural labour, there was an obvious decrease in female work, from 125,400 to 45,600 (reduced to almost a quarter), while male work increased from 160,300 to 183,000. Section 16:64 of the 1953 Sample Survey of Population explains the disparity: "In 1943 ... the women and children were thrown out of the labour force by the manner in which the definition of 'gainful occupation' was applied". The Labour Department Report of 1944 explained the parameters of "gainful occupation" as including services or assistance with the production of goods. According to the Report, women doing unpaid housework in their own homes were "returned as homemakers and not considered as being among the gainfully occupied." Both the sample survey and the report are cited in French, 1995, p. 142.

56 See LeFont, S, 1996, *The Emergence of Afro-Caribbean Legal Tradition: Gender Relations and Family Courts in Kingston, Jamaica*, San Francisco: Austin and Winfield in Anderson, P., 2009, 'The Changing Roles of Fathers in Jamaican Family Life', Planning Institute of Jamaica, Working Paper 10, p. 7.

57 See Thomas, 2011; Heron, 2008; Ulysse, G., 1999, 'Uptown Ladies and Downtown Women: Female Representations of Class and Colour in Jamaica', in Rahier, J. (ed.), *Representation of Blackness and the Performance of Identities*, New Heaven: Greenwood, 147-172.

#### **4.5 LOCATING GENDER CONSTRUCTIONS AND VIOLENCE AGAINST WOMEN IN CONTEMPORARY JAMAICA – ISSUES OF THE PRESENT**

Women's involvement in representational politics reveals enduring male hegemony and female subordination. Given that a woman recently became Prime Minister of the country, this section focuses on the operation of gender constructions in the formation of the independent Jamaican State and on the implications for women's participation and representation in public and political spheres. It further presents some contemporary aspects of the problem of gender-based violence against women in Jamaica. The deliberate choice of illustrating the manifestation of gender identities and stereotyping within the Jamaican governance landscape is based on the fact that the governance permeates every sector of society and reflects the gender, class and race discrepancies in Jamaican society.

##### **4.5.1 Depictions of gender constructions in the post-Independence period: 1962-the present**

Jamaica is a young independent state. On August 6, 2012, it celebrated 50 years since its liberation from British colonial rule. It is now part of the Commonwealth Caribbean<sup>58</sup> and, since 1973, is a Member State of the Caribbean Community (CARICOM). The formation of the state was modelled upon the Westminster formula. After all, independence was gained, as Nettleford explains, "through a skilfully crafted policy of phased transfer of power to Britain's Caribbean colonials who were put in apprenticeship in preparation for the time when they were deemed fit to rule and to govern."<sup>59</sup> Since 1962, the political power has alternated between the two main parties in Jamaica, i.e. the social-democratic People's National Party (PNP) and the conservative Jamaica Labour Party (JLP). December 2011 marked the second time that Jamaica's leadership was put into the hands of a woman. Portia Simpson-Miller became the Prime Minister of Jamaica, after she ran the country in an interim position in 2007. A female prime minister leading the country represents a real challenge to the prevailing sexism in which the ideological foundation of Jamaican political leadership is anchored.

Current gender constructions in Jamaica continue to favour men while they discriminate against women. They are major factors that inhibit women's potential to fully enjoy equality and their human rights. Jamaican women across class and colour lines are still debilitated by, often, imperceptible barriers imposed in a male-dominated society. The political arena is one mirror of these barriers. Social and

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58 The Commonwealth Caribbean is a sub-regional division that refers to the independent English-speaking countries in the Caribbean region.

59 Nettleford, 1989, p. 2.

cultural patterns of conduct based on ascribed sex roles and gender stereotyping permeate Jamaica's politics and the governance profile of the country.<sup>60</sup>

The ideological foundation of Jamaica's political culture is known to have embraced the liberal ideology of Enlightenment underpinning the Westminster liberal democracy.<sup>61</sup> In the nationalist era of the 1950s, Jamaican politics was monopolised mainly by the "brown" middle class.<sup>62</sup> As such, the precepts reflecting British colonial ideology inscribed the value systems, and the governance agendas. Citizens' dependency on the government for essential needs, i.e. education, health, housing, is an example of this type of governance, which is rooted in the colonial rule of Governor John Peter Grant and the Crown Colony government.<sup>63</sup> Furthermore, the political space is dominated by the presence of the man, to which women's interests have been subordinated. Several authors identify that central to the liberal discourse are: "the belief that rationality is the mechanism or means by which individuals achieve autonomy; the notion that an individual citizen is a male household head; the separation and differentiation of society into the private and the public, the world of dependence, the family, and the world of freedom, the state, the work; and finally, the gendering of that differentiation."<sup>64</sup> As Heron notes, "[w]omen, in this ideological foundation, are secondary citizens, without rationality and reason."<sup>65</sup> Liberal ideology limits women's place in and contribution to society to the private space, is valued less than the public sphere and alludes to subordination. Barriteau emphasises that "women represent the family and sexual life, not the cerebral qualities of public virtues."<sup>66</sup> In this scheme, the church also comes into play. As it has gained credit among the Jamaican population and has been "ranked high in the pantheon of accredited authorities", it plays a key role in reinforcing and disseminating these values among the various social strata.<sup>67</sup>

Consequently, the under-representation of women is a trend in the Jamaican political leadership. The Jamaican governance type and the political environment reflect the asymmetric nature of gender relations. As an emulation of the British model, the

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60 Heron, 2008 p. 60.

61 Barriteau, 1998, p. 191; Barriteau, 2001, p. 3.

62 Meeks, B., 1996, *Radical Caribbean: From Black Power to Abu Bakr*, Kingston: University of the West Indies Press; Heron, 2008.

63 Nettleford, 1989, p. 6.

64 Heron, 2008, p. 62; see also, Barriteau, E., 2001, *The Political Economy of Gender in the Twentieth-Century Caribbean*, Palgrave; Flax, J., 1994, 'Is Enlightenment Emancipatory?: A Feminist Reading of What is Enlightenment', in Barker, F., Hulme, P., and Iversen, M. (eds.), *Postmodernism and the Re-reading of Modernity*, Manchester, New York: Manchester University Press, 232-249.

65 Heron, 2008, p. 62.

66 Barriteau, 2001, p. 37.

67 Nettleford, 1989, p. 6.

post-colonial Jamaican state inherited social relations into which gender is inscribed. The charismatic authoritarianism characterizing the democratic Jamaican framework is *masculine* in essence.<sup>68</sup> That establishes patriarchal codes as the benchmark for leadership. Women still have to strive to break the glass ceiling while their specific interests on the governance agenda are marginalized. According to Dunn, Hamilton, Vassell and Brown Wynter “irrespective of the socio-economic progress or educational achievement made by some women, systemic cultural barriers such as attitudes towards the role of women in politics [in the public sphere] and prevailing unequal gender ordering of society, may prevent women from participating equally in politics and decision-making in Jamaica.”<sup>69</sup> That may be explained by the focus of the British colonial ideology of the 1950s on *service* rather than *rights*, which does not interrogate or attempt to remedy the relations of power between women and men.<sup>70</sup>

The political ascendancy and leadership of Portia Simpson-Miller have boldly confronted the historically inscribed gender constructions. However, her election as the Prime Minister cannot make up for the political under-representation of women. As Bailey indicates, so far, “in all Caribbean States female representation in parliaments is well below the minimum 30% proposed as the goal for countries in the British Commonwealth. This under-representation of women in decision-making points to a lack of parity between men and women in socio-political matters and limited opportunity for women to exercise economic, political and administrative authority in national affairs at the macro level.”<sup>71</sup>

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68 The charismatic leadership is characterized by “individual subordination to the ‘wisdom’ of the leader and to party tradition. The participation is relatively passive, reactive and election-oriented.” See Emmanuel, 1993 in Heron 2008, p. 66.

69 Dunn, L., Hamilton, P., Vassell, L., and Brown Wynter, G., 2007, ‘Gender and Governance in Jamaica’, *Ja People Magazine*, 19 (2), Kingston: Planning Institute of Jamaica, p. 1.

70 Apparently, the struggle for women’s rights in Jamaica was limited to labour demands. See, Heron, 2008, p. 66; see also, Vassell, L., 1995, ‘Women of the Masses: Daphne Campbell and Left Politics in Jamaica in the 1950s’, in Shepherd, V., Brereton, B., Bailey, B. (eds.), *Engendering History: Caribbean Women in Historical Perspective*, Kingston: Ian Randle Publishers.

71 Bailey, 2011, p. 11.

#### 4.5.2 Gender-based violence against women in contemporary Jamaica

*“Jamaica is a society where everybody is so angry at each other: the mother is upset with the child’s father because there is no communication, no relationship to pass it on to the child. This is going to pose problems.”*<sup>72</sup>

This is how a Jamaican civil servant depicts relations between and among women and men in Jamaica: dysfunctional and hostile. From the outset, it needs to be mentioned that colonial impositions and socialization into violence, the junction of conflicting African-European ideologies, the constant reorganization of living conditions generated contradictions and tensions in Jamaican society that have not been resolved to date.<sup>73</sup> In Barriteau’s words, it led to “subsequent psychic and material burdens for women and men”.<sup>74</sup> The current patterns of conduct where the construction of gender identities and violence interlock are indicative of this societal tension, which surfaces through inequalities.

The Caribbean Human Development Report 2012 reveals a loss in gender equality achievements in Jamaica by 44.5%, which is higher than the Latin America and Caribbean (LAC) average.<sup>75</sup> Bailey explains that the downfall of gender equality efforts is caused by constraints deriving from the economic, political and cultural environments in the Caribbean, and in Jamaica in particular. The macro-economic climate marked by globalization, neoliberal ideologies and trade, financial policies and the post-Beijing shift of international funding is used by an economically weak State to justify the reduced attention to women on the political agenda.<sup>76</sup> This occurs against the backdrop of a cultural climate founded on hegemonic masculinities, entrenched dichotomies and resultant unequal relations of power between women and men. The high levels of gender-based violence against women, particularly sexual violence, are a strong expression of this cultural climate.<sup>77</sup> The CEDAW Committee reiterated in the Concluding Observation on Jamaica of 2012 its previous concerns expressed in 2001 and 2006 about “the persistence of stereotypes and adverse cultural norms and traditional practices concerning the roles and identities of women and men in the family and in society, which undermine women’s social status and hamper their equal participation in all avenues of life.”<sup>78</sup> It further emphasises that “gender-

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72 Author’s interview at the Bureau of Women’s Affairs, March 25, 2011, high-level governmental official.

73 Beckles, 1999, p. 2.

74 Barriteau, 2001, p. 37.

75 UNDP, 2012, p. 18.

76 Bailey, 2011, pp. 11-12.

77 Ibid., p. 10.

78 CEDAW CO Jamaica, 2012, para. 17.

based violence is reportedly widespread and underreported owing to prevalent social and cultural factors.”<sup>79</sup>

In Jamaica, masculinity is associated with control over women, as many as possible, and such control is manifested through sexual activity. As Antrobus says, “[y]oung men in particular are constantly ‘proving’ their masculinity through sexual activity, ‘intercourse as status rather than intimacy’.”<sup>80</sup> Such constructions of masculinity, and assumptions and expectations of male behaviour not only lead to the objectification of women and dysfunctional relationships, but also to men’s vulnerability: they exercise an exaggerated homophobia “which actually plays into the fears of males about their identities.”<sup>81</sup> As proof of manhood, men, predominantly adolescent and young males, engage in high-risk sexual behaviour. “... for young men, gender stereotyping manifests in direct relation to their peers/crews through a strong social influence to adopt certain competitive and negative rules and sexual behaviour.”<sup>82</sup> Men wield considerable power over decisions surrounding sex and often coerce women into having unprotected intercourse. As a result of such male conduct, women are socialized to tolerate violence, especially aggression within the family and sexual harassment. The normalization of gender-based violence against women, characteristic not only of Jamaica, but also of the wider context of Caribbean societies, is acknowledged by Justice Barrow in the *Martinus Francois v Attorney General (AG) of St. Lucia* case:

*“Domestic violence is a scourge. It is a major source of violence in our societies. It is part of the bedrock on which rests the subjugation and servitude of women. The pervasiveness and social acceptance of violence against women point to the fact that such violence is the norm rather than the aberration in our societies.”*<sup>83</sup>

The statistics across the Caribbean for sexual violence rates, rape in particular, are high. The UNODC and World Bank (2007), drawing on United Nations crime trend data for various years, show that 3 of the top 10 recorded rape rates occur in the Caribbean.<sup>84</sup> However, these numbers might not reveal the full picture, as much of this violence goes unreported.

The following Tables 1 and 2 show the data on violence against women available in 2011 at the Jamaica Constabulary Force.

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79 Ibid., para. 21(a).

80 Antrobus, 2009, pp. 8-9.

81 Antrobus, 2009, p. 8.

82 Common Country Assessment Report under UN Development Assistance Framework for Jamaica for the period 2006-2010, p. 75.

83 HC of St. Lucia, *Martinus Franchoise v AG of St. Lucia*, May 24, 2001, in Robinson, 2004, pp. 10-11.

84 UNDP, 2012, p. 26.



**Table 1. Violent Crimes Against Females for the Years 2001-2010, Jamaica<sup>85</sup>**

Crimes	2001		2002		2003		2004		2005	
	Total	Females	Total	Females	Total	Females	Total	Females	Total	Females
<b>Murder</b>	1139	109	1045	124	975	87	1471	141	1674	188
<b>Shooting</b>	1183	123	1270	149	1145	125	1675	197	1646	154
<b>Rape</b>	912	912	875	875	931	931	860	860	746	746
<b>Carnal Abuse</b>	306	306	270	270	377	377	409	409	346	346
<b>Incest</b>	40	40	35	35	27	27	42	42	19	19
<b>Assault</b>	4213	2194	3931	1983	4052	2185	4224	2269	4107	2100
<b>Wounding</b>	4716	1415	4289	1331	4091	1226	4149	1348	3927	1167
<b>Total</b>	<b>12509</b>	<b>5099</b>	<b>11715</b>	<b>4767</b>	<b>11598</b>	<b>4958</b>	<b>12830</b>	<b>5266</b>	<b>12465</b>	<b>4720</b>

Crimes	2006		2007		2008		2009		2010	
	Total	Females	Total	Females	Total	Females	Total	Females	Total	Females
<b>Murder</b>	1340	152	1583	151	1618	165	1682	161	1430	144
<b>Shooting</b>	1341	110	1448	126	1528	151	1664	161	1497	152
<b>Rape</b>	708	708	712	712	849	849	695	695	668	668
<b>Carnal Abuse</b>	434	434	509	509	610	610	578	578	538	538
<b>Incest</b>	30	30	35	35	45	45	N/A	N/A	N/A	N/A
<b>Assault</b>	2566	1334	4468	2285	4623	2615	N/A	N/A	N/A	N/A
<b>Wounding</b>	2359	673	4113	1129	4143	1315	N/A	N/A	N/A	N/A
<b>Total</b>	<b>8778</b>	<b>3441</b>	<b>12868</b>	<b>4947</b>	<b>13416</b>	<b>5750</b>	<b>4619</b>	<b>1595</b>	<b>4133</b>	<b>1502</b>

**Table 2. Domestic-Related Murders Against Females for the Years 2000-2006, Jamaica<sup>86</sup>**

Years	Total Murder	Domestic Related	Domestic Related Murders against Female
<b>2000</b>	887	294	47
<b>2001</b>	1139	231	48
<b>2002</b>	1045	290	55
<b>2003</b>	975	331	41
<b>2004</b>	1471	315	59
<b>2005</b>	1674	49	18
<b>2006</b>	1340		28

85 Jamaica Constabulary Force (JCF), Statistics Information Management Unit, Data available at and provided on June 7, 2011 at the request of the researcher; Note to Figure 1, as provided by JCF: Domestic-Related Murders reduced dramatically in 2005 because the motives were reclassified; data on Incest, Assaults and Wounding for 2009 to 2010 are not available at this time.

86 JCF, Statistics Information Management Unit, Data available at and provided on June 7, 2011 at the request of the researcher.

In 2008 the Jamaica Constabulary Force received the highest numbers of reported rapes – 849, an increase from 2007. Also in 2008, there were 4,149 reports of domestic wounding and 4,568 reports of domestic assault – 200 more than the previous year. This number of rapes fell in 2009 and 2010 to 695 and 668 respectively. In 2006, of the 1,340 murders reported across Jamaica, 28 were domestic-related. By the end of 2006, the police tallied 61 domestic-related murders which were investigated – 12 more than the year before.<sup>87</sup> Yet, the clearance rates for cases, hence convictions, are low. For Jamaica, during the period 1970 to 2009, the average clearance rate for cases of rape and carnal abuse was 48%. It declined from 62% in 1970, decreased to 35% in 1995, and then went up to 50% in 2009.<sup>88</sup> This disparity between the rate of violent incidents and the rate at which they are solved is indicative of a climate of impunity for gender-based violence against women. This lack of protection has so far resulted in a sentiment of mistrust in the authorities and a discouragement for victims and for citizens at large; it has also created a space in which the police and, overall, the judicial system, appear to further contribute to a culture of violence.

Often, women who are subjected to violence and abuse are economically dependent on men, disempowered and socially vulnerable. In many cases, low levels of education and skills, large families and a perceived inability to access resources result in an inescapable cycle of abuse. Moreover, the tolerance of violence renders gender-based violence an accepted practice rather than a crime.<sup>89</sup> The Common Country Assessment for Jamaica prepared by the United Nations Country Team and the Government of Jamaica for the period 2006-2010 confirms that women operate within a space of unconcealed gender inequalities, limited access to “social power” and economic dependency on men.<sup>90</sup>

This power imbalance seems to be entrenched in the Jamaican cultural psyche, as evidenced by several popular culture references. Representations of women and men in Jamaica’s popular music genre, the dancehall, reinforce expectations of women’s adherence to the ascribed codes of patriarchy, glorify the masculine dominance over and entitlements to women’s and girls’ bodies, and supports a discourse of violence, including gender-based violence.<sup>91</sup> The Caribbean Court of Justice Judge, the Hon. Mme. Justice Désirée Bernard, points out:

87 This is the available data provided by JCF, Statistics Information Management Unit, on June 7, 2011.

88 UNDP, 2012, p. 26.

89 United Nations Country Team and the Government of Jamaica, ‘United Nations Common Country Assessment for Jamaica, 2006-2010’, p. 76, available at [http://www.jm.undp.org/files/CCA-Jamaica\\_3-final-unct.pdf](http://www.jm.undp.org/files/CCA-Jamaica_3-final-unct.pdf), last accessed October 31, 2012.

90 United Nations Country Team and the Government of Jamaica, ‘United Nations Common Country Assessment for Jamaica, 2006-2010’, p. 75. See also Tafari-Ama, 2008, pp. 51-76.

91 See Hope, 2010, who discusses the hegemonic Jamaican masculinity within the dancehall culture.

*“Women in the main are ambivalent about violence perpetrated by family members. Apart from the private nature of such violence, many women suffer from feelings of guilt believing that they deserve the beatings because of some wrong committed by them. Others refrain from speaking out about the violence because of fear of further abuse or shame and embarrassment, threats of financial deprivation or lack of options. In marital and common law relationships wives convince themselves that their vows or conjugal duties include occasional corporal punishment from their spouses or partners, as frequently glorified in calypsos and dance hall music.”*<sup>92</sup>

It is within such a context that gender-based violence against women in Jamaica continues to prevail. Much of the female suffering goes unreported, young women and girls being “the silent victims of most major crimes in Jamaica”.<sup>93</sup>

#### **4.6 CONCLUSION: AN OVERVIEW OF THE CARIBBEAN FRAMEWORK FOR THE ELIMINATION OF GENDER-BASED VIOLENCE AND THE PROMOTION OF EQUALITY**

Responses to the alarming situation of gender-based violence against women have been abundant in Jamaica and in the Caribbean at large. Robinson stats that “[t]here is no single issue on which there has been greater feminist engagement with the state in the Caribbean region in recent times than violence against women.”<sup>94</sup> As a result, women’s inequality has been addressed in the context of an international and regional impetus to legislative reform and the promotion of women’s rights.

Current institutional frameworks related to gender-based violence against women and the promotion of equality in Jamaica are embedded in international and regional conventions, agreements and programmes. The CEDAW, the Inter-American

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Hope notes that dancehall performances mirror the gender codes inscribed in Jamaica’s classed and gendered hierarchies, which encourage a macho type of masculinity. Hope, D.P., 2010, *Man Vibes. Masculinities in the Jamaican Dancehall*, Kingston: Ian Randle Publishers; In *Inna di Dancehall*, Hope argues that the dancehall culture reflects the patriarchal arrangements in the Jamaican society and positions dancehall “actors” within the scope of patriarchy. Hope, D.P., 2006, *Inna di Dancehall. Popular Culture and the Politics of Identity in Jamaica*, University of the West Indies Press; For a different standpoint, see the work of Cooper, who argues that the dancehall culture provides a space for free female expressions and women’s empowerment. See for example, Cooper, C., 2004, *Sounds Clash. Jamaican Dancehall Culture from Lady Saw to Dancehall Queen*, Palgrave Macmillian.

92 Hon. Mme. Justice Bernard, D., O.R., C.C.H. Judge of the Caribbean Court of Justice, ‘Confronting Gender-Based Violence in the Caribbean’, available at <http://www.caribbeancourtofjustice.org/papersandarticles/07-Confronting%20Gender-Based%20Violence%20%2029%2011%2006.pdf>, p. 3, last accessed October 15, 2012.

93 See United Nations Country Team and the Government of Jamaica, ‘United Nations Common Country Assessment for Jamaica, 2006-2010’, p. 75.

94 Robinson, 2004, p. 4.

Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) and the Commonwealth Plan of Action for Gender Equality 2005 create the framework for the elimination of violence and discrimination, and the setting for gender equality programmes to realise human rights for women.

Women's desks and bureaus have been established throughout the Caribbean. The first Women's Desk was established by the Government of Jamaica in 1972, and was elevated to Bureau status in 1975.<sup>95</sup> In the 1990s, the Caribbean region experienced a momentum of legislative initiatives to advance the rights of women. The CARICOM model legislation was developed in the late 1980s to address women's inequality in the form of domestic violence, sexual offences and sexual harassment. International organizations, such as the United Nations Development Fund for Women (UNIFEM, currently UN Women) and the United Nations Population Fund (UNFPA) have been instrumental in supporting these efforts for ensuring equality and the realisation of women's rights in the region and in Jamaica. The academic community from the three campuses of the University of the West Indies responded to this women's human rights momentum with the creation of Institutes of Gender and Development Studies.<sup>96</sup> A comprehensive review of legislation has been undertaken at the national level by the Jamaican Bureau of Women's Affairs. This review would cover 42 Acts of Parliament, which are discriminatory and/or archaic in some of their provisions. Some of these laws portray women as inherently subordinate, or prone to imprudence or impiety. Some create gender-based disparities in parental rights and responsibilities. A few, while not in themselves discriminatory, may create potential hardships for women or fail to give sufficiently strong protection to women's needs and interests.

However, as promising as it was, the impetus of the 1980s and 1990s in the region and in Jamaica faded in the post-Beijing period.<sup>97</sup> Despite those efforts to advance gender equality and the realisation of women's human rights, inequality and gender-based violence persist. The question remains, are the actors with the capacity to respond taking enough action to change social and cultural behaviour and remedy the situation of gender-based violence against women?

To conclude, this chapter has engaged with historical perspectives in order to provide a wider picture of the gender constructions and violence perpetrated against women in Jamaica. Against the historical backdrop, it is evident that inequalities and violence

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95 For more on the Jamaica Bureau of Women's Affairs and the legal and policy framework in Jamaica, see Chapter 6.

96 Bailey, 2011, pp. 2-6.

97 Post-Beijing refers to the period after the Fourth World Conference on Women held in Beijing in 1995.

constitute a long continuum that shapes the contemporary socio-cultural environment in Jamaica. They intertwine with “the fabric of everyday life” to create what is in effect a structural barrier to gender equality.<sup>98</sup> Within this context, the “*aberration*” of gender-based violence against women passes easily undetected.

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98 Thomas, 2011, p. 10; see also, Harrison, F., 1997, ‘The Gendered Politics and Violence of Structural Adjustment: A View from Jamaica’, in *Situated Lives: Gender and Culture in Everyday Life*, Lamphere, L., Ragone, H., and Zavella, P. (eds.), New York: Routledge.



## METHODOLOGY





## CHAPTER 5

# UNVEILING THE RESEARCH – METHODOLOGY

*“Law and society research typically proceeds ... informed and evolving through experiences in the field and engagement with the data.”<sup>1</sup>*

Halliday and Schmidt

### 5.1 INTRODUCTION

The approach taken in this research is socio-legal. Given its aim, to provide a thorough and holistic understanding of putting Article 5(a) into practice at the country level, the research was geared towards a qualitative, in-depth exploration of the reality of putting Article 5(a) into practice. I therefore combined theoretical desk research, which I carried out mainly in the Netherlands, with qualitative and exploratory research, which I conducted in the concrete setting of Jamaica. In this setting, I explored the possibilities and difficulties of bringing about social and cultural transformation conducive to the realisation of women’s right to be free from gender-based violence. I first conducted preliminary research in Jamaica for six weeks from November to December 2009 with the purpose to map out the ground and prepare for the subsequent field research period. During a period of eight months and two weeks,<sup>2</sup> starting in December 2010 until August 2011, I immersed myself in the Jamaican realities and engaged in extensive collection and generation of data.<sup>3</sup>

In the present chapter I explain the concrete strategies employed during my field research in Jamaica. These data form the basis of the analysis and discussion presented in subsequent chapters. By unveiling details of the empirical methods used in this research, I intend to demystify a “cryptic” process that is still approached with reluctance in legal research and to justify my choice of an interdisciplinary approach employing qualitative methods. In this chapter I first explain the rationale

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1 Halliday, S. and Schmidt, P., 2009, *Conducting Law and Society Research. Reflections on Methods and Practices*, Cambridge Studies in Law and Society, Cambridge University Press, p. 4.

2 The second field research was initially planned for a period of six months, which was extended by two months and two weeks.

3 In addition to the term data collection, I subscribe to Mason’s use of the term “data generation” as intended “to encapsulate the much wider range of relationships between researcher, social world, and data which qualitative research spans. ... the researcher is seen as actively constructing knowledge about that world according to certain principles and using certain methods derived from, or which express, their epistemological position.” See Mason, 2002, p. 52.

for this approach to what is mostly considered a legal issue – the implementation of an internationally agreed upon human rights standard, and for opting for the case study approach. Next, the details of the research protocol that supported the use of qualitative methods and the access to data sources are presented. I clarify the ways in which I employed the methods of data collection: interviews, focus group discussions, observations, one questionnaire and the ways in which I subsequently managed and analysed the data. Next, I give an account of the ins and outs of doing fieldwork, the peaks and troughs that I encountered, and I conclude with an acknowledgement of the limitations that may have impacted the research process.

## 5.2 QUALITATIVE APPROACH TO A LEGAL ISSUE: CROSSING DISCIPLINARY BOUNDARIES

Putting Article 5(a) into practice to bring about social and cultural transformation is as much a social process as it is legal. As discussed in Chapter 3, in any national context it is in the social spaces<sup>4</sup> that human rights emerge and are put in practice;<sup>5</sup> all the more, it is the mentalities and consciousness of people in their everyday life that are, in essence, addressed by the social and cultural transformation as provided in Article 5(a).<sup>6</sup> Researching the implementation of this Article is as much a theoretical endeavour of human rights *in the books* as it is a study of unfolding lived realities of people. Epistemological premises of this research are in line with Flood's position that "Law ... is situated at the intersection of life and theory ... Without interaction scientific description of our world will be lifeless and most probably incorrect."<sup>7</sup> I therefore designed this research as interdisciplinary and contextual – to involve the social realities of a particular locality, to engage with and apply local knowledge. Given the scarcity of previous in-depth studies on putting Article 5(a) into practice, I considered it necessary to adopt an exploratory approach.<sup>8</sup> Consequently, the qualitative field research was informed by a theoretical desk study so that data are derived from both primary and secondary sources.

The *a priori* desk study<sup>9</sup> of the meaning and content of Article 5(a) and of the CEDAW Concluding Observations from 1994 up to 2010<sup>10</sup> guided the choice of the qualitative

4 Donnelly, 2003, p. 34.

5 Goodale, 2007, p. 17.

6 Merry, 2006, p. 3.

7 Flood, 2005, pp. 35 and 37.

8 See Eijkman, 2007; Muller, P., 2010, *Scattered Families. Transnational Family Life of Afghan Refugees in the Netherlands in the Light of the Human Rights-Based Protection of the Family*, Antwerp, Oxford and Portland: Intersentia and School of Human Rights Research, Volume 39.

9 This theoretical desk study was conducted mainly in the Netherlands and it was prior to the field research conducted in Jamaica.

10 I reviewed the Concluding Observations that the CEDAW Committee issued during the period

methodological approach, the preparation of field research instruments, the choice of respondents and the coding and analysis of the data. A qualitative approach was considered appropriate and chosen for conducting this research “[b]ecause of its attention to detail, complexity and contextuality”<sup>11</sup> and its ability to closely engage the researcher with local realities. In the context of this research, the approach used allowed me to reveal concrete processes and mechanisms conducive to putting Article 5(a) into practice.<sup>12</sup> For that reason, the legal issue of putting Article 5(a) into practice was investigated through field research lenses from which theoretical conclusions are derived based on actual realities of duty bearers, vernacularisers and rights holders.<sup>13</sup> My direct interaction with local experiences of legal norms, inequalities, violence, and with local knowledge<sup>14</sup> of the necessary change required to ensure women’s right to be free from gender-based violence under Article 5(a) provided for a firm, legitimate ground for the solutions, recommendations and theories generated by this research and presented in this book.<sup>15</sup>

### 5.3 A CASE STUDY RESEARCH

The national context of Jamaica was taken as the field site serving as the general unit of analysis for this research. Applying the case study method suits the intention of this research to offer a thorough and holistic understanding of putting Article 5(a) into practice at country level. This method offers in-depth analysis because “[o]ne of the primary virtues of the case study method is in depth ... detail, richness, completeness, wholeness, or the degree of variance in an outcome that is accounted for by an explanation. ... Case studies are thus rightly identified with ‘holistic’ analysis.”<sup>16</sup> A model for putting Article 5(a) into practice constructed from the case study research

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between 1994, when the documents became available on the CEDAW Committee’s website, and 2010, when I started extensive data collection and generation in Jamaica. My review focused on those Concluding Observations related to sex roles, gender stereotyping and cultural practices and violence against women. After the field research period in Jamaica I focused on the CEDAW session of July 2012 when Jamaica reported to the Committee, and on the Concluding Observations on Jamaica issued thereafter.

11 Mason, 2009, p. 175.

12 Yin, R.K., 1993, *Applications of Case Study Research*, Newbury-London-New Delhi: Sage Publications, Applied Social Research Methods Series, Volume 34, p. 5.

13 In his work ‘Socio-Legal Ethnography’, Flood argues that “law is constituted by everyday concerns” and therefore fieldwork is key. Flood, 2005, p. 37.

14 See Nabudere ‘Towards and Africology of Knowledge Production and African Regeneration’ [year of publication unavailable], available at [http://store.blackherbals.com/Africology\\_and\\_Renewal.pdf](http://store.blackherbals.com/Africology_and_Renewal.pdf) for an understanding of local communities as knowledge sites. In the production of knowledge, understanding is arrived at through dialogue and communication between the researcher and those “who know”, the locals as custodians of knowledge, pp. 24 and 32.

15 See Flood, 2005; Yin, 1993.

16 Gerring, 2007, p. 49.

in Jamaica serves the goal to “identify the variety of causal patterns that can lead to the outcome of interest and determine the conditions under which the patterns occur.”<sup>17</sup>

Furthermore, the case study method entails “an intensive study of a single unit ... for the purpose of understanding a larger class of similar units (a population of cases).”<sup>18</sup> Therefore, the model for putting Article 5(a) into practice that is built up in this research from understandings gained from field research has the potential to be applied to other similar contexts.<sup>19</sup> Within the case study, the concern of qualitative research with “how and why social phenomena or processes happen in particular circumstances and particular ways can certainly support predictive ideas about how those things might vary in different contexts.”<sup>20</sup> By exploring Jamaica’s social, cultural, legal and historical specificities, and determining a model for putting Article 5(a) into practice, it may be possible to extrapolate the results of this case study research to other countries.

In order to study the process of implementing Article 5(a) within the national setting of Jamaica, three levels of analysis are included: the State level or the duty bearers, the civil society organizations level or the vernacularisers/translators of norms and rights, and the rights holders level.<sup>21</sup> As a consequence, the field research in Jamaica has been premised on a three-tiered approach, as follows: i) the international law approach to norm diffusion at the State level; this allows an examination of the extent to which the State is aware of, understands and has adopted and implements measures of social and cultural transformation required by Article 5(a); ii) the vernacularisation approach at civil society level; this allows an examination of the extent to which civil society actors are aware of, understand and act independently and/or in collaboration with the governmental branches of the State in translating the norms of social and cultural transformation; iii) the rights-holders approach; this allows an examination of the extent to which norms of social and cultural transformation are drilled down to individuals, and that they know about and benefit from the measures in place. Using complex analysis within and across these three levels within the larger unit

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17 According to George and Bennett, it is not within the purpose of case study research to offer findings of “*how frequently each type of causal pattern appears in the universe of cases of that phenomenon.*” On the contrary, “*typological theories can be constructed without identifying a representative sample of cases.*” George and Bennett, 2004, pp. 243-244.

18 Gerring, 2007, p. 37.

19 Yin, 1993, p. 5.

20 Mason, 2009, p. 175.

21 The three levels of analysis undertaken and the concept of vernacularisation are discussed at length in the theoretical Chapter 3.

of analysis-Jamaica, this country represents an instance of putting Article 5(a) into practice.<sup>22</sup>

#### 5.4 FIELD RESEARCH PROTOCOL

To answer the main research question of this study inquiring into *the manner in which Article 5(a) can be put into practice in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women*, I anchored my data collection and generation activities in an inquiry protocol structured along the main epistemological underpinnings of the research: *consciousness and understanding* of a necessary, and internationally required change of those social and cultural patterns of conduct that are at the root of gender-based violence against women; *action, measures and strategies* to transform these social and cultural patterns of conduct; *factors* facilitating and/or impeding the putting into practice of measures and actions geared towards bringing about such social and cultural transformation; *gaps* in the process of implementing these measures and actions, and further necessary action to ultimately achieve the *implementation of Article 5(a) in Jamaica*.

The review of CEDAW Concluding Observations identified as necessary elements in the implementation of Article 5(a) the *awareness* of social and cultural issues related to gender-based violence and taking up *action, measures and strategies*,<sup>23</sup> mainly by the government departments in collaboration with a variety of stakeholders. I chose to additionally focus on *factors* that affect putting this Article into practice, and *gaps* in its implementation because they emerged as those missing aspects that are key to understanding *Article 5(a) being put into practice*.<sup>24</sup> Moreover, as mentioned in section 5.3 of this Chapter, I went beyond the investigation of these themes at the level of the State as the main actor in the implementation of CEDAW, to study them at civil society level and the rights holders level. I explored each of the themes in-depth through sets of questions, both open – allowing the emergence of information, and focused – probing for specific information.

22 See Yin, 1993.

23 See also Wilson, R.A., 2006, 'Afterword to "Anthropology and Human Rights in a New Key": The Social Life of Human Rights', *American Anthropologist*, 108 (1), 77-83; Wilson, in his critique of the human rights status quo points to the fact that the human rights framework is not sufficiently elaborated. See Wilson, 2006, p. 78. He proposes an empirical study of the social life of human rights as a necessary remedy for the deficiencies in the existing framework. He argues that a study of the social life of human rights involves, *inter alia*, examining the social mobilization of elite and non-elite social actors.

24 Chapter 3 discusses in detail the conceptual underpinnings of the choice of this approach.

The research protocol was therefore organized in five main parts:<sup>25</sup>

- 1) The aspects discussed in the *consciousness and understanding* theme tapped respondents' personal perspectives on the social and cultural reproduction of gender identities in Jamaica; whether, and the manner in which gender identities affect relations between and among women and men; the interface between such gender constructions and violence against women, as well as the problem of gender-based violence against women in Jamaica and its root causes. The inquiry schedule was subsequently geared towards respondents' understandings of the obligations to reduce gender-based violence against women in Jamaica and, in that regard, awareness of the necessity to change adverse social and cultural patterns of conduct, norms, ideologies and attitudes. The awareness and understanding section was kept standard for each level of inquiry.
- 2) The second theme, *action, measures and strategies*, was crafted to explore whether any measures, actions or initiatives had been taken to address the issues previously discussed as well as the mechanisms and strategies pursued to operationalize these measures, actions and initiatives. This section was nuanced depending on the level of inquiry and the agency, department or organization investigated. It was not assumed that actions and mobilization initiatives to implement Article 5(a) would be limited to those recommended by the CEDAW Committee in the reviewed Concluding Observations, and in particular in the Concluding Observations for Jamaica. Generally, questioning was open-ended to allow the emergence of the full range of possibilities. In that way, any kind of action taken and mobilization initiated or the absence of actions and mobilization, for that matter, became visible. Questions referring to the particular measures and actions recommended by the CEDAW Committee in Concluding Observations were used as probing tools only when it was absolutely necessary.<sup>26</sup>

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25 The research protocol also comprised of a standard introductory section, which allowed for the creation of a profile of the respondent population and also facilitated the rapport essential for "establishing collaborative climate" with the respondents. See Woodhouse, P., 2007, 'People as Informants' in Thomas and Mohan (eds.), *Research Skills for Policy and Development: How to Find Out Fast*, Sage Publications, pp. 159-179, p. 131. After explaining the purpose of the inquiry, the questions covered respondents' professional position and years of experience in that respective position and at the institution they worked for, previous professional experience, their age range, and their educational background.

26 Inquiry into the mobilization processes (mechanisms and strategies) to put into practice the identified actions was guided through questions about: the incentive for undertaking the respective action and the extent to which CEDAW norms and/or the CEDAW Concluding Observations for Jamaica triggered, in any way, the actions taken; the actors involved in taking the action and the collaboration between these actors; the target groups for the identified actions; outreach activities to rights holders; the initiation time for the respective action and its life span; follow-up activities; and evaluation and monitoring. These were all aspects covered to understand any connection between the actions taken and the CEDAW demands. Questions were also crafted to cover the country reporting to the CEDAW Committee and the dissemination of the Concluding Observations in Jamaica after the "constructive

- 3) The third theme investigated the *factors* accounting for the implementation of actions, where actions had indeed been taken. The questions allowed for both facilitating and impeding factors to come to the surface.
- 4) The fourth theme addressed existing *gaps* in the action-taking activities.
- 5) The research protocol concluded by making specific inquiries into *feasible ways in Jamaica to put Article 5(a) into practice*. The questions were designed to solicit respondents' ideas about concrete steps they considered necessary and appropriate to be taken within the Jamaican context in order that social and cultural patterns of conduct, at the root of gender-based violence against women can be modified.

Crafting the protocol drew on an extensive review of the literature on doing fieldwork, qualitative researching, interviewing and specific training in field research methods.<sup>27</sup> At the University of the West Indies in Jamaica, I engaged in discussions with academics with long-standing experience in qualitative research and fieldwork,

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dialogue" with the Committee in New York or Geneva; the actors involved in this CEDAW process; the subsequent use of the CEDAW Concluding Observations; the Optional Protocol to the CEDAW Convention and ultimately the value of CEDAW within the domestic setting of Jamaica.

- 27 To name some of the relevant studies reviewed, Mason, J., 2009, *Qualitative Researching*, Sage Publications, 2<sup>nd</sup> edition; Kvale, S. and Brinkmann, S., 2009, *Interviews: Learning the Craft of Qualitative Research Interviewing*, Los Angeles: Sage, 2<sup>nd</sup> edition; Moncrieffe, J., 2009, 'Negotiating Children's Social Contexts in Jamaica: Ethics, Practicalities and Research Methods', *IDS Bulletin*, 40 (3), Institute of Development Studies, Oxford: Blackwell Publishing Ltd; Woodhouse, P., 2007, 'People as Informants' in Thomas and Mohan (eds.), *Research Skills for Policy and Development: How to Find Out Fast*, Sage Publications, pp. 159-179; Gerring, J., 2007, *Case Study Research, Principles and Practices*, Cambridge: Cambridge University Press; Wilson, R.A., 2006, 'Afterword to "Anthropology and Human Rights in a New Key": The Social Life of Human Rights', *American Anthropologist*, 108 (1), 77-83; Madison, S., 2005, *Critical Ethnography, Methods, Ethics and Performance*, Sage Publications; Ellsberg, M. and Heise, L., 2005, *Researching Violence against Women: A Practical Guide for Researchers and Activists*, World Health Organization (WHO) and the Program for Appropriate Technology in Health (PATH), available at <http://www.oath.org/publications/>; George, A.L. and Bennett, A., 2004, *Case Studies and Theory Development in the Social Sciences*, BCSIA Studies in International Security, the MIT Press; O'Leary, 2004, *The Essential Guide to Doing Research*, London: Thousands Oaks/New Delhi: Sage Publications; Laws, Harper and Marcus, 2003, 'Choosing Methods' in *Research for Development, A Practical Guide*, London: Thousands Oaks/New Delhi: Sage Publications; Cronin, A., 2002, 'Focus Group' in Gilbert, N., (ed.), *Researching Social Life*, Sage Publications, 2<sup>nd</sup> edition, pp. 164-177; Herbert, S., 2000, 'For Ethnography' in *Progress in Human Geography*, 24 (4), pp. 550-568; Frith, H., 2000, 'Focusing on Sex: Using Focus Groups in Sex Research' in *Sexualities*, Sage Publications, 3(3), pp. 275-279, available at <http://sexualities.sagepub.com>; Levy, H. and Chavannes, B., 1996 (revised 2001), *They Cry 'Respect'! Urban Violence and Poverty in Jamaica*, Centre for Population and Social Change, Department of Sociology and Social Work, University of the West Indies, Mona, Kingston; Ambert, A., Adler, P.A., Adler, P., Detzner, D.F., 1995, 'Understanding and Evaluating Qualitative Research' *Journal of Marriage and Family*, 57 (4), 879-893; Weiss, R.S., 1994, *Learning from Strangers. The Art and Method of Qualitative Interview Studies*, New York, Free Press; Yin, R.K., 1993, *Applications of Case Study Research*, Newbury-London-New Delhi: Sage Publications, Applied Social Research Methods Series, Volume 34.

which assisted me in assessing the feasibility of my field research instrument and in meticulously planning and refining the questions for data collection. This represented my springboard into the field and thus into the real life represented by the data. The next step in that regard was to pilot test the data collection instrument through interviews with two respondents from different institutions to inform any adjustments that would render the instrument more suitable for the targeted respondents.

The inquiry instrument consisted of approximately eighty-seven (87) open-ended and probing questions – a generous tool which ensured a focused yet open exploration of the research issues by means of triangulating various data collection methods on various data sources.<sup>28</sup> Corroborating multiple research methods to investigate multiple perspectives and interests on the specific issues of the research ensured not only a depth of understanding but also checks of the “validity and trustworthiness of ... findings”.<sup>29</sup> That is because “multiple informants and multiple methods of data gathering or triangulation within a same study are themselves recursive checks against the validity of the researcher’s interpretations.”<sup>30</sup>

I made use of this protocol at all levels of inquiry, adapting it according to the mandate and the functioning of each stakeholder, the respondent’s position and the method of data collection used. Probing, follow-up questions geared these variations. The standardized, open-ended nature of most of the questions allowed an assessment of the consistency between answers within the same level of inquiry and across levels of inquiry. The data were thus easily comparable and patterns, similarities and divergences between responses were derived. The focused questions allowed the identification of specificities across and within inquiry levels, which are discussed in subsequent chapters.

## 5.5 RESEARCH METHODS AND DATA SOURCES

The main methods of data collection included semi-structured, in-depth interviews, focus group discussions, one self-administered questionnaire, and unobtrusive and participatory observations. The sampling of the respondent population was purposive. As advised in the literature “I identified ‘who is important’ to the enquiry not only by ‘what they know’ but also by ‘who and where they are’ – that is, their position in a particular social situation.”<sup>31</sup> “Those who know”<sup>32</sup> for the purpose of this research

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28 See Levy and Chavannes, 1996; Ellsberg and Heise, 2005; Yin, 1993, p. 5; See also section 5.5 of this Chapter.

29 Ellsberg and Heise, 2005, p. 55; Woodhouse, 2007, p. 131.

30 Ambert, Adler, P.A, Adler, P., Detzner, 1995, p. 884.

31 Woodhouse, 2007, p. 161.

32 Woodhouse, 2007, p. 165.



were Government officials or the duty bearers, the civil society organizations level or the vernacularisers/translators of norms and rights, and common individuals or the rights holders.

### 5.5.1 Interview data

Semi-structured, in-depth interviewing represented the primary method of data collection at the governmental and civil society levels of inquiry. Interviews allow for the “exploration of ideas and interpretation of what people say”.<sup>33</sup> This was therefore used as the means of soliciting information on views about ways to reduce gender-based violence against women in Jamaica and the connected necessity of social and cultural change, as well as on initiatives and mobilization undertaken in that regard. Interviews therefore allowed for tapping understandings based on professional experience, hence drawing on the expert knowledge of key respondents situated in key positions in critical government entities within the Jamaican civil society milieu.<sup>34</sup> Although they had a semi-structured format, the interviews took a conversational tone in order to facilitate a flowing discussion and to encourage respondents’ cooperation.

#### *State level of inquiry*

The purpose of investigation at the level of the State (which I refer to hereinafter as the Government of Jamaica) was to find out whether and in what manner the different governmental branches had taken any measures, actions or initiatives to address social and cultural root causes of gender-based violence against women in line with Article 5(a). The interview schedule zoomed in on CEDAW informed actions according to the mandate and activities of each governmental body interviewed. Based on the obligations as derived from CEDAW Concluding Observations that follow from Article 5(a), I selected those ministries, departments and agencies of the Government of Jamaica that were relevant in taking the necessary types of action.<sup>35</sup> The national machinery for women, the Jamaican Bureau of Women’s Affairs (BWA)<sup>36</sup>– the main governmental agency mandated to implement and disseminate CEDAW and the CEDAW Concluding Observations, represented the main respondent institution and a point of reference for the selection process. In addition, I checked the relevance of the respondents’ selection by tracking the ministries, departments and agencies (MDAs) that the BWA engages with in collecting data for reporting to

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33 Cronin, 2002, p. 165.

34 See Woodhouse, 2007.

35 See Chapter 2 where these obligations are detailed.

36 The Bureau of Women’s Affairs (BWA) was at the time of conducting this research a governmental agency located in the Ministry of Youth, Sports and Culture of the Government of Jamaica. BWA will be further discussed in Chapter 6.

the CEDAW Committee, in disseminating the Concluding Observations, and partners with for the development and implementation of policy, programmes and projects on women's human rights in Jamaica. I also used the *snow-ball* technique where interviewees, at my request or sometimes through voluntary information, led me to a potential respondent with relevant expertise. The sampled governmental ministries and agencies visited are listed in appendix 1. More than one department or unit were visited in some governmental entities, according to the relevance of their mandate for the research.

Expertise, decision-making power, involvement with gender issues or women's human rights and community outreach were the criteria for selecting respondents from the sampled governmental entities. Therefore, I spoke to persons in different positions and with different functions, from the upper echelons to the foot soldiers conducting the groundwork in different communities, which enabled an extensive coverage of the subject-matter. Respondents included: executive directors, heads and managers of units, research directors, policy directors and analysts, legal officers, project managers and officers, counselling staff and governmental consultants, and police officers of various ranks. A number of these respondents had the gender focal point function added on to their substantive functions.

All respondents were guaranteed anonymity. In order to preserve that, their names and the precise details of their professional position are not referred to in this book. For that reason, they were categorized in three types of governmental respondents according to the decision-making position in the governmental ladder, i.e. senior management, middle management and technical staff. Their voices are referred to in this way throughout the text in order to indicate from which governmental perspective the account is given.

Respondents working for the BWA, as the national machinery for women, were interviewed across all management levels. At the Ministry of Justice, the Ministry of National Security, which incorporates the Jamaica Constabulary Force, and at the Planning Institute of Jamaica, due to their multifaceted activities, various respondents across management levels were interviewed. In some instances, such as the Ministry of Education, due to circumstantial opportunities, interviewing attempts turned into focus groups,<sup>37</sup> which covered a variety of professional positions, from

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37 Keeping an open attitude in the field and to a certain extent letting things take their own course was definitely an advantage. The two focus group discussions I conducted at the Ministry of Education were results of serendipity. Intended as interviews with the directors of two units of the Ministry, the interactions turned into focus groups discussions – the directors' lack of time or forgetfulness about the appointment with me was compensated by offering me a discussion with the entire unit, from junior technical staff to the senior manager of the unit.

junior technical staff to the senior manager of the unit. These focus group discussions provided both perspectives across the board and diverse opinions according to the professional experience and age range in the respective units. In general, respondents were selected from the senior management pool, targeting also the add-on (the extra) “gender focal point” expertise, which was not always guaranteed.

Most interviews comprised of individual discussions. Several interviews consisted of group conversations with two to three respondents. The interviews with government respondents were generally conducted at the seat of the respective governmental institutions, hence in the Kingston and St. Andrew area. Respondents from one unit of the Jamaica Constabulary Force unit outside of the Kingston metropolitan area, in a rural parish, were also interviewed. One interview was conducted by phone. When necessary, follow-up interviews were conducted to gain more information or to complete the interview schedule; sometimes, the respondents themselves requested the follow-ups. In total, I conducted thirty-three (33) interviews at twenty-four (24) ministries, departments and agencies of the Government of Jamaica, and I interacted with forty-nine (49) governmental officials from all management levels.

#### *Civil society level of inquiry*

At the civil society level, the interview schedule was tailored to specifically examine the initiatives and strategies used by civil society actors to engage local communities/ rights holders in the process of vernacularisation/translation of women’s human rights, and the role of civil society organizations as implementing actors, with or without collaboration with the Government of Jamaica. The position of the Government vis-à-vis civil society initiatives has therefore been given special attention.

The civil society level of inquiry was comprised of non-governmental organizations (NGOs) including women’s groups, men’s groups, church groups, independent experts/consultants and activists. Academia and international organizations, i.e. NGOs and United Nations agencies, were also included in this level of respondents, as facilitators of all levels of actors. Academia cuts across the work of all groups through knowledge building and dissemination. Similarly, the sampled international organizations facilitated the work of actors at all levels by providing financial support, studies and capacity building through training. Due to the fact that these organizations were different in nature and conducted different types of activities, the selection criteria varied depending on the type of organization.

The selection of *non-governmental organizations (NGOs)* was based on a number of criteria: 1) organizations taking a women’s rights approach to their work; 2) organizations addressing gender-based violence against women in particular;

3) organizations involved in the process of reporting such as the 2006 NGO shadow report to the CEDAW Committee, organizations involved in CEDAW-related activities such as the CEDAW Steering Committee, member organizations of the umbrella women's organization AWOJA (Association of Women's Organizations of Jamaica); 4) organizations involved in the consultations for the Jamaica National Action Plan which addresses Gender-Based Violence and, specifically, organizations involved in BWA activities and programmes, i.e. UNiTE to End VAW, "Way Out" Project to implement components of the National Gender Policy. Prominence and long-standing activity in the field of women's human rights, both advocacy and grass roots, were also taken as criteria for sampling the range of organizations.

Due to the large number of religious denominations in Jamaican and the time constraints of the field research, the selection of the *church groups* was based on representativeness and influence. Therefore, the groups visited were the Jamaica Council of Churches because it represents an umbrella organization encompassing most of the religious denominations in Jamaica, and the United Theological College of the West Indies (U.T.C.) for its knowledge spreading and capacity for moulding minds through the theological training it provides.

The criteria opted for selecting *independent experts/consultants, activists, academics* were as follows:

1) well-known activities on gender issues and in promoting women's rights in Jamaica; 2) involvement in the CEDAW reporting process; 3) active participation in legal reform, in the enactment of the National Gender Policy in Jamaica and the Strategic National Action Plan on Gender-Based Violence; 4) undertaking community outreach activities. In the case of academics, the selection was made based on responsibility for or knowledge of a women's rights curriculum, especially in the law departments of the university (Faculty of Law and Norman Manley School of Law), on work on women's rights, gender equality, and/or gender-based violence against women. The independent experts, activists and academic respondents were working as independent lawyers, attached as consultants to governmental institutions or political parties, affiliated to the Faculty of Law and the Norman Manley Law School or the Institute for Gender and Development Studies of the University of the West Indies, Mona Campus.

International NGOs and UN agencies targeted as interview subjects were those instrumental in supporting the CEDAW reporting process in Jamaica, funding, commissioning and/or implementing women's human rights projects and programmes in partnership with BWA and/or women's groups.

The preliminary field research I conducted in 2009 set the stage for plunging into the exploration of Jamaican civil society work. I made most of my contacts with relevant organizations at that time. During the second field research, the BWA provided me with their list of partnering civil society organizations. Similarly, the Association of Women's Organizations in Jamaica (AWOJA) supported my search for and selection of women's organizations. The selected organizations for the study were therefore checked against the BWA list of partnering organizations and double-checked in the light of the organizations comprised under the AWOJA umbrella organization. I also used the *snow-ball* method to confirm the selection of organizations and to make it both comprehensive and feasible in the time I had available.

The civil society actors interviewed are listed in appendix 2.

Respondents within the civil society organizations were selected on the basis of their position and function in the organization. Therefore, individuals in executive positions were targeted for their in-depth knowledge of and long-standing involvement with the women's rights movement and struggle in Jamaica. Most of the times I held interviews with more than just one person in these organizations in order to gain an all-encompassing insight into the organization's activities, at both conceptual and outreach levels. Hence I sought for the perspectives of individuals involved in advocacy and grass-roots work, community mobilization, court litigation, project management and training, of those people working as connectors for outreach activities of the organizations and doing groundwork activities. Additionally, information from respondents themselves was valuable in guiding the selection of both organizations and respondents from those organizations. This was the most effortless activity, since most of the respondents volunteered information on who would be "*good to talk to*". Most of the interviewees presented themselves as "*wearing different hats*", meaning that they were involved in various roles in various organizations focusing on women's rights. This brought a broader perspective to the interview discussions.

Interviews with respondents from civil society organizations took a rather casual format: while most of the interviews were conducted at the location of the respective organization, a number of them were conducted at the home of the respondent, in New Kingston hotel lobbies, or in parks or cafeterias of the Mona campus of the University of the West Indies. All interviews at the civil society level took place in Kingston and they were conducted in person, with the exception of one interview being conducted by phone and one interview being handled via e-mail. Except for one group interview

with two respondents, all interviews were individual. In total, I selected twenty-five (25) civil society actors, and conducted thirty-three (33) interviews.<sup>38</sup>

### 5.5.2 Focus group discussions (FGDs) data

Focus group discussions (FGDs) represented the primary tool to collect data at the rights holder level. Given the exploratory nature of this research and the novelty of including the level of rights holders in the inquiry approach, the interactive<sup>39</sup> nature of focus group discussions was particularly suited for this groundwork. As observed in the literature, “focus groups are an effective method of generating hypotheses or investigating topics about which little is known.”<sup>40</sup> FGDs “can tap previously unrecognized areas of interest because participants often have the opportunity to steer discussions in directions of greatest personal concern”<sup>41</sup> allowing the emergence of unanticipated issues or interests. Due to the interaction that FGDs build on, this method “allow(s) researchers to gather diverse opinions, experiences and attitudes at the same time” which is useful to “provide fast and efficient way of obtaining a wide variety of information in a relatively short period of time.”<sup>42</sup>

#### *The rights holders' level of inquiry*

The process of conducting focus group activities was emergent and sometimes serendipitous. The interactions with *the rights holders* emerged from interviews with both civil society and governmental actors. The same themes discussed at governmental and civil society levels were explored at this level. However, the interview protocol and the language were adapted to a more colloquial format to suit the targeted participants. FGDs were used as a means of investigating the extent to and the manner in which rights holders had been exposed to the initiatives of different actors and have received and benefited from them. In other words, these discussions explored how norms, ideas and concepts of women’s human rights have been diffused, translated and appropriated *on the ground* so that rights holders can benefit from them and practice their rights. Specific questions on the knowledge, the use and the value of CEDAW provisions in daily life were discussed with all the groups. Additionally, the discussions were used to corroborate the information received during interviews at governmental and civil society levels with the perspective of rights holders. In this

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38 The interviews lasted between one hour, and one hour and thirty (30) minutes; some of them were expanded to two or even three hours.

39 See Cronin, 2002; Frith, 2000.

40 Frith, 2000, p. 227.

41 Frith, 2000, p. 278.

42 Frith, 2000, p. 278.

way, the study benefited from in-depth insights into the specifics and particularities of the ways to vernacularise CEDAW provisions and rights to individuals.

I deliberately chose rights holders groups who had been exposed to CEDAW through initiatives undertaken by the Bureau of Women’s Affairs, as the main governmental arm for the implementation of women’s rights in Jamaica, and by the Women’s Resource and Outreach Centre (WROC), as the civil society organization that stood out for its activities focused on the vernacularisation of CEDAW. WROC was the core actor in developing the instrument entitled “*Rights a di plan, wid CEDAW in wi han’: CEDAW for Jamaicans*”.<sup>43</sup>

WROC provided me with access to the group of rights holders they engage with in their activities related to CEDAW rights. The rights holders group at WROC with whom I held discussions (hereinafter the WROC groups) was comprised of both women and men. I held the discussions separately in women-only and men-only groups to ensure that participants were comfortable. The WROC women and men groups were urban groups composed of individuals of low income status coming from the inner city and garrison community areas of Kingston in which WROC carries out its activities. The women’s group consisted of eight women ranging in age from late twenties to sixties. The men’s group was composed of six men and boys with ages ranging from twelve to thirties. I held three focus group discussions with the WROC women and men groups. They were all conducted at the location of the facilitating organization.

The Bureau of Women’s Affairs gave me access to one of the groups they usually engage with – a mixed rural women-only group from a parish outside of the Kingston-St. Andrew metropolitan area, located on the North coast of the island. The group was composed of eight women of different economic backgrounds and ranging in age from late twenties to sixties. The respondent women were living across the parish. A community facilitator from the area assisted me in bringing the group together.<sup>44</sup>

The rights holders I interacted with were not representative of the socio-economic distinctions in Jamaican society. These groups were chosen on the basis of their exposure to the instances of CEDAW vernacularisation rather than being representative of rights holders of the Jamaican population. The selection of rights holders groups did not allow for distinctions based on the social factors mentioned above, although

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43 This title is in Jamaican Patois. The translation is: “Rights are the plan with CEDAW in our hand – CEDAW for Jamaicans”.

44 They introduced me to and helped me also with the protocols of such meetings: pecuniary compensation for people’s time, breaks for refreshments, catering for lunch, arranging the meeting venues, and all those details that one only knows by doing.

I am very much aware that these factors could influence the measurements taken in this study. Therefore, findings cannot be widely generalized beyond the parameters of the selected groups. The model for putting Article 5(a) into practice may thus be applicable only to these types of groups. The composition of the rights holders group was to a large extent decided by the availability of initiatives and the demographic focus of the actors undertaking these initiatives. Nonetheless, the distinctions between the groups offered the necessary material to conduct a subsequent comparative analysis between these groups.<sup>45</sup>

### 5.5.3 Observations data

Observations, both unobtrusive and participatory, served all levels of inquiry. They proved particularly useful in understanding *putting into practice* processes<sup>46</sup> and in corroborating data from interviews and focus group discussions. Attendance at and observations of different events allowed me to grasp the involvement of and the collaboration between different actors in relation to women's human rights issues. In order to understand the provision of Article 5(a) and to gain an insight into CEDAW processes "by which women's human rights are created and implemented",<sup>47</sup> I also observed CEDAW Committee sessions in July 2009 in New York and in October 2010 in Geneva.

At country level, the method of observations was used to observe the content of training programmes for government officials, civil society representatives<sup>48</sup> and rights holders.<sup>49</sup> Observations allowed me to study the extent to which the content of the training was informed by a CEDAW rights language, the manner in which CEDAW norms or women's rights were presented to the target audience, and the manner in which they were received. Observations were also used while attending NGO staff meetings, regional expert meetings, events organized by the Bureau of

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45 The respondents responded in Patois – the Jamaican Creole. This, generally, was not a barrier for me, as the moderator of the focus groups, since I understand Jamaican Patois sufficiently not to need the assistance of translators either in my activities of collecting the data, or in the analysis of the data. However, my focus group discussions activities were supported by two assistants: one WROC intern who took notes during the focus group discussions conducted in Kingston and my companion to the rural area on the North coast of Jamaica who produced video footage with the permission of the women participants in the discussions. The focus group discussions lasted between three and five hours.

46 Interview with Sally Engle Merry on the research methods employed in her book *Getting Justice and Getting Even* in Halliday and Schmidt, 2009, p. 133.

47 Merry, 2011, p. 53.

48 CUSO-VSO Jamaica Gender Workshop 'Towards a Regional Gender Strategy for Latin America and the Caribbean', held by CUSO-VSO Jamaica on March 8-10, 2011, in Kingston.

49 AVON-WROC Elimination of Gender-Based Violence Project, Community Facilitators Training Programme held by WROC between July 15-August 9, 2011, in Kingston.



Women's Affairs, such as the ones organized on the occasion of the International Day for the Elimination of Violence against Women on November 25, 2009; on the occasion of the International Women's Day on March 8, 2011 when the National Gender Policy and the implementation project "Way Out" were launched; the National Consultation on the Strategic National Action Plan on Gender-Based Violence held in February 2011, and the press launch of the UNiTE Campaign organized by BWA. Participating in events was purely an emergent process – I kept my eyes and ears open and I attended any event that appeared relevant for my study. Many times, I was invited; most of the time I would ask to be allowed to attend. Most interesting stories and some of the respondents emerged in this way.

Prior to any of my interactions with rights holders, I participated in one community transect walk and one community induction undertaken by the Social Sciences Department of the University of the West Indies in August Town – a poor and volatile inner-city community in the vicinity of the university. In this way, I familiarized myself with community settings and interactions, and also with ways to reach out to people for subsequent focus group discussions.

During the course of one month, I participated as an observer of the first phase of a Training Project on the Elimination of Gender-Based Violence focused on training community facilitators. This training represented a microcosm of the CEDAW vernacularisation process – where the concepts behind the provision of Article 5(a) and the Convention itself became part of the Jamaican vernacular of the students of the training. Observations were therefore used as a means to explore strategies and mechanisms used by the civil society actors to bring the international human rights ideas and provisions closer to individuals' understanding and to the vernacular of their daily life. It was also aimed to capture the interactions between actors, both the *translators* and the rights holders, the involvement of different actors in the process and the way individuals received these initiatives. Therefore the process and the participants, both students of the training and facilitators of the training, were observed. The training facilitators were civil society (WROC) representatives. Most of the students had participated in the focus group discussions I previously conducted. In brief, the training's student cohort presented a rich mixture of gender, economic background, area of residence (the urban area of Kingston and a rural area in the vicinity of Kingston), religion (Christians and Rastafarians), age (from early twenties to sixties), professional background (from police officers, ministers of religion, to the unemployed), marital status (single mothers, married persons, bachelors). Most importantly, they were selected for the training because of their prominence and influential capacity in their community.

I observed the training project starting with a staff meeting on the preparations of the training sessions and I continued by following each of the sessions. The trainees were exposed to intense sessions of six hours of training activities, two days per week at a location in the Downtown area of Kingston. During the sessions, I observed. I was also exposed to the training activities and to the reading, video and audio materials used during the sessions. I held informal conversations with the trainers and the participants, I joined them during lunch, I hung out with them during breaks, I cried during emotional moments, I held hands in prayer circles at the commencement and the end of every session. *Putting myself out there*, as I was told by the trainers during one break, and fully participating as an observer made me part of the process. That was particularly useful to get a thorough understanding of the processes and mechanisms of CEDAW provisions and rights vernacularisation (translation, diffusion and appropriation). The opportunity to participate in the training *came my way* during my persistent visits to WROC for interviews and focus group discussions. There was definitely a serendipitous feeling of being in the right place at the right time in that, as it had just so happened that WROC was awarded funding for this training by the United States organization AVON. Such events are outside of the researcher's power to decide and select; they seem to either occur or not, while the researcher has the power to grab the opportunity to explore or not. Being asked about the process behind the scenes of her qualitative research, Merry revealed:

*“Field work is a process where you become the research instrument. It really depends a lot on your social skills and your empathy and your willingness to listen to other people ... it does mean that you're very personally engaged in the process. You have to move outside of your comfort zone a lot.”*<sup>50</sup>

#### 5.5.4 Questionnaire data

The questionnaire represented a follow-up method to the observations of the WROC training sessions. Since time did not allow me to follow-up on the CEDAW vernacularisation by interviewing each participant in-depth (there were seventeen participants in the training), I subsequently developed a questionnaire, which was handed out among the participants at the end of the training. The questionnaire had eight questions which were used to tap participants' perceptions of the training, their understanding of the information they received, including gender relations, power and gender stereotyping, women's human rights, gender-based violence against women, the CEDAW, and the feasibility of such information for their daily life. In other words, the questionnaire corroborated the previous observations and my understandings of the process of the vernacularisation of CEDAW provisions and rights.

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50 Sally Engle Merry in exposing her experience of field researching in an interview to Halliday and Schmidt; see Halliday and Schmidt, 2009, p. 134.

## 5.6 FIELD RESEARCH LOGISTICS: DOING FIELD RESEARCH

“... research methods need to be demystified and understood as social practices, just as surely as sociolegal scholars believe that law’s claim to autonomy and superiority must be laid bare.”<sup>51</sup>

Carrying out field research represented an awakening to the intricacies of reality: the reality of the institutions I was researching – both the institution of law and its machinery, and the societal milieu; the reality of research; and my own reality. Having the right contacts,<sup>52</sup> having an open attitude to opportunities and challenges, having time at hand and enough patience to deal with the traditional Jamaican “soon come”<sup>53</sup> approach to time, and having enough financial means to support all activities that field research entails were the basic conditions that facilitated my field research endeavours.

Based on previous desk research and on tapping into local knowledge during my preliminary field trip in 2009, I identified a number of actors of interest at that time and I already started making contacts for the extensive data collection field trip in 2012-2011; however, making contacts was an ongoing process throughout the entire field research. The Institute for Gender and Development Studies (IGDS) of the University of the West Indies (UWI), Mona Campus, received me as a guest fellow and integrated me into the academic life of the Institute. I was offered a desk and access to facilities, which assisted me in conducting my research. Professors and fellow researchers I came into contact with pointed out potentially relevant institutions and respondents for my research. Even in making contacts for interview interactions, a priori and emerging processes intertwined throughout my field research activities, confirming this interplay as intrinsic to my research. I submitted the list of actors I deductively established as relevant through desk research at my home institute in the Netherlands to a reality check with my colleagues at the Jamaican Institute of Gender and Development Studies (IGDS). By further applying the *snowball* technique, my network of relevant contacts was easily updated and expanded with “*persons good to talk to*”. At my request, but most of the times on a voluntary basis, people directed me to information-rich actors. This network of contacts represented a basis from where to start my extensive data collection, which I conducted from December 2010 until August 2011.

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51 Halliday and Schmidt, 2009, p. 217.

52 Those *right* contacts were mostly facilitated by professors and colleagues at the Institute for Gender and Development Studies and by my own social network of friends and acquaintances.

53 “*Soon come*” is a common colloquial Jamaican expression meaning an undetermined period of time, which could last from minutes to hours.

The main method of contacting and appointment making was arranged via phone calls. On some occasions, I sent e-mails accompanied by introductory letters, but only at the request of the respondent. That was because e-mailing without a previous introduction in person or via the phone never proved effective. On some occasions I had references, which made the contacting and appointment setting rather smooth; only the busy schedule of respondents represented a barrier. On many occasions I made the contacts myself, with no reference to *back me up* apart from my academic affiliation. The affiliation to the neutrality of scholarship, in my case the Institute for Gender and Development Studies (IGDS), evidenced my reliability, enabling my entry into some of these institutions. In addition, attending relevant events, seminars, workshops, any social events related to the topics of gender, women's human rights and gender-based violence against women was an instrumental method for people getting to know me personally, for presenting my interests in Jamaica, for making contacts or even arranging appointments. My persistent participation in such events reached the point where I became well known as "*Ramona from Romania, living in the Netherlands and doing research on violence against women in Jamaica*". Most of the time, however, my national identity, country of residence and research interests formed an unusual combination, which aroused the curiosity of most people I met and helped in starting insightful conversations. Such conversations were invaluable for conducting this research. Coming from a country that suffered communist oppression and my personal memories and experiences of restricted freedoms helped me and my field research to relate in the most profound ways to people's stories of suffering, and to a collective memory of oppression.

No field research is smooth, as reality itself is not smooth and linear. Difficulties and obstacles brought useful insights. Getting into contact and setting appointments for interviewing Government officials was a great challenge for my research. Constant cancellations of appointments and long waiting hours in the "*soon come*" style delayed the research process. On many occasions, when I had no references for any of the "persons good to talk to", I had to turn to the (governmental) Blue Pages in the phone directory or to internet websites, and identify relevant departments in the Ministries of interest in that way. Long periods of time holding on the phone, no responses at all, and people turning me away at the very idea of being interviewed on gender and violence against women issues were indicative of the institutional dynamics and definitely provided me with valuable insights into the workings of the Government machinery and the way in which such institutions make themselves available to and serve the general public. My field research forced me to confront the difficulties that any Jamaican citizen goes through in approaching governmental bodies. A lack of a gender mainstreaming process piercing through the whole governmental machinery, hence a deficient network of gender focal points within the governmental bodies, and the absence of gender-based violence against women and women's rights as a

point of interest on the Government's agenda, impacted the process of interviewing governmental respondents as well. Women's rights, gender and violence against women were topics that rather obstructed or made it very difficult to gain access to certain governmental ministries and departments.

Despite the “*soon come*” style of some respondents, operating the field research at the civil society and rights holders levels was expeditious and a very fulfilling experience. Needless to say, power disparities were at play, especially in the interactions I had with the rights holders. Aware of being in a position of *the other* or even of *another researcher imposing on people's realities* to excavate information for her own research interests, especially after a rather potholed journey through the governmental machinery, I was greatly surprised to be received with open arms and a genuine will to talk frankly and straightforwardly. The interest of the respondents in the topics of the interview conversations/focus group discussions, and the fact that this was a way for many (especially for the right holders I interacted with) to talk about their experiences of violence or working with gender-based violence against women, and make their voices heard, inspired them as much as it inspired and motivated me. One such example was when the women who participated in the WROC focus group discussion became so interested in the topics of the discussions and the flow of the interactions that they asked for a follow-up meeting to talk extensively about CEDAW. Once again, it made all the ups and downs of the research worthwhile.

## **5.7 DATA MANAGEMENT**

This section explains the methods I employed in order to manage the massive amount of primary and secondary data collected and generated during my empirical work in Jamaica.

### **5.7.1 Transcriptions and coding**

All interviews and focus group discussions have been voice recorded and the rural women group gave me permission to produce video footage of the focus group interaction. The recordings have been subsequently transcribed verbatim.<sup>54</sup>

The findings of the research are based on cross-sectional indexing of data, by devising a systematic and coherent system of categorical indexing also known in the literature

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54 Considering the amount of time necessary to do that, I needed at least an extra transcribing hand. Except for the interviews that I transcribed myself, three assistants helped me with the transcription work, while I carried on with doing the fieldwork.

as coding.<sup>55</sup> I coded the transcribed interviews and focus group discussions through the lens of the conceptual framework around the social and cultural reproduction of gender relations and the interconnection with gender-based violence against women, and of the themes pulled out from reviewing the CEDAW Concluding Observations (i.e. *a priori or deductive coding*). At the same time, recurrent themes, which surfaced throughout the data, generated another set of coding categories (i.e. *inductive or open coding*). I therefore looked for respondents' voices to illustrate the coded constructs. The creation of codes made visible and enabled the investigation of similarities, disparities, and unanimity occurring in the data. The applied a priori and emerging coding intertwined with both manual and electronic analysis of the transcribed data. I supported the analysis with the use of ATLAS.ti Scientific Software for "its ability to qualitatively analyse large bodies of textual (graphical, audio, and video) data by enabling the researcher to manage, extract, compare, explore, and reassemble segments of data."<sup>56</sup>

### 5.7.2 Field notes

I recorded the observations of the various events, colloquia, workshops and training sessions I attended through field notes that I consistently logged in computer databases, log notebooks and in field diaries which I constantly carried with me wherever I went. The interviews and focus group discussions were always completed with a time for reflection when I jotted down notes related to the subject-matter of the interview and impressions about the field research process and the method.

### 5.7.3 Secondary data

Document analysis was used to support the information gathered through the methods mentioned above. The analysed documents ranged from legal texts (i.e. the Jamaican Constitution, the Charter of Rights and Freedoms, the Domestic Violence Act, the Sexual Offences Act, etc), policy documents (i.e. Jamaica National Gender Policy, National Security Policy, Medium Term Policy frameworks), institution-related documents (i.e. PIOJ studies and Economic and Social Surveys from 2006 to 2010; Bureau of Women's Affairs' reports, baseline studies, and newsletters;

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55 Literature refers to coding also as "*categorizing, coding, assigning nodes, or 'code and retrieve' ... systematic routine scrutiny of one's data – can help the researcher to distance themselves from the immediacy of the initially striking or memorable elements, and therefore to gain a more measures view of the whole. Sorting, organizing and indexing can thus help you to get surprises from your data which take you beyond and impressionistic view based on the limitations of your own memory and you capacity to sort and organize in your head.*" Mason 2002, p. 150. For more literature on coding, see Richard, 2005; Bernard, 1994; Strauss and Corbin, 1990.

56 Charles, 2011, p. 2.

police statistics on violence against women), to relevant project-specific evidence (i.e. project planning and agendas, background studies, meetings' minutes and e-mail correspondence) and newspaper articles for an all-round perspective. This data was collected during document studies at the Bureau of Women's Affairs and PIOJ documentation centres, at NGOs' premises, or volunteered by respondents after the completion of interviews.

#### 5.7.4 Visual and audio data

Visual material and artefacts proved particularly useful in grasping the process of vernacularisation of CEDAW provisions and rights through visual exposure. The cultural representations and discourses with which such type of data is loaded<sup>57</sup> serve as “a context that defines relationships and meanings, and constructs the possibilities of action.”<sup>58</sup> Indicating local cultural practices as resources for change, such data enabled piercing through the strategies used to mobilize women's human rights and “localize imported practices”<sup>59</sup> – giving meaning to ideas, concepts, provisions and rights in a way that was appealing and ensured rights holders' understanding and awareness of them. Various institutions provided me with access to video recordings, DVDs they produced, visual material, artefacts they used in training courses, such as T-shirts, posters, films – all material used for the translation process. When permitted, photographs of focus group participants, observation settings, respondents and the teaching material used in workshops were garnered and enhanced the empirical study with visual material. This material and its significance for the research will be mentioned in relevant subsequent chapters.

#### 5.7.5 Presentation of data

To sum up, the findings will not be presented according to individual respondents or institutions. Instead, it will be structured within each level of inquiry, focusing on the identified implementation constructs: awareness and understanding, action in place and mobilization, factors, gaps and feasibility within the selected organizations. Analysis across governmental bodies, civil society organizations and rights holders groups enabled patterns, similarities and/or differences to be identified, while concurrently pinning down specificities or divergences through analysis within a given level. As mentioned previously, voices of respondents are used as a means to illustrate the findings. Their anonymity is guaranteed, therefore only the institutions

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57 Sustain and Chiseri-Strater, 2007, pp. 143-145.

58 Merry, 2006, p. 9.

59 Merry, 2006, p. 7.

they are affiliated to and general categorizations of their positions are referred to in order to show the perspective from which the account is given.

## 5.8 CONCLUSION: LIMITATIONS OF THE STUDY

Conducting field research also meant running against time. The available time period of six months, even if supplemented with two months and two weeks, imposed constraints on the actors approached (at all levels of inquiry) and the data collection activities carried out. The study therefore by no means claims to have exhaustively captured all voices and investigated all initiatives surrounding the issue of putting Article 5(a) into practice in Jamaica. In fact, a number of respondents (governmental, civil society, and rights holders) identified as relevant during the course of the data collection could not be approached due to my time constraints and/or their unavailability, so their views were not possible to capture. However, the respondent population was selected purposively to enable capturing the essential characteristics of the wider universe of data sources to which they relate. To be precise, this selection assured that the respondents given priority in interviewing within the time limits and the available data sources included “instances of all important dissimilar forms present in the larger population”<sup>60</sup> so that patterns and specificities drawn could build an understanding of the possibilities of putting into practice Article 5(a) in a country like Jamaica.

It is important to note that having had the possibility to specifically observe initiatives of vernacularisation in contrasting social class settings, and to conduct focus group discussions with rights holders belonging to middle-class and upper-class layers as well, would have allowed for a fuller perspective of the way in which norms translation strategies were mediated – appropriated and used within and across class settings. Since it was aimed to investigate actual instances and strategies in use to translate CEDAW provisions and rights at rights holders levels, the data collection and generation at this level depended on those initiatives already in place and on those stakeholders who provided me with access to the rights holders groups they usually engage with in undertaking their initiatives. A case in point is that both Government and civil society actors concentrated their initiatives on lower-income groups and inner-city/garrison communities. Notwithstanding that the focus group conducted in the rural area was a rather mixed group of women in terms of their socio-economic background, strong class differences were not represented or captured. One reason I was given was that in particular the upper-class Jamaican population was rather reluctant to participate in research initiatives;<sup>61</sup> hence, making it difficult to

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60 Weiss, 1994, p. 23.

61 Interview Bureau of Women’s Affairs, March 25, 2011, female high-level Government official.



gather a group of rights holders at that level. Any findings on the ways in which class differences operated within the implementation process drew on the views of the interviewed governmental and civil society actors, some coming from those classes themselves. Moreover, I gained an understanding of the implications of class differences from secondary literature research and from the informal conversations I held throughout my stay in Jamaica with acquaintances, friends and fellows at the University of the West Indies.

Due to time constraints, I put an end to the data collection and generation process with WROC Community Facilitators' Training on Elimination of gender-based violence, which excluded an in-depth exploration of the process of internalization of meanings that happened subsequently at the rights holders level.<sup>62</sup> The questionnaire conducted on the completion of the training and the previous focus group discussions created a picture of such internalization and the intended use of translated meaning of rights and obligations. However, interviews with each participant would have allowed an in-depth assessment of their perceptions of the process of giving meaning to international norms and their views on feasible ways to put such norms further into practice in their lives and in their communities. The WROC initiative continued in a second phase with the immersion of participants into their communities. This phase had the specific purpose to impart the information and knowledge that participants had acquired during the training. Observations of the ways in which the translated meaning of norms was passed on and received would have provided first-hand insights into ways in which implementation can permeate at the community/rights holders level.

The findings presented in this study on measures to provide gender-sensitive training for relevant professionals were collected through interviews at the Bureau of Women's Affairs, at the Jamaica Constabulary Force and with civil society respondents. Interviews with judges would have given important in-depth accounts of the implementation of such measures at the level of judicial personnel. This respondent population, however, was inaccessible for a thorough exploration.

Since putting into practice obligations of social and cultural transformation and the elimination of gender-based violence against women is such a multifaceted process, the study of this process is multifaceted as well. Considering the novelty of this contextual research, I intend to explore and also to open up new ideas for further investigations, therefore acknowledging the limitations of my research endeavours.

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62 The internalization of meanings as being essential in putting human rights into practice is discussed in the theoretical Chapter 3.

To conclude, conducting field research entailed essentially an organic, natural process of engaging: engaging with life realities, engaging with data, engaging with Jamaica.<sup>63</sup> “*Si mi a one ting, come live wid mi aneda*” (To see me is one thing, to come live with me is another) is a Jamaican proverb reminding us that living with somebody is more than mere acquaintance; it provides intimate insights into their context and realities, and a deep knowledge of them. Such was applying qualitative field research to this study. It represented the opportunity to gain in-depth knowledge by closely interacting with and exploring Jamaica’s realities of the particular issue of putting into practice, at the country level, the international women’s human rights obligations under Article 5(a) demanding social and cultural transformation. Positioning itself in the liminal space of interdisciplinarity and taking a socio-legal approach, the study aligns in this way to the belief that “*it is time that more attention is paid to empirical, contextual analyses of specific rights struggles. This intellectual strategy allows ... to follow how individuals, groups, communities and states use a discourse of rights in the pursuit of particular ends, and how they become enmeshed in its logic.*”<sup>64</sup>

The following chapters echo the voices of the actors engaged by this study. These voices illustrate the social realities of struggles and possibilities to put the legal provision in Article 5(a) into practice and to realise women’s right to a life free from gender-based violence.

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63 Field research diary, August 15, 2011 – during the return flight from field research in Jamaica.

64 Cowan, Dembour and Wilson, 2001, p. 21.

## THE EMPIRICAL STUDY



## CHAPTER 6

# THE DUTY BEARERS UNDER ARTICLE 5(a) CEDAW – GOVERNMENT ACTION AND MEASURES

### 6.1 INTRODUCTION

My discussions (in-depth interviews or simple chats) with different people from various levels of the social strata 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>1</sup> “[A] lot of women in this country ... at all levels of the strata are being beaten.”<sup>2</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>3</sup> However, the magnitude of gender-based violence against women occurring in Jamaican society is underrated;<sup>4</sup> its palpable occurrence is obscured by a mind-set embedded in its normalisation.

My extensive qualitative explorations of the problem of and responses to gender-based violence against women and its social and cultural underpinnings frequently pointed me to a certain saying commonly surfacing in the language of women: “*If he doesn’t beat me, he doesn’t love me*”. The interviewed civil servants of the Government of Jamaica made it clear that this is an overt denial that minimizes the seriousness of this blatant societal issue. Such denial contributes to, and in fact exacerbates the structural problem that gender-based violence against women entails in Jamaica. “*Violence against women is major, not only because it occurs, but because it is not seen sufficiently as a problem ... or as yet accepted generally as a major problem ... because we are also not yet generally treating it in our responses as a problem.*”<sup>5</sup> The construction of gender identities along sex-linked roles and their manifestation in asymmetric relations and stereotyping between women and men fosters such an acceptance of gender-based violence against women.

The CEDAW Committee makes specific references in the Concluding Observations on Jamaica of 2006 to “the persistence of strong patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life which ... underpins discrimination in many spheres and condones

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- 1 Interviews conducted at Broadcasting Commission, April 28 & May 6, 2011, male senior Government official.
  - 2 Interview Victim Support Unit (VSU), May 4, 2011, male senior Government official.
  - 3 Interview VSU, May 4, 2011.
  - 4 See Chapter 4 for data collected by the Jamaica Constabulary Force (JCF) on violence against women.
  - 5 Interviews Broadcasting Commission, April 28 & May 6, 2011.

gender-based violence and promiscuous behaviour by men”<sup>6</sup> in the country. Given that the Government has primary responsibility in guaranteeing women’s human rights and freedom from gender-based violence, it is important to interrogate the views of Government actors about its responses to this situation. The Government, representing the State in the implementation of international human rights treaties, is also referred to in this chapter as the duty-bearer or actors *from above*<sup>7</sup> in the process of the implementation of Article 5(a) and the realisation of women’s right to be free from gender-based violence.

This chapter voices perspectives of governmental officials in order to discuss the transformation of social and cultural patterns of conduct based on sex roles and gender stereotyping that perpetuate gender-based violence against women. The chapter examines the extent to which actors *from above* are cognizant of, understand, have adopted and put in practice measures of social and cultural transformation as required in Article 5(a). The chapter encompasses an analysis of the empirical data gathered through interviews and a number of focus group discussions. Findings are presented along the following themes: i) the *consciousness and understanding*<sup>8</sup> of Government actors of a necessary, and internationally required transformation of those social and cultural patterns of conduct that perpetuate gender-based violence against women; ii) *action and measures* undertaken *from above* to transform these social and cultural patterns of conduct; iii) *factors* influencing governmental measures and actions and *gaps* in the process of putting into practice these actions and measures; iv) *recommendations* for effectively putting Article 5(a) into practice. This exploration serves the purpose of establishing whether the prerequisites for taking action to bring about social and cultural transformation are met at the governmental level, what gaps exist in the action already taken and what further steps need to be taken for effective action.

## 6.2 CONSCIOUSNESS AND UNDERSTANDING OF THE NECESSITY FOR SOCIAL AND CULTURAL TRANSFORMATION IN JAMAICA – A GOVERNMENTAL ACCOUNT

This section discusses whether Government actors are cognizant of and understand a necessary, and internationally required transformation of those social and cultural patterns of conduct based on sex roles and gender stereotyping, which perpetuate gender-based violence against women. The section provides insights into the consciousness and understanding at the duty-bearer level of: 1) the social and cultural construction and reproduction of gender relations in Jamaica; 2) the integral

6 CEDAW CO Jamaica, 2006, para. 13.

7 See Chapter 3, section 3.2.

8 See Chapter 3, sub-section 3.3.1.

link between constructions of gender identities, in particular masculinity, and manifestations of gender-based violence against women; 3) the necessity of social and cultural transformation in order to eliminate gender-based violence against women in Jamaica; 4) the international human rights provision in Article 5(a), which imposes an obligation on the State to bring about social and cultural transformation in order to reduce gender-based violence against women.

### **6.2.1 Consciousness and understanding of the social and cultural construction and reproduction of gender relations: sex roles along dichotomous gender identities**

*“I think in Jamaica it is very clear, at least until very recently, what the males are expected to do and what the females are expected to do and to be. ... Gender identities in Jamaica are culturally formed through a socialization process that begins at birth or before. ... It’s clearly male or female in terms of how you behave, how you think, how you respond, and what you do with your life.”<sup>9</sup>*

Becoming a woman or a man is enabled by the socialization of girls and boys along dichotomous identities. Such boundaries further translate into sex roles, which determine them to operate in their adult life within well-defined dichotomous private-public, restriction-freedom parameters. Distinct ways of behaviour, life approaches, life directions and expectations mark the boundaries of their feminine and masculine identities, which are not to be subverted. Women are generally associated with “child management and care”.<sup>10</sup> They are not considered complete unless they perform these already established domestic roles. In contrast, men are generally ascribed to the public space, associated to breadwinning and sexual freedom.

*“[Men] have taken the notion that a woman ... has an obligation to be domestic”,<sup>11</sup> while women expect men to be “... the main economic agent or the breadwinner ... If the male is unable, for one reason or another, to fulfil that role of bringing in the money, his role is somewhat belittled.”<sup>12</sup>*

The Jamaican vernacular confirms, reproduces and reinforces the asymmetric expectations and dynamics of gender relations. This classic dichotomy of the free man dominating the public space vs. the domestic woman dedicated to child bearing and nurturing are clearly articulated in the commonly used Jamaican vernacular. The expression “*nuff gal*”, for example, clearly indicates the requirements of fulfilled

9 Interview conducted at Planning Institute of Jamaica (PIOJ), April 4, 2011, female senior Government official.

10 Interview PIOJ, April 4, 2011.

11 Interviews Broadcasting Commission, April 28 & May 6, 2011.

12 Interview PIOJ, April 4, 2011.

manhood in Jamaica.<sup>13</sup> Having multiple female sexual partners and children with these various partners is a mark of the hegemonic, heterosexual masculinity and stands as a test of manhood. “*A man might form a relationship with more than one woman just to satisfy a certain set of needs.*”<sup>14</sup> Conversely, a woman not fitting the expected role of bearing children is considered barren. She is referred to as “*mule*”, which indicates that her femininity is not complete.<sup>15</sup> “*If the woman doesn’t bear children she is considered a mule in a local context, and the man would go out and have other partners.*”<sup>16</sup> Such roles dominate, to a certain extent, gender relations in and outside the household.<sup>17</sup>

### **6.2.2 Consciousness and understanding of the social and cultural reproduction of violence against women: the brand of Jamaican masculinity within asymmetric gender relations**

These dichotomous identities lead to gender relations that are asymmetric in nature, featuring men in the dominant position in the hierarchy.<sup>18</sup>

*“You are a boy, you are not to be trampled on by other persons, you are not to be trampled on by girls certainly. You are to stand up for your rights, and you are to be assertive! We teach our boys that. In general, we may not be teaching that to our girls.”*<sup>19</sup>

This is how a female civil servant, herself a mother of a girl and a boy, comments on the socialization of children in Jamaica. Certainly not being trampled on by women, but exerting macho attributes of superiority, toughness and control over women is a strong dimension of Jamaican hegemonic masculinity. As a result, differential power plays out in interpersonal relationships, and is often expressed in violent ways. Being socialized to believe that they are the ones “*with the power and control and in charge*”, men tend to have a sense of entitlement over women to the extent of disciplining them when they cross over their expected roles and attitudes to which submission is a core characteristic.<sup>20</sup> Such identities cultivate a climate, which is conducive to violent expressions of masculinity.

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13 “*Nuff gal*” means having multiple female sexual partners.

14 Interview conducted at Ministry of Justice (MOJ), May 4, 2011, middle management Government official.

15 Interview conducted at the Bureau of Women’s Affairs (BWA), April 5, 2011, female senior Government official.

16 Interview BWA, April 5, 2011.

17 Interviews Broadcasting Commission, April 28 & May 6, 2011.

18 Interview MOJ, May 4, 2011.

19 Interview PIOJ, April 4, 2011.

20 Interview conducted at the Bureau of Women’s Affairs (BWA), March 25, 2011, female senior Government official (1); Interviews Broadcasting Commission, April 28 & May 6, 2011; Interview



This socio-cultural reproduction of gender relations and its interface with violence against women was not only fully acknowledged, but also explained in detail by Government respondents. Various voices across governmental bodies expressed similar viewpoints, revealing a general understanding of the interplay between the masculine identity and unequal power relations manifested in intimate partner violence in Jamaica.

*“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>21</sup>

Overall, respondents indicated that the construction of masculinity is conducive to an environment in which the “aberration” of gender-based violence against women is not acknowledged as a societal problem.<sup>22</sup> More so, the mentality that the woman in fact deserves the beating underpins the manifestation of violence in relations between women and men and, in a way, justifies it. As one respondent explained, “*you will hear people say: ‘If she nuh behave harsef and so, she nuh do so and so, she need fi get a likke’.*”<sup>23</sup> The respondent made clear that this type of thinking cuts across and transcends economic groups and class structures, supporting the manifestation of gender-based violence against women as a generally accepted dynamic of male/female relations, to the extent of justifying violent behaviour.<sup>24</sup> “*Beating a woman is considered the norm; it’s no big deal to do it*”<sup>25</sup> to the point that “*some women feel a sense of status when a man shows them so much attention, like he is connected [to her], so if he beats me he is not going to leave because it is like he owns me or perhaps he loves me.*”<sup>26</sup>

The celebration of macho attributes, such as toughness and the exercise of power and control, is linked to “*dysfunctional relationships*” which lead to gender-based

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VSU, May 4, 2011; Interview conducted at the Ministry of Justice (MOJ), May 3, 2011, male senior Government official.

21 Interview BWA, March 25, 2011 (1).

22 Interview PIOJ, April 4, 2011; Interview conducted at the Planning Institute of Jamaica (PIOJ), April 15, 2011, female middle management Government official; Interview BWA, March 25, 2011 (1).

23 Translation from Jamaican Patois: “If she doesn’t behave herself, if she doesn’t do so and so, she needs to get a kick.” Interview BWA, March 25, 2011 (1).

24 Interview BWA, March 25, 2011 (1); Interview BWA, April 5, 2011; Interview MOJ, May 3, 2011; Interview VSU, May 4, 2011.

25 Interview PIOJ, April 15, 2011.

26 Interview VSU, May 4, 2011; Chapter 8 shows that this view was confirmed by respondents from inner-city areas of Kingston.

violence.<sup>27</sup> In the words of one senior male Government official, it is “*socialization where we go astray; it clearly has been bad for Jamaica and it has contributed too to a devaluation of women in the eyes of some men.*”<sup>28</sup> Beside the family environment, media and popular music, the school, the church and peer groups are socialization agents that reinforce and sustain gender dynamics in which asymmetric power relations may manifest in violent behaviour. Media and the popular culture – the famous Jamaican dancehall, in particular – represent socialization spaces where the asymmetric gender relations are cultivated and reinforced through unequal portrayals of women and men. Different respondents emphasized that women’s bodies are depicted as sex objects and commodities in dancehall and in advertisements in order to sell products, which in essence serve the purpose of boosting virility.<sup>29</sup> The use of such images and language in these spaces reinforces a one-dimensional representation of women, which is essentially negative. “*The whole issue of the violent lyrical content in some of our music ... has added to this real scourge of violence against women and the whole degrading of the woman, her body and her person.*”<sup>30</sup> In opposition to this view of women, the macho features of the masculine identity such as virility, domestic freedom and male dominance in relation to women, are put at the forefront and used to portray images of men.<sup>31</sup> Lyrical content such as the well-known “*nuff gyal inna bungle, man a gyallis, traila load a gyal*”<sup>32</sup> feeds into the macho image of the Jamaican male which “*contributes to brutish and disrespectful attitudes towards women*” displayed explicitly in some dancehall songs.<sup>33</sup>

The general problem of crime and violence that cripples Jamaican society should not be disregarded in this discussion. This violent context reinforces a type of masculinity that is linked to and is a root cause of violence against women.<sup>34</sup> One senior Government official working for the Victim Support Unit explained how gang assaults give course to claims of manhood and fulfil the macho type of masculinity:

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27 Interviews Broadcasting Commission, April 28 & May 6, 2011.

28 Interviews Broadcasting Commission, April 28 & May 6, 2011; Interview MOJ, May 3, 2011; Interview PIOJ, April 4, 2011.

29 Interviews Broadcasting Commission, April 28 & May 6, 2011.

30 Interview BWA, March 25, 2011 (1).

31 Anderson, p. 7.

32 The lyrics allude to men who have multiple female sexual partners; the term “*gyallis*” stands for a man who knows how to control women. See Chapter 8 for accounts given by rights holders on the negative impact of dancehall music.

33 Interview BWA, April 5, 2011. Similar general comments were made in Interview conducted at the Ministry of Foreign Affairs (MFA), May 20, 2011, female senior Government official; Interviews Broadcasting Commission, April 28 & May 6, 2011.

34 Interview PIOJ, April 4, 2011.

*“Even among young offenders too ... there are the gang assaults, meaning, that boys in groups will sexually assault a female who is targeted for that assault. Within that group it appears that is something that they would expect, something that they would do. They do it to fulfil some sort of ... identity.”<sup>35</sup>*

Findings reveal that Government respondents are aware that the type of masculinity that men are socialized into is integrally linked to expressions of violence. Besides basing their accounts and opinions on their own experience of being raised and living in Jamaica, respondents drew on academic studies to support their views. In many instances they referred to scholars from the University of the West Indies, well known for their work on gender matters.<sup>36</sup> These findings evidence that Government respondents have a good understanding and are cognisant of the social and cultural reproduction of gender-based violence against women. Their accounts indicate that the acceptance of such violence enables a cycle of adverse asymmetries in the way men and women identify themselves and relate to each other; this feeds further into cyclic stereotyping: victimhood is built into the feminine identity, while domineering and disciplining attributes are perpetuated in the male identity. As a consequence, violent dynamics in male/female relationships are reinforced.<sup>37</sup>

### **6.2.3 Consciousness and understanding of the necessity of social and cultural transformation**

The main idea that comes from the interviews with Government officials is that in order to reduce violence, a change in social and cultural norms, ideologies and behaviour is indeed needed. Respondents displayed awareness of the interface between social and cultural patterns of behaviour based on sex roles and gender stereotyping and the problem of gender-based violence against women. Respondents' awareness of the social and cultural construction and reproduction of gender relations in Jamaica was demonstrated not only by the content of their responses but also by the manner in which they answered. The interview questions explored respondents' understanding of gender constructs in Jamaica in general terms, without making any explicit link to the cultural and social nature of such constructions or to the provisions in Article 5(a). For that reason, any socio-cultural implications in questioning the understanding of the formation of gender identities in Jamaica were not solicited; respondents voluntarily referred to them.

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35 Interview VSU, May 4, 2011; Interview PIOJ, April 15, 2011; Interview conducted at the Ministry of National Security (MNS), April 19, 2011, female senior Government official.

36 Scholars such as Professor Barbara Bailey, Dr. Patricia Anderson, Taitu Heron and Dr. Leith Dunn. were mentioned by respondents.

37 Interview BWA, March 25, 2011 (1); Interview BWA, April 5, 2011; Interview MOJ, May 3, 2011; Interview MOJ, May 4, 2011; Interview VSU, May 4, 2011; Interview PIOJ, April 15, 2011.

Respondents made explicit references to the need for a social and cultural transformation. In order to deal with gender-based violence, one senior Government official suggested: “*We would have to work on our culture, how we express ourselves culturally and work on changing our mindset*”.<sup>38</sup> Other respondents expressed similar views.<sup>39</sup>

#### **6.2.4 Consciousness and understanding of Article 5(a) provisions of social and cultural transformation**

Article 5(a) imposes on State parties to CEDAW the obligation to bring about social and cultural transformation to eliminate gender-based violence against women.<sup>40</sup> In spite of the overall awareness of the social and cultural reproduction of gender relations and the interconnection with gender-based violence against women, the interviews with the duty-bearers revealed that in most cases these understandings were not informed by a knowledge or appreciation of the international human rights norm in Article 5(a). An understanding and a consciousness of the issues covered in this Article were triggered by the context in which people were living, and not by the international norm, obligations and ideas in this provision. Nonetheless, such understanding contributes to an environment, which is conducive to implementation and the country’s compliance with its obligations under CEDAW, in an implicit rather than explicit way.

Some differences emerged among the interview responses, depending on the particular focus of the Government ministry, department or agency the respondent represented. Government officials working directly with the Convention, such as those from the Bureau of Women’s Affairs, and the Ministry of Foreign Affairs, made explicit references to CEDAW and displayed a full knowledge of the content of Article 5(a). This shows that knowledge either of Article 5(a) in particular or of CEDAW in general is not widely spread at the Governmental level; instead it is concentrated at the level of the national machinery for women.

The fact that most governmental respondents are not directly cognisant of the content and meaning of Article 5(a) points to a disconnect between the international norm and the understandings thereof at the Government level. This renders consciousness of the content of the international norms by Government officials a crucial ingredient for proceeding with the implementation of those norms. Such consciousness represents the groundwork for the subsequent stages of the process of implementing Article 5(a).

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38 Interview MFA, April 20, 2011.

39 Interview MOJ, May 4, 2011; Interview BWA, April 15, 2011.

40 See Chapter 2 explains in depth the meaning and scope of Article 5(a) CEDAW.

Given that Governments are the main interlocutors on the international arena, in particular in the “constructive dialogue” with the CEDAW Committee, and are the primary actors which are responsible for implementing international women’s human rights according to the legal understanding and approach to implementation, I entered the field research with the assumption that the Government of Jamaica would be cognisant and would understand the international norms and obligations under CEDAW, hence Article 5(a). The findings show that such Government awareness is an unfounded assumption, which could lead to a further unfounded assumption that the ratification of international human rights treaties automatically results in the implementation at country level of international human rights norms. This will be further explored in the subsequent sections.

### **6.3 ACTION AND MEASURES UNDERTAKEN *FROM ABOVE***

Given that the Government actors interviewed were cognisant and had an understanding of the ideas and issues covered under Article 5(a), the question then arises how such consciousness translates into action so that social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping are confronted and ultimately modified, and gender-based violence is eliminated. In its Concluding Observations on Jamaica of 2006, the CEDAW Committee proposed a number of measures so that the provisions in Article 5(a) are met by the State party. In the interviews, respondents made reference to a number of these measures being undertaken in the Jamaican context as well.

#### **6.3.1 Legal measures**

One of the obligations that countries must comply with under Article 5(a) is to take legal measures, which create a legislative basis that enables an environment for social and cultural transformation and for the elimination of violence against women. Calling upon Jamaica in the Concluding Observations of 2006 “*to ensure the implementation and effective enforcement of existing laws, and the priority passage and implementation of pending laws*” in the area of violence against women, the CEDAW Committee encourages the State party “*to link its efforts to combat prevailing gender-based stereotypes with its efforts to combat violence against women.*”<sup>41</sup> With that in mind, the question that arises is what is the situation at present in Jamaica? Have any actions been taken to create a legislative framework conducive to social and cultural transformation and the elimination of violence against women?

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41 CEDAW CO Jamaica, 2006, para. 16. The Committee made similar recommendations to the Government of Jamaica also after the recent review of the country report at the CEDAW 52<sup>nd</sup> session, 2012. See CEDAW CO Jamaica, 2012, para. 22(a), (b).

Representatives of the Bureau of Women's Affairs, the Ministry of Justice and the Ministry of Foreign Affairs working particularly with legislation, indicated a series of legal measures that are in place and address the issues concerned. Two laws particularly stand out and those are the Domestic Violence Act, 1995 and the Sexual Offences Act, 2009. Additionally, the recently passed Charter of Rights and Freedoms addresses some of the issues and adds to this legal constellation.

#### *Domestic Violence (Amendment) Act, 2004*

The amendment of the 1995 Domestic Violence Act is the product of a review process and is one legal measure referred to by respondents without exception. This Act provides redress to victims of domestic violence and affords their protection through occupation, ancillary and protection orders. Initially, the scope of the Act covered only persons in a married relationship. However, the family union type in Jamaica does not consist only of married relationships. Cohabiting relationships, such as common law relations and visiting union relations are a widespread variation of the Jamaican family union type. In 2004 the Domestic Violence Act was amended to broaden the scope of the Act, extending protection against domestic violence to these two major categories of persons, previously not recognized under this law, i.e. persons in visiting relationships and persons in common law unions. The amendment of the Domestic Violence Act also strengthened the reporting procedures so that a third party, relative or a person close to the victim of abuse could make a report to the police on behalf of the victim.

Considering the different types of family unions existing in Jamaica, it is important to note that by including and acknowledging the existence of individuals in common law and visiting unions and their experiences of violence as well, the 2004 amendment reflects the social norms around the family types in Jamaica.

#### *Sexual Offences Act, 2009*

A recent piece of legislation, the Sexual Offences Act 2009, was tabled in Parliament in 2008 to expand the scope of the legislative measures addressing sexual offences against adults and children. Apparently, the offences as they existed under the law did not reflect the modern patterns in sexual offences. As a result, the Act was issued with the purpose of repealing the Incest (Punishment) Act, which was adopted in 1948, and a number of provisions of the Offences against the Person Act, also in force since colonial times (1865). To that end, the Sexual Offences Act combines provisions from both acts, repeals some of the discriminatory provisions in those acts, makes a

new provision for the prosecution of rape and other sexual offences, and provides for a Sex Offender Registry.<sup>42</sup> The Act has been in force since 2011.

For example, one discriminatory provision that is abolished by the Act is the evidence of character, which was admissible under the Offence Against the Person Act. In prosecuting rape, the character of the victim and instances of sexual activities with persons other than the one who has been indicted used to be permitted as evidence of the promiscuous nature of the victim. By still admitting such evidence, the Offences Against the Person Act reflected and preserved stereotyping against women, and more so, the double standards of female and male gender roles. It is noteworthy that such evidence of character by all means referred to women, since they are considered the traditional victims of rape; a man, who is ascribed the position of control, cannot be a victim of such offence. Hence, sexual offences legislation used to support a “*legislative language that is skewed against women*”.<sup>43</sup> One senior respondent involved with the legislative reform at the Ministry of Justice stressed that the admissible evidence of character “*speaks in most derogatory terms about women who are ... ‘loose women’, as if [sexual violence] is ok if you are a ‘loose woman’. It reflects the old stigma against women:*” the woman needs to be disciplined because she “*asked for it*”.<sup>44</sup> Therefore, the Act of 2009 addresses the perpetuation of gender stereotyping in and through law, and illuminates an important element.

Moreover, the Act addresses the narrow definition of rape operating in the earlier Jamaican law, which did not recognise particular patterns of sexual offences that occur across the country. In an effort to broaden coverage to acts of a sexual nature that might not fit into the category of rape as defined under the law, the Sexual Offences Act introduces the crime of grievous sexual assault. This new offence recognizes and criminalizes other types of acts, such as the manipulation of objects, and penalizes them as severely as the offence of rape.<sup>45</sup> Yet, the strict definition of rape remains unchanged.

The Sexual Offences Act, 2009 also protects against marital rape. However, it still remains a contentious issue, albeit acknowledged in the law. Rape between spouses is recognized as occurring only in certain circumstances, which according to section 5, subsection (3) of the Act are: “(a) *the spouses have separated and thereafter have lived separately and apart within the meaning of the Matrimonial Causes Act; (b) there is*

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42 See Sexual Offences Act, 2009, Act 12 of 2009, available at Ministry of Justice, Jamaica, website <http://moj.gov.jm/sites/default/files/laws/The%20Sexual%20Offences%20Act.pdf>, last accessed on September 21, 2012.

43 Interview MOJ, Legal Reform Unit, July 13, 2011, female senior Government official.

44 Interview Legal Reform Unit, July 13, 2011.

45 Sexual Offences Act, 2009, section 4(1)(a), (b), (c), (d), (e), (f).

*in existence a separation agreement in writing between the spouses; (c) proceedings for the dissolution of the marriage or for a decree of nullity of marriage have been instituted; (d) there has been made or granted against the husband an order or injunction, as the case may be, for non-cohabitation, non-molestation or ouster from the matrimonial home for the personal protection of the wife; or (e) the husband knows himself to be suffering from a sexually transmitted infection.”<sup>46</sup>*

Evidently, rape within marriage is not always criminalised. As it was confirmed by interviews, such conditioned recognition of marital rape under the law renders the man immune for his acts. It reinforces the asymmetric gender relations, where the man is legally recognised as being in a superior position with entitlements and control over the woman, especially if she is his spouse. The leading argument that supports the limitation to the provision of marital rape in law is the preservation of the sanctity of marriage, since “*sexual intercourse [is] one of the reasonable expectations of the consortium vitae.*”<sup>47</sup> However, as it is now recognized under the law, marital rape seems to preserve more the sanctity of the man. As one respondent with a long-standing involvement in the legislative process firmly explained “*it is to preserve the male ... the whole concept of the immunity of a husband from prosecution.*”<sup>48</sup>

Evidently, the Sexual Offences Act 2009 does repeal discriminatory laws and provisions, and institutes provisions, which aim to promote gender equality and eliminate violence against women and girls. However, conditioning the recognition of marital rape reinforces discriminatory sex roles and gender stereotyping which perpetuate violence between women and men. Thus, the Act reflects the enduring biases in Jamaican society.

### *The Charter of Fundamental Rights and Freedoms, the Constitution (Amendment) Act, 2011*

A major advancement in the Jamaican legislation is the amendment of the Jamaica (Constitution) Order in Council 1962, which broadens the scope of the right to non-discrimination. It thus provides protection for a wider range of human rights and fundamental freedoms. The Jamaican Constitution did not initially recognize sex as a ground for discrimination. The Charter replaces Chapter III of the fundamental law by providing, *inter alia*, protection against discrimination on grounds of “*being male or female*”.<sup>49</sup>

46 Sexual Offences Act, 2009, section 5, subsections (3)(a), (b), (c), (d), (e).

47 Interview Legal Reform Unit, July 13, 2011.

48 Ibid.

49 See the Charter of Fundamental Rights and Freedoms (Constitutional Amendment Act), 2011, Chapter III, article 13, section 3(i), (i).



However, the list of grounds is still restrictive, limiting the scope of the protection it affords.<sup>50</sup> As the CEDAW Committee expressed in its Concluding Observations on Jamaica of 2012, this amendment did not institute a legal definition of discrimination against women in the Constitution. Such definition is also not provided in any other legislation. The general definition of discrimination, as it is provided at the moment, also allows for restrictions. It does not distinguish between and provide for both direct and indirect discrimination, nor does it cover discrimination by both public and private actors.<sup>51</sup> Nonetheless, the Charter represents an advancement for the Jamaican legislation. Government respondents believed that the amendment of the Constitution indicated that “*Jamaica is seeking to move further towards equitable treatment of women.*”<sup>52</sup>

To briefly conclude, the adoption of these legal measures confirms that action has been taken to abolish provisions that would foster discriminatory sex roles and gender stereotyping, and thus to promote gender equality and the elimination of violence against women and girls. According to CEDAW General Recommendation No. 19, legal measures that criminalize the varied forms of gender-based violence against women and stereotyping, and thus combat impunity, are an imperative for dealing with such violence.<sup>53</sup> Putting in place effective systems for the punishment and prosecution of perpetrators while at the same time facilitating civil sanctions of issuing protection orders is a duty that States parties should fulfil in order to efficiently address and protect women from violence.<sup>54</sup> Nevertheless, there are limitations to the extent to which the repealing of gender stereotyping in the laws mentioned above benefits the reality of women and men. The next sub-sections present some of the limitations of these legal measures, as explained by Government officials.

### *The role and limitation of legal measures for social and cultural transformation*

Government officials who engage in the legislative process confirmed that the role of the law in dealing with social and cultural patterns of conduct is significant; it ensures the criminalization of certain behaviour, and imposes appropriate penalties in legislation in order to deter discriminatory conduct.<sup>55</sup> In that way the law can guide behaviour in a certain direction.<sup>56</sup> However, the capacity of the legislation to change

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50 Ibid., article 13.

51 CEDAW CO Jamaica, 2012, para. 11.

52 Interview MOJ, May 3, 2011; Interview MOJ, May 4, 2011.

53 See CEDAW GR 19, 1992, para. 24.

54 See Chapter 2 for a detailed discussion on the obligations of the State under Article 5(a) to eliminate gender-based violence.

55 Interview MOJ, May 4, 2011.

56 Interview Legal Reform Unit, July 13, 2011.

cultural norms and mores is limited. The view that “*the issues of social and cultural patterns of behaviour are not things that can be legislated*” was put across widely by the respondents working with the instrument of law.<sup>57</sup> “*Whatever piece of legislation you pass, attitudes will remain the same. So, you can’t really legislate against attitudes and patterns of behaviour.*”<sup>58</sup> Another respondent, a senior Government official, confirmed that “*there are limits on the effectiveness of legal measures in shaping cultural norms.*”<sup>59</sup> The respondent further explained that “*therefore we have to look outside of that norm to other instruments that might be used*” in order to bring social and cultural transformation.<sup>60</sup>

Having legal measures in place to address social and cultural norms surrounding violence against women represents the groundwork for the promotion of equality and the elimination of gender-based violence. It also creates the springboard for putting into practice the international human rights provision in Article 5(a).

*Consciousness of the law: setting the stage for putting legal measures into practice*

*“Laws are passed but what happens next?”<sup>61</sup>*

Legislative measures “*have been used to try to shape or reflect a policy decision to narrow the gap between the reality and the law.*”<sup>62</sup> It clearly emerged that law is a reflection of the social reality. However, in order to have enough teeth to have an impact on social reality and realise the right of women to be free from gender-based violence, bringing the enacted, amended or reviewed law into force is of key importance; so it is the manner in which the law is enforced. The legal measures dealing with domestic violence and sexual offences mentioned above are crafted in a gender-neutral language, for both women and men to fall under their protection. However, as one respondent – senior Ministry of Justice official stressed, “*the gender that is usually disadvantaged by non-recognition is invariably the women*”.<sup>63</sup> The disadvantage that women experience emerges in the operationalization of the law, even when the language of the law is void of gender biases. Entrenched beliefs and attitudes impact on the way the law in *the books* is enforced in reality. According to a senior Government official involved in the legal reform process, “*implementation*

57 Interview BWA, March 25, 2011 (1).

58 Interview Legal Reform Unit, July 13, 2011; Interview MOJ, May 4, 2011; Interview BWA, March 25, 2011 (1).

59 Interview Legal Reform Unit, July 13, 2011.

60 Ibid.

61 Interview BWA, March 25, 2011 (2).

62 Ibid.

63 Ibid.

*of the law or how the law affects societies, that is where you find the discrimination against women.*<sup>64</sup>

To conceptualise the enforcement and implementation of legal measures as legal issues creates the risk of perpetuating the gap between the law *in the books* and the reality of women and men. Several respondents identified enforcement as impeding the implementation of laws and the realization of justice for individuals.<sup>65</sup> Findings indicate that enforcement in the broader sense encompasses not only that law enforcement agencies properly use the instrument of law, but also remedies that give citizens a sense of fairness and justice. Therefore, enforcement is essential in setting the stage for implementation. A key element underlying this understanding is the consciousness of those legal remedies that encourage the individual to make use of and invoke the law.

Knowledge of the rights provided by the legal measures, understanding of the value of all the mechanisms in place to respond to gender-based violence against women, and awareness as to how to make use of them facilitate the materialization of legal and judicial provisions addressing this type of violence. Hence “*real persons get real help*”<sup>66</sup> while the law does not remain an “*empty shell*” living only in the books<sup>67</sup> and making sense only for the legal scholars and practitioners.<sup>68</sup> As it was indicated during interviews, “*yes, there is the law, but unless the law is invoked, then the legal remedies are useless*”.<sup>69</sup> Invoking the law is based and depends on knowledge of or about the law and how to make use of it. The lack of an understanding of the law and of its benefits facilitate avoidance attitudes towards the law and the mechanisms in place. One police officer clearly explained:

*“One of the dilemmas I think we face is that there are provisions under the law for people who are been abused in an intimate setting to seek remedies, but a lot of people don’t know how, don’t understand. Again it’s a lack of knowledge and education about how to use a restraining order for example. If you are being stalked, what to do? Again, even though the laws are there, if there is not that effort to bring the knowledge to the population in a way that is understandable and usable by them then you basically are not progressing the way you should.”*<sup>70</sup>

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64 Ibid.

65 Ibid; also, Group Interview, VSU, April 19, 2011, technical staff Government representatives.

66 Interview Office of the Cabinet, April 1, 2011.

67 Interview Legal Reform Unit, July 13, 2011.

68 Interview Cabinet Office, April 1, 2011; The respondent stressed: “*It tends to be that the lawyers know what the laws are, citizens [however] don’t necessarily know what they are supposed to benefit from under the law*”.

69 Ibid.

70 Interview Jamaica Constabulary Force (JCF) Kingston and St. Andrew, April 29, 2011, female police officer.

Overall, respondents working at all levels of the State apparatus expressed concerns regarding the reluctance of individuals to use the instrument of law and engage with the machinery of justice, especially with regard to private matters. One respondent clearly depicted this perspective:

*“It would be interesting to know the extent to which all these wonderful provisions are used, because very often women who are ... victims are reluctant to invoke these legal measures. It’s not the absence of laws so much as the lack of enforcement of existing laws. When you come to laws that relate to the private aspect of our lives there is a greater reluctance to invoke the law, and so the broader question of enforcement in that area. Enforcement is not only with law enforcement agencies, as it is with persons invoking the legal remedies, and resorting to them.”<sup>71</sup>*

Notwithstanding the legal measures and remedies in place, it was commonly expressed that to the extent that persons are reluctant to refer to the law for private matters, enforcement is hindered; hence the implementation of the legal and judicial measures in place is hindered as well. Such reluctance derives from a lack of knowledge of the benefits under the law, and of the mechanisms and remedies in place. Furthermore, a lack of awareness and understanding of the social norms that lie at the root of such reluctant behaviour also renders the measures in place ineffective.

Dispensing justice, in general, and to women in particular, is wider than instituting formal structures, institutions and machineries. Although an essential and primary step, *“legislation is an empty shell if it is not viable because people don’t know about it, people aren’t conscious of the value of legislation and therefore it is just there in the book, and nobody using it.”<sup>72</sup>* It emerged that the real test of the effectiveness of the legal measures is ultimately the extent to which the rights holders are cognisant of the measures, and do make use of them, if needed. This means that legal measures do not exist only in the abstract, but they translate into women’s actual access to them.<sup>73</sup>

### **6.3.2 Protection measures: judicial measures, remedies and support services**

Re-victimization of victims of sexual violence was a common practice while reporting their case to the police. Before 1989 when the Centre for the Investigation of Sexual Offences and Child Abuse (C.I.S.O.C.A.) was created, the attention to women’s experience of sexual violence and the responses to their attempts to report rape cases to the police would most certainly involve a process of re-victimization.

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71 Interview Legal Reform Unit, July 13, 2011.

72 Ibid.

73 Focus group discussions with rights-holders explored this aspect in depth, which will be presented in Chapter 8.

Long waiting hours in the police halls, a lack of privacy and a general insensitive, demeaning treatment ensured that reporting a sexual offence to the police was a prolongation of the ordeal itself to the point that individuals would feel even more vulnerable and afraid.<sup>74</sup> Thus, they would refrain from reporting, rendering legal and judicial remedies “useless”.<sup>75</sup> As a senior Government official explained, “*for a long time we had a problem getting our law enforcement people to regard domestic violence as something serious which requires action on their part.*”<sup>76</sup>

An infrastructure of appropriate protection measures has the capacity to contribute to an environment that is conducive to the elimination of gender-based violence and social and cultural transformation. Concurrently with efforts to combat impunity for violence and to provide access to justice, putting in place a system of sufficient shelters, counselling services with adequate legal, medical and psychological services is core to protecting women from gender-based violence. CEDAW jurisprudence attests that such a system reveals States’ commitment to give adequate attention to women’s problems and their important position in society. Conversely, failure to provide adequate protection from violence leads to the State’s complicity in the perpetuation of the historically subordinate position of women in society. The State is thus involved in sustaining those forms of gender stereotypes and patriarchal attitudes that legitimize, exacerbate or tolerate violence against women.<sup>77</sup>

This section presents a number of institutional arrangements that have been put in place in an effort to address violence against women. These institutional arrangements may reveal whether there is an infrastructure of protection measures in Jamaica that is conducive to social and cultural transformation. The most crucial institutional measures that emerged during the research explorations encompass the Centre for the Investigation of Sexual Offences and Child Abuse (C.I.S.O.C.A.), the Victim Support Unit (VSU) and shelters.

#### *Centre for the Investigation of Sexual Offences and Child Abuse (C.I.S.O.C.A.)*

In response to the prevalence of sexual offences and recognizing the need for sensitivity in dealing with such crimes, a special unit with the mandate to deal exclusively and in

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74 Interview JCF, April 29, 2011, police officer; Interview CISOCA, May 17, 2011, female police officer; Interview JCF Statistics and Information Unit, July, 11, female police officer; Interview Legal Reform Unit, July 13, 2011; Interview VSU, May 4, 2011.

75 Interview Legal Reform Unit, July 13, 2011.

76 Ibid.

77 See Chapter 2 for a discussion of the CEDAW jurisprudence attesting that the State is in breach of Article 5(a) when it does not provide adequate and sufficient institutional arrangements. One such case is CEDAW Communication No. 2/2003, A.T. v. Hungary.

a centralized manner with the reporting and investigation of sexual offences against women and children was established on December 1, 1989. This unit was created within the Community Relations Branch of the Jamaica Constabulary Force (JCF) in Kingston and had offices across the island. Initially known as the “Rape Unit”, it was subsequently called the Centre for the Investigation of Sexual Offences and Child Abuse commonly known and referred to as C.I.S.O.C.A. The sexual offences included in the mandate of this special unit are rape, carnal abuse, indecent assault, buggery, incest and gross indecency.<sup>78</sup> By providing private settings for victims to report their experiences of violence and by ensuring an investigation of the reported offences, C.I.S.O.C.A. represents one of the protection measures strategically taken in response to the problem of sexual violence and the manner in which it used to be treated by the police force.<sup>79</sup> According to one Government official,

*“... we have come a far way, because we have had special training. We now have a special unit that deals with [sexual offences], and a lot of work has gone into sensitizing [police officers] – not just about the law, but also about the need to intervene and take action and treat [sexual violence] as serious, and not as a private matter that should be ignored. So there is one evidence or one instance of the State doing something more than just enacting law to give effect to the [CEDAW] Convention.”<sup>80</sup>*

Unobtrusive observations at the C.I.S.O.C.A. Unit in Kingston<sup>81</sup> confirmed respondents’ indications of the sensitivity of the process of reporting at this unit.<sup>82</sup> *“The victim wouldn’t have to interfere with persons that came to report other cases; so there is a private area where the victim would be able to feel more relaxed and comfortable and be able to give the statement.”<sup>83</sup>* Medical examination and treatment is provided by doctors assigned to the C.I.S.O.C.A. offices, as well as by three specific hospitals collaborating with the unit. Equipped with social workers who are trained also as counsellors, C.I.S.O.C.A. provides for the rehabilitation of victims through counselling and therapy. Interviews with Jamaica Constabulary Force officers, more specifically with Community Police officers and C.I.S.O.C.A. officers,<sup>84</sup> revealed that

78 Interviews CISOCA, May 9 and May 17, 2011, female police officers.

79 Interview BWA, April 15, 2011.

80 Interview Legal Reform Unit, July 13, 2011.

81 Field diary notes, May 6 and 9, 2011.

82 Interview BWA, April 15, 2011; The participation of CISOCA officers in special training in gender-based violence is confirmed through information recorded by the author during attendance of and observations conducted at the Consultations on the National Strategic Action Plan and Press Launch of the UNITE Campaign to End Violence Against Women held by the Bureau of Women’s Affairs in February 2011 and April 2011, respectively.

83 Interview JCF Statistics and Information Management Unit, July 14, 2011, female police officer.

84 Interviews CISOCA, May 9 and 17, 2011; Interviews JCF rural area, May 5, 2011, female and male police officers.

social work<sup>85</sup> is on some occasions part of the expertise of the police officers indicating in this way an increased awareness about the manner to deal with sensitive issues. The collaboration between C.I.S.O.C.A. and the VSU supports the counselling services offered at C.I.S.O.C.A. An in-house counsellor assigned to the unit by the Ministry of Justice takes the victims to the VSU for further counselling.<sup>86</sup> The investigation of the reported sexual offence and pursuing the matter in Court by C.I.S.O.C.A. officers is inherent in the reporting process at this unit. When cases are in the preliminary examination stage, victims are provided with court assistance by the C.I.S.O.C.A. officers assigned to their case. Once the case becomes a court matter, the Crown automatically provides the victims with legal assistance.

Such an orchestrated, collaborative mechanism ensures support services for victims. C.I.S.O.C.A. and stakeholders such as the VSU, the Courts, hospitals, and the Jamaica Constabulary Force (JCF) Statistics and Information Management Unit operate in an interlocked system where “all relevant agencies come together as one”.<sup>87</sup> One C.I.S.O.C.A. police officer also explained, “*a person [who] will go to his or her station and report a sexual offence ... will be taken here, so they are forced to know about C.I.S.O.C.A.; so they will come to us. Once they come from wherever we don't turn them away, we deal with them.*”<sup>88</sup> Therefore, persons become aware of the work and the purpose of C.I.S.O.C.A. through their interaction, as victims, with other institutions providing remedies and support services, such as the police stations, hospitals or the VSU.

### *Victim Support Unit (VSU)*

Without being focused specifically on sexual or domestic violence, another institution responding to violence against women through support services for victims is the Victim Support Unit, commonly known as VSU. Operating as a branch of the Ministry of Justice, VSU was established in 1998 as a response to perceptions of imbalances in the Jamaican justice system where most attention and resources would be spent on the accused during court proceedings.<sup>89</sup> The unit was designed to provide a support

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85 Such expertise is acquired through additional degrees taken on a voluntary basis (Interviews CISCOA, May 6 and 17, 2011) or it is part of the police training (Interviews JCF rural area, May 5, 2011).

86 Interviews CISCOA, May 9 and 17, 2011.

87 Interviews CISOCA, May 9 and 17, 2011. Such collaboration was also stressed during the interview conducted at VSU on May 4, 2011 with a male senior management government official. Interview JCF Statistics and Information Management Unit, July 14, 2011.

88 Interviews CISOCA, May 9 and 17, 2011.

89 Ministry of Justice website <http://moj.virtual.vps-host.net/content/victim-support>, last accessed December 15, 2011. Also, informative print overview on the functions and objectives of the VSU obtained by the author from interview respondents working for VSU.

mechanism to assist victims of crime in managing emotional trauma associated with and caused by crime.

Even if its mandate covers crime in the broader sense and regardless of the victim's gender, most of the unit's clientele comprises of women. Interviews with VSU staff indicated that "*women are mostly the recipients of crime here, especially since domestic violence is probably most prevalent.*"<sup>90</sup> These women accessed the VSU services at the referral of courts, police or hospitals that have dealt with their cases, and sometimes even at the referral of schools; or they made use of the walk-in services provided by the unit. The asymmetric gender identities emerge thus in the attitude towards the support system for cases of violence. As one VSU senior representative attested,

*"We do see mostly women here because they are the ones who are coming for counselling, but men are also victims of crime. ... Because of socialization, of the gender issues, men really do not come for counselling as much as women."*<sup>91</sup>

Equipped with a staff composed of social workers and psychologists VSU's core mandate involves counselling, emotional support, court support, and crisis intervention. VSU assists with "*cognitive counselling, which basically helps reshape how you think. There is behaviour modification counselling which is designed to help you learn new behaviours that are required, new disciplines, new coping skills, new routines that will better take you away from the situation*"<sup>92</sup> with the purpose of debunking myths about the dynamics of offences and of empowering victims by providing information and raising their awareness. The unit also undertakes cultural re-socialization intervention targeting children; they also target parents through special intervention projects in schools. The preparation of victims for court proceedings entails beforehand preparation, accompanying the victim to the court and follow-ups after the clearance of the case.<sup>93</sup> Respondents explained that sometimes in certain situations "*we have to arrange for restraining orders; we have to arrange for court to press charges; we have to arrange for custody for children or relocate the children; in some instances we have to help mothers find a place to live with their children, find jobs.*"<sup>94</sup> According to one Ministry of Justice (MOJ) senior Government official,

90 Interview VSU, May 4, 2011. The respondent emphasized that "*almost any female that you see out there [meaning in the VSU waiting room] was raped; almost, I would say, one in three [sitting] out there at any time of the day ... If you come here after 3 o'clock any female child you see out there was raped; because they go to school [they come in later in the day].*" Observations while waiting in the reception hall of the VSU confirm the statements. I visited VSU both in the morning and in the afternoon, and the waiting area was full mostly with women and girls.

91 Interview VSU, May 4, 2011.

92 Interview VSU, May 4, 2011.

93 Group interview VSU, April 19, 2011.

94 Interviews VSU, May 4, 2011; Group interview VSU, April 19, 2011.



the free of charge service that VSU provides is valuable, as “*it is filling a void that otherwise meant further victimization from the point of view of the victim.*”<sup>95</sup>

### *Shelters*

The provision of a refuge for women victims of violence where housing, counselling and rehabilitation are provided marks another protection strategy in place.<sup>96</sup> However, there is just one temporary shelter that covers the metropolitan area of Kingston and St. Andrew, which is actually run by the non-governmental organization Woman Inc. with support from the Government. Starting in August 2010, the Government, through the Bureau of Women’s Affairs, has provided for financial support in order to avoid the closing of the shelter.<sup>97</sup> The main idea that emerged from interviews held at the Bureau is that the government intended to strengthen the shelter to the point of making it a Government-run shelter.<sup>98</sup> The author’s observations of the “International Day to End Violence Against Women – 16 Days of Activism” held by the Bureau of Women’s Affairs in November 2009 confirmed that the Jamaican Government contemplates the opening of a second shelter. However, more than a year and a half later, at the time of completing the extensive data collection for this research (August 2011), that intention had not come to fruition. It could not be identified, while conducting field research in Jamaica (December 2010-August 2011), whether more shelters for women victims of violence existed in other parts of the island. The Bureau indicated that a Government-run shelter had been already identified and was in the preparation stages.<sup>99</sup> However, findings from discussions with Government officials, including C.I.S.O.C.A. officers and VSU staff, transpired an uncertainty about the existence and the number of shelters in Jamaica, apart from the one run by Woman. Inc. for Kingston and the St. Andrew area.

The situation in Jamaica is rather paradoxical. The Jamaican legal infrastructure, the institutional arrangements and the remedies responding to forms of violence against women indicate, on the one hand, that measures have been put in place to respond to this societal scourge. C.I.S.O.C.A. and VSU are clear examples of that. Despite such measures and remedies in place, the inadequate number of shelters contributes to the normalization of violence and the climate of impunity and indicates a lack of commitment to women’s issues that still occupy a marginal position on the governmental agenda. According to CEDAW jurisprudence, for example Communication *A.T. v. Hungary*, the lack of shelters indicates that the State is failing

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95 Interview MOJ, May 3, 2011.

96 Interview at the BWA, February 25, 2011, senior management Government official.

97 Interview BWA, April 5, 2011.

98 Interview BWA, February 25, 2011.

99 Interview BWA, April 5, 2011.

to fulfil its obligations and thereby is violating the rights of the victim under *inter alia* Article 5(a).<sup>100</sup>

*The impact of social and cultural norms on putting law in practice*

“If he doesn’t beat me, he doesn’t love me!”

The mere enactment of laws and putting in place judicial infrastructures do not necessarily guarantee that the law is made use of when it is needed. Instead, the belief system encouraging the acceptance of violence against women impedes victims from seeking justice; implicitly, this has repercussions for putting the law into practice.

Reporting domestic violence to the police is a prerequisite for initiating the investigation and prosecution of such matters, and allows the law to take its course.<sup>101</sup>

Women’s refusal to provide the police with signed statements of the domestic abuse or withdrawals of statements halfway through the reporting procedure emerges often in the discussions with Government officials. Notwithstanding the disenfranchisement of women due to socio-economic circumstances, particularly in rural Jamaica and in inner-city/garrison community areas of towns, interviews pointed to the acceptance of abuse as a culture within which women operate. This understanding was especially put across by respondents from the Jamaica Constabulary Force (JCF), C.I.S.O.C.A., the Ministry of Justice (MOJ), the VSU and the BWA who work closely with women. Without the necessary voluntary report to the police, the investigation and prosecution of the case cannot follow their course. One police officer dealing with cases of domestic violence explained,

*“[Women] come in the heat of the moment when they are emotional and crying and they want him arrested and charged. If they are injured it is mandatory for us to take them for medical attention. By the time they get medical attention, two-three hours elapsed, they are now saying ‘Offica, mih jus waan fi teach him a lesson. Ruff him up, arrest him, put him in jail fi about five days. If him did beat mi fi steal or suh I would have felt better’ ... You realize that she accepts the beating.”*<sup>102</sup>

Such scenarios were referred to with preponderance in the discussions to emphasize that women themselves trivialize the situation of abuse committed against them,

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100 See CEDAW Communication No. 2/2003, A.T. v. Hungary, paras. 9.4 and 9.6.

101 Interview JCF Kingston and St. Andrew, April 29, 2011; Interviews JCF rural area, May 5, 2011.

102 Interviews JCF rural area, May 5, 2011; Translation from Jamaican Patois: “Officer, I just want to teach him a lesson. Ruff him up, arrest him, put him in jail for about five days. If he did beat me for stealing or so, I would have felt better”.

acting according to the cultural belief that beating for private matters is normal.<sup>103</sup> The police officer continued,

*“Because they are socialized that way ... If you are not getting beaten, if you nuh get a kick and a bax, yuh man nuh love yuh.”*<sup>104</sup>

Women’s refusal to pursue the reporting of domestic violence to the police corresponds therefore, to a large extent, to the social norm of acceptance of violence.<sup>105</sup> Acting upon the common belief *“if he doesn’t love me, he doesn’t beat me”* impacts on enforcing the law, and thus contributes to the encouragement and perpetuation of violence against women. Therefore, it is important to consider socio-cultural norms as serious barriers to reporting violence against women to the police.

*“It’s a man-woman ting. Go home and mek it up!”*<sup>106</sup>

This refers to another attitude about reporting intimate partner abuse to the police, which causes police officers to trivialize such abuse and to discourage women who approach the police from reporting. Findings from across the interviewed Government institutions show that statements such as *“It’s a little ting between man and woman”*, *“It’s a family thing, you must go home. Go mek it up with him”*, *“Go mek it up! You are wasting my time!”*, *“It’s a little home matter, what you want us to do? Why don’t you go home and reconsider?”* or *“How you report your husband?”*<sup>107</sup> encompass common police responses to women, from all levels, wanting to report intimate partner violence.<sup>108</sup>

Several respondents argued that women’s reporting behaviour explains why matters of intimate partner violence are not taken seriously by police officers. One senior VSU Government representative explained,

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103 Interviews CISOCA, May 9 and May 17, 2011; Interview BWA, March 25, 2011 (2).

104 Translation from Jamaican Patois; “... if you don’t get a kick and a punch, your man doesn’t love you”, Interviews JCF rural area, May 5, 2011; Interview VSU, May 4, 2011.

105 Other factors, such as emotional, psychological and socio-economic, play an important role in women not pressing charges. Interview VSU, May 4, 2011; Interviews JCF rural area, May 5, 2011; Interviews CISOCA, May 9 and May 17, 2011.

106 *“Ting”* is the Jamaican Patois for “thing”; *“mek”* means “to make”.

107 Such situations determine women to rather refer to their doctors with regard to domestic violence matters and not to the police stations. *“Data from Ministry of Health is that persons will go to their doctors about serious issues like domestic violence that happens to them and they would leave it there.”* Interview JCF Statistics and Management Information Unit, July 14, 2011.

108 Interview VSU, May 4, 2011.

*“According to [police] records, these people are not serious. A lot of police, I have seen, are saying that: ‘I don’t get involved in domestic violence because no matter what you do for those people, they are not going to follow through. They are going to waste your time: you are going to write them in the book ... and you turn up to court six times and they don’t come. And remember, as the police if you write the report you have to turn up in court that day and they not coming, so the police [are] reluctant to write reports.”*<sup>109</sup>

Such stereotypical patterns of behaviour around reporting by both women and police personnel reinforce each other and appear to determine police reporting dynamics that conveys certain messages to men and women. While men get the message that they can act with impunity with regard to abuse directed towards their female partners,<sup>110</sup> situations that on many occasions resume and result in women’s death,<sup>111</sup> women’s understanding is that of being discriminated against by the legal system. One Government official explained the way women think in this situation, *“I don’t bother because of how I am treated by the system. I am treated as if it is a man’s right [to beat me]”*.<sup>112</sup> Discussions at the Ministry of Justice confirmed that women complaining of sexual abuse at police stations were yet again victimized by the police treatment. *“The way you are treated at the station ... you are twice victimized. ... So this is what prevents people sometimes, because the very institution they go for seeking justice, is itself creating an injustice.”*<sup>113</sup>

It thus becomes evident how socio-cultural beliefs, attitudes and patterns of behaviour influence reporting dynamics and erode the legal mechanisms in place. Individuals’ cultural beliefs of *“if he doesn’t beat me he doesn’t love me”* and police officers’ attitudes like *“it’s a man-woman ting”* hinder invoking the law and making use of the legal remedies by individuals. Such beliefs obstruct the enforcement process, investigation and prosecution by the police, and limit the law “to live” only as text and not as practice. Moreover, they perpetuate stereotyped patterns of behaviour, which encourage violence against women and a feeling of mistrust in the legal system itself.<sup>114</sup>

109 Ibid.

110 *“Men get away with beating women because they know that they can get away with it. It is not going to stop.”* Interview VSU, May 4, 2011; Similar understandings were expressed by other respondents. Interviews JCF rural area, May 5, 2011.

111 Interview BWA, March 25, 2011 (2).

112 Interview VSU, May 4, 2011.

113 Interview MOJ, July 13, 2011.

114 Talking about informing individuals of the remedies in place as a strategy to make the law tangible to individuals and reduce violence against women, a senior management official from the BWA working in community outreach emphasized: *“If you are going to inform the community that these things are in place, they want to be able to trust the system. For example, the restraining order that you get from the family court, and yet the man comes to your house, and box you down, and what happens? Nothing happens! So the common person must be able to access these laws and trust them.”* Interview BWA, April 25, 2011.

Considering men – “... but do you understand that we are suffering too?”<sup>115</sup>

The patterns of behaviour about reporting abuse to the police differ along gender lines, mirroring the asymmetric construction of gender identities. Socialization into macho masculinities as opposed to weak femininities projects stereotyped images of men being by default the perpetrator in situations of sexual or intimate partner violence.<sup>116</sup> The man cannot be beaten and “*even if he is being beaten he had better give the impression that he is not being beaten*”;<sup>117</sup> the woman, on the other hand, is traditionally perceived as the victim. While the visibility of violence being inflicted on women is permitted and expected, intimate and /or sexual violence experienced by men is obscured.

Statistical data collected by the JCF Statistical Department and Information Unit pointed to women being preponderantly the victim.<sup>118</sup> Interviewees explained that that was in part due to the fact that men did not report such incidents. Society does not allow men to recognize overtly that they can be victims too. Parents, peers, police officers act according to the ascribed roles of tough, aggressive, in control males, which impacts on the awareness of the actual incidence and forms of violence in Jamaica and on accessing, and making use of the law, the legal mechanisms and the remedies in place.

A male police officer dealing with domestic violence cases explicitly pointed out: “*men will hardly come out (to report), they are macho.*” Men do not recognize being abused and refuse to report such incidents out of fear of being ridiculed and humiliated. Police officers interviewed attested, “*Their friends are going to laugh at them saying that they are not man (enough)*”.<sup>119</sup> This observation was confirmed by the account given by one VSU representative who explained that at the police stations,

*“You will see that persons coming in because of domestic violence are mostly women. I guarantee you that you will not find readily a man turning up to report to the police that his wife bit him. That man would not be allowed to leave the police station without being ridiculed. I do not see many police taking his report.”<sup>120</sup>*

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115 Interview BWA, March 25, 2011.

116 In many interviews, Government representatives referred to victims automatically as *she* and to the abuser as *he*, while being aware of the issues and talking about them.

117 Interview VSU, May 4, 2011.

118 See Chapter 4 for data provided for the purpose of this research by the Jamaica Constabulary Force (JCF).

119 Interviews JCF rural area, May 5, 2011.

120 Interview VSU, May 4, 2011.

Respondents from the Ministry of Education further indicated that treating men with ridicule in cases of reporting abuse at police stations mirrored a common treatment of boys when they alert adults, parents or teachers, about being abused by women: “*Buoy, you should be glad that a woman likes you ... you should praise for it!*” Hence silence around abuse suffered by men, which perpetuates the stereotypes, weakens the justice system and victimizes both women and men if they subvert the borders of the gender roles ascribed to them.

Whereas some women dare to come forth to report or speak out<sup>121</sup> and are more visible in police data, and thus the silence around sexual violence experienced by women seems to gradually be broken, the received cases dealt with by C.I.S.O.C.A. and VSU are still obscure about the men victims of sexual violence and domestic abuse. This imbalance mirrors the asymmetry of gender identities – the role of victim assigned to and assumed by women as opposed to a tough, aggressive, in control male identity mostly associated with perpetrator images. Yet again, this emphasizes the need to consider and involve men and boys in addressing sexual violence, violence occurring in the domestic sphere, and evidently all forms of violence against women.

All in all, the socio-cultural construction of gender identities not only influences relations between and among women and men, but it also represents an important factor influencing the administration of justice. Understandings of the value of law and the mechanisms in place are blanketed by socialization into ascribed types of identities and patterns of behaviour. More concretely, the normalization of violence against women hinders access to the legal measures, making use of the remedies in place, enforcement of the law and hence the realisation of rights. This affects both the individuals affected by violence and also the officials that make the law, enforce it and administer justice.

### 6.3.3 Preventive measures – policy and programmes

Putting in place a policy framework, covering programmes and strategies targeting social and cultural root causes of violence against women, represents one of the *appropriate measures* recommended by the CEDAW Committee in order to put Article 5(a) into practice. The Committee urges Jamaica in the Concluding

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121 Group interview VSU, April 19, 2011. Respondents explained: “*We find now that more persons are coming up to say yes, I have been abused, especially as it related to females; the women are now coming up to say more. It could be because of general education and the whole fear factor that was there has been reduced somewhat- people are more comfortable now to talk about it as opposed to a few years back. ... Before some persons wouldn't want to talk because they knew that they didn't have the kind of support mechanisms, but now with places like us that provide that much more support, it makes it more easy.*”

Observations of 2006 to “*put in place without delay a comprehensive strategy ... to modify or eliminate negative cultural practices and stereotypes that discriminate women*”.<sup>122</sup> In relation to combating and eradicating violence against women, the Committee specifies that such a comprehensive strategy should be taken “*in conformity with General Recommendation 19 to prevent violence, punish offenders and provide services for victims*” and “*should also include awareness-raising measures and sensitization of, in particular, the judiciary, law enforcement officers and prosecutors, as well as teachers, health-care and social workers and the media.*”<sup>123</sup>

This section maps out policy and programmes actions undertaken by Government actors in order to explore whether there are adequate preventive measures in place.

*Policy framework: actions to address discriminatory sex roles and gender stereotyping*

Until 2011, the policy framework was laid down in a “National Policy Statement on Women” issued by the Government in July 1987 in response to the decade for women of 1975-1985. The Statement specifically addressed women’s situation in Jamaica, but did not deal with the socio-cultural constructions of gender relations. Next, the “Gender Sector Plan” of the “Vision 2030 Jamaica National Development Plan” of 2010 acknowledged gender as a crosscutting issue for all national development initiatives. However, concrete policy action responding to gender inequalities in Jamaica was only undertaken on March 7, 2011 when the Cabinet Office approved a national gender policy for Jamaica entitled the *National Policy for Gender Equality (NPGE)*, after two policy submissions to the Cabinet Office in 2008 and in 2010. The Bureau of Women’s Affairs in collaboration with the Gender Advisory Committee played a central role in the development of the policy.<sup>124</sup>

Findings from interviews indicate that preventative approaches are preferred so that there is “*no need to go to the court, to go to the law because there are so many bottlenecks. You get blocked up in the system waiting for justice!*”<sup>125</sup> The general sentiment of disappointment and distrust in the legal system, expressed clearly by most of the Government officials interviewed, seemed to determine in turn placing high hopes on the recently launched gender policy, which provides for a comprehensive

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122 CEDAW CO Jamaica, 2006, para. 14.

123 CEDAW Concluding Observations for Jamaica, CEDAW/C/JAM/CO/5, 2006, para. 16.

124 On the occasion of the centenary of the International Women’s Day on March 8, 2011, the BWA launched Jamaica National Policy for Gender Equality (NPGE) and its implementation project entitled “Way Out”. Author’s Observations, March 8, 2011.

125 Interview BWA, April 6, 2011, female middle management Government official.

approach. Respondents specifically expressed the necessity for a “*holistic approach*”<sup>126</sup> that would ensure “*a fulsome buy*”<sup>127</sup> policy. One of the BWA staff interviewed explicitly stated: “*The truth is that we are hoping the gender policy will really bring some changes. From my experience and what I have seen from other persons, the laws are not very effective.*”<sup>128</sup>

One of the goals of the policy is the transformation of “*prevailing gender ideologies, inequitable gender relations and gendered governance practices at all levels of public sector organizations*” (Goal #2). In that regard gender mainstreaming is regarded as an institutional mechanism addressing behaviour change, indicating the interest in and the need to address and redress gender inequalities by going deeper into institutional and implicitly societal structures.<sup>129</sup> Interviews with key actors in designing and planning the policy implementation steps confirmed the underpinning of this particular policy measure. One senior Government official from the BWA emphasized that “*the policy is based on the fact that there has been historical disadvantages between men and women.*”<sup>130</sup> Moreover, the respondent emphasised that since “*violence against women is critical, it is also in the policy,*”<sup>131</sup> confirming in this way that the social and cultural construction and perpetuation of gender-based violence against women is addressed in the policy.

Going beyond the promising written text of the policy, its practicability and implementation needs to be put under scrutiny. As one female senior official from the Cabinet Office pinpointed “*because those that created the policy know what the policy is supposed to do, they know what they are planning to [achieve]*”, so the following pertinent questions arise: “*how does the policy break down at the different levels? How do we get the Government agencies, not just the Bureau, do what they are required to, which is to provide the services in a timely manner?*”<sup>132</sup> For that reason, the sub-sections below explore and map out the strategies foreseen in the policy in order to address social and cultural patterns of conduct based on discriminatory sex roles and gender stereotyping, and the manner in which they are planned to be implemented.

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126 Interview JCF, April 29, 2011.

127 Interview Legal Reform Unit, July 13, 2011.

128 Interview BWA, April 6, 2011.

129 See NPGE Jamaica, 2010, Objectives 2 and 3.

130 Interview Bureau of Women’s Affairs, March 25, 2011 (1).

131 Ibid.

132 Interview Cabinet Office, April 1, 2011, female senior Government official.



### *Strategies and actors for implementing policy objectives*

The policy specifies a series of strategies to fulfil its objective of gender equality, especially in relation to discriminatory sex roles and gender stereotyping. The following sub-sections focus in particular on these strategies, as they emerge from the policy text and from the interviews with Government officials.<sup>133</sup>

#### Sex-disaggregated data collection and gender analysis

In order to build an understanding of the manner in which gender roles and “*gender-inequitable power relations*” operate in Jamaican society, the policy proposes gender analysis as an ongoing strategy.<sup>134</sup> The collection of sex-disaggregated data is expressly stated as an integrated component of this strategy, which “*can provide useful information about the roles, behaviour, and responsibilities of women and men within organizations.*”<sup>135</sup> Based on this, the manner in which “*gender roles and gender-inequitable power relations may affect how and why individuals are resistant to change*” can be assessed through the gender analysis tool.<sup>136</sup> This strategy is thus envisioned to have the potential to facilitate an understanding of where change in patterns of behaviour is required in order to “*create an environment in which women and men can function based on the goals of greater gender equality and equity.*”<sup>137</sup> The Government as a whole is indicated in the policy document as responsible for employing this strategy, and as such for guiding the understanding and integration of gender at all levels.<sup>138</sup>

#### Gender mainstreaming: “you have to think gender”

Gender “integration”<sup>139</sup> by means of collaboration between relevant partners is a required mechanism to channel knowledge through the different structures and thus implement the policy. Gender Focal Points (GFPs) established by the Bureau in each governmental ministry, department and agency, and monitored by the Gender Advisory Council are intended to sustain the implementation process. Representatives from the Bureau explained the manner in which these mechanisms were anticipated to work:

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133 Considering that the policy document was approved and launched on March 8, 2011, not all Government officials were aware of the policy.

134 NPGE Jamaica, 2010, p. 20.

135 Ibid.

136 Ibid.

137 Ibid.

138 Ibid.

139 Interview Cabinet Office, April 1, 2011.

*“We are using gender focal points within ministries, departments and agencies to look at the policy and to see where their area fits into the policy [and] then use the policy to actually analyse the work they are currently doing and to improve the whole process. Also to ensure that gender is mainstreamed within their particular area and the needs of men and women are taken into account based on the policy.”*<sup>140</sup>

As another BWA senior representative observed, such a strategy is needed at Government level *“because all too often with all the other things that are supposed to be considered important and priority, sometimes the gender focus is not there. So, we want to push the gender focus.”*<sup>141</sup> The respondent further explained,

*“So, we are there, always in your face, to say: ‘just always remember that each time you are doing anything at all, you have to think gender.’”*<sup>142</sup>

In this way the gender focus is not kept under the rug by Government institutions; instead, gender concerns are placed on the Government agenda.

### Education and training

*“Education and culture”* is one of the areas in which the policy specifically addresses sex roles and gender stereotyping.<sup>143</sup> In that respect, it sets as targets the transformation of *“prevailing gender ideologies that undergird a sexual division of labour and reproduces a male/female hierarchy in educational institutions and ultimately the wider society”*,<sup>144</sup> and the re-socialization of adolescent males and females *“away from entrenched stereotypical views on expressions and performance of masculinity and femininity towards an understanding of the importance of shared roles”*.<sup>145</sup> These targets are planned to be fulfilled within precise timeframes between 2012 and 2015. They encompass teacher training for gender-sensitive school/classroom practices through a mandatory module on “Gender in Caribbean Education” for teachers at all levels, the scrutiny of curricula and textbooks for gender biases and the introduction of a parenting education programme addressing gender socialisation, issues of sexuality in educational institutions from early childhood levels, and the removal of barriers preventing either females or males to “access sex-linked curriculum areas, particularly in the technical-vocational areas”.<sup>146</sup> In the area of reproductive health rights and HIV/aids, the policy targets the construction of femininity and masculinity,

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140 Interview BWA, April 5, 2011.

141 Interview BWA, February 25, 2011.

142 Ibid.

143 See NPGE Jamaica, 2010, p. 51.

144 Ibid.

145 Ibid., p. 52.

146 Ibid., pp. 51-52.

and issues of power in sexual relations. It sets as a strategy sex education for adolescent girls and boys based on the Health and Family Life Education (HFLE) programme of the Ministry of Education. In that regard, teachers at all primary and secondary levels must be trained to use the HFLE curriculum to build the understanding of relevant gender issues.<sup>147</sup>

#### Stakeholders' collaboration: "a multi-sectoral approach"

The Government is the leading actor in bringing about social change with respect to gender. The policy states: "*In order to effect a culture of change in society with respect to gender and development, the GOJ [Government of Jamaica] shall take the lead in promulgating the principle of gender equality and equity.*"<sup>148</sup> A close look at all the actors that are indicated as responsible for the implementation of these strategies shows that the Bureau is envisioned as the central actor to assist the implementation process.

However, the policy document makes clear that the Government cannot undertake policy endeavours to achieve the objective of gender equality by itself. "*Gender equality cannot be achieved simply through the efforts of the GOJ.*"<sup>149</sup> Putting policy measures into practice requires a collaborative approach by all relevant stakeholders. This is essential for the dissemination and application of the content of the policy. A "*multi-sectoral approach*" also referred to as "*strategic partnerships and multi-stakeholder outreach*" is necessary to be taken by which civil society and for-profit and not-for-profit sectors join efforts to achieve gender equality.<sup>150</sup> A variety of actors from relevant ministries and governmental institutions, academia, local organizations and regional ones to parents, students and publishers are envisioned to join the efforts of the BWA to fulfil the policy targets.<sup>151</sup>

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147 Ibid., p. 57.

148 Ibid.

149 NPGE Jamaica, 2010, p. 21.

150 Ibid.

151 In this area, the responsible institutions encompass, the Ministry of Education (MOE) Textbook Unit and Guidance and Counselling Unit, the Ministry of Health, the Institute for Gender and Development Studies (IGDS), the Joint Boards for Teacher Education, Parent Student Associations (PTAs), School Boards, Student Councils, parents, publishers, the CARICOM Secretariat, and relevant non-governmental organizations (NGOs). See NPGE Jamaica, 2010, pp. 52-53 and 57.

## Dissemination of policy content: “knowledge sharing”

“*Information sharing and knowledge*”<sup>152</sup> emerged as a key strategy to put the policy measures into practice and thus to fulfil the objective of transforming discriminatory gender identities, ideologies and practices. The dissemination of the policy content encompasses a wide distribution. Using different, free of cost media is a strategy that can ensure that persons across the country are aware of the tenets of the policy and the manner in which it affects their lives. As one BWA senior management representative explained,

“*We are trying to take it at all levels and we admit that not everybody is going to know about the policy all at once, but over the period and through different means we are hoping that persons will be able to. Persons who are computer-literate and computer-savvy will be able to use the Internet. For those who are readers ... we are going to ensure that every ministry, department and agency has a copy; we are going to get one copy over the national library or in the libraries across the island. We want to make sure that we have copies in the libraries across the island and we also want to make sure we have copies into key agencies, like some of the service clubs, some churches ... and at least in some main school libraries.*”<sup>153</sup>

Verbal means are also integrated in the dissemination plan in order to provide access to policy content at the community and school levels; new media, such as the BWA Internet website, is anticipated as an avenue for an interactive social network where individuals can avail themselves of the policy, voice their opinions and make comments.

### *Policy implementation: reaching out to target groups*

Because the communication of measures, such as this policy document, tends to be either an article in the *Gleaner* or the *Observer*,<sup>154</sup> a launch or a press release that are not accessible to everyone, it is important to question and investigate,

“*Where do we connect out community and the people in the community to get that information from those that created the policy down to the level that people know how to access services and/or what is there they are supposed to be accessing?*”<sup>155</sup>

Ensuring understanding and awareness of the policy and its content “*not only in terms of an academic understanding, but how the policy relates to them at their level*”

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152 Interview Cabinet Office, April 1, 2011.

153 Interview BWA, April 5, 2011.

154 These are the most popular local newspapers.

155 Interview the Cabinet Office, April 1, 2011, female senior Government official.

emerged as the primary strategy for reaching out to individuals at all societal levels.<sup>156</sup> GFPs emerged as the strategy to ensure that every governmental ministry, department and agency has a copy of the policy, while targeting civil society organizations, churches, schools and communities emerged as the strategy to communicate the policy content to the population. Interviews across Government ministries revealed that the diffusion of the content and meaning of the policy at the level of the common individual is essential in the operationalization of the policy measures. According to the explanation of one senior Government official,

*“Once people understand what the policy is all about, what it intends to do and what are the roles and responsibilities of each institution and individual in the context of the policy, then we can see some good results from that.”<sup>157</sup>*

As explained by one BWA representative, prior practices that have worked in the dissemination of CEDAW could inform the choice of strategies for the diffusion of the policy content.

*“People will invite us from time to time to different meetings and so we have to know how to use those opportunities to actually at least say that there is a national gender policy. So, for example, if we are talking about gender-based violence, we would most naturally make reference to the policy and the particular area within the policy that would fall under; with the scope that there is gender equality and there is no usurping of power in relations or in gender relationships.”<sup>158</sup>*

Observations of workshops targeting different groups, from Government officials, to civil society representatives and community individuals, in which the Bureau integrated the provisions of CEDAW in order to translate ideas and meanings of rights and gender equality confirm that remark. This illustrates the manner in which the Bureau operationalizes CEDAW and the national gender policy in an effort to achieve gender equality.

The implementation of the policy has been initiated through a specific programme developed in collaboration with the local NGO Dispute Resolution Foundation (DRF) and funded through the UN WOMEN Fund for Gender Equality, Advancing Women’s Political and Economic Empowerment.<sup>159</sup> The programme entitled “Way

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156 Interview BWA, April 5, 2011.

157 Interview MOJ, May 3, 2011; also, Interview Office of the Cabinet, April 1, 2011; Interview BWA, April 5, 2011; Interview BWA, March 25, 2011 (1) and (2); Interview BWA, April 6, 2011.

158 Interview BWA, April 5, 2011.

159 See UN WOMEN, *Fund for Gender Equality, Advancing Women’s Political and Economic Empowerment*, available at [http://www.unwomen.org/wp-content/uploads/2011/03/FundForGenderEqualityBrochure\\_en.pdf](http://www.unwomen.org/wp-content/uploads/2011/03/FundForGenderEqualityBrochure_en.pdf), last accessed on September 27, 2012.

*Out: Jamaican Women's Political and Economic Empowerment*<sup>160</sup> focuses the policy implementation measures on training for both the public and private sector on gender mainstreaming, on public education campaigns to promote and encourage women's participation in decision-making spheres, gender awareness training, such as the sensitization of media practitioners about their role in streamlining gender issues,<sup>160</sup> and on mediation training. These are strategies to communicate the policy content to the public at large in order to implement the policy and create a climate, which is conducive to the elimination of gender biases and ensures higher economic and political influence of women in private and public sector organizations.<sup>161</sup> Undertaking this project illustrates the way in which partnerships between the Government, through the BWA, and the civil society function for the wider diffusion of the content and meaning of the policy.

#### *Education, awareness and public information actions and initiatives*

Awareness raising and public education measures are core strategies for conducting the UN Secretary-General's UNITE Campaign to End Violence against Women. This campaign is one of the governmental responses, through the BWA, to address the heightened levels of gender-based violence against women in Jamaica. It does so by using similar strategies as the ones planned for implementing the gender policy, i.e. taking consultative and multi-sectoral approaches in addressing the issues of violence against women, striving for improving data collection on violence against women, and increasing public awareness and social mobilization.

The community outreach approach taken in this campaign makes it an example of the strategies employed by the BWA to resonate with the cultural fabric of the Jamaican population. The strategies undertaken cover school tours, church and public forums in communities, and not the least, the use of drama sketches, popular artists and music in order to convey the message of reducing violence against women. Public service announcements (PSAs)<sup>162</sup> by popular artists aired on different television stations together with the artists touring together with the BWA in order to raise consciousness about gender-based violence against women are central to the campaign. These strategies draw on the specificities of Jamaican culture in order to make the message

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160 The Jamaica Observer, November 28, 2011, "Gender Focus for Way Out Project".

161 Interview BWA, "Way Out" Project April 27, 2011, female technical staff; see also, UN WOMEN, Fund for Gender Equality, Jamaica, 'General Programme Goal', available at <http://www.unwomen.org/wp-content/uploads/2011/07/IMP-Bureau-Womens-Affairs-Dispute-Res-Fnd-Jamaica-Profile-July-2011.pdf>, last accessed on September 27, 2012.

162 On the occasion of spending three weeks in Jamaica in January 2012 I saw such a PSA being broadcast on a popular Jamaican television channel.

of eliminating gender-based violence against women meaningful to the Jamaican citizen. One BWA representative in charge of designing the campaign summarized,

*“Because for people once their song is in singing, you get people listening. Then the people will follow the popular artists. That is basically the essence of the campaign. We also want to put on a drama part, because [we] Jamaicans, we listen and we look a lot more than we’ll read. So, a brochure won’t appeal to the mass. We have to basically give it to them in their language, and their language is visual and audio. So we are trying that approach to basically get the society really look at the problem internally: how can I as a citizen deal with or stop violence against women?”<sup>163</sup>*

Music emerges as a powerful means to shape mentalities and attitudes in Jamaica. Being identified as a factor impacting on the socialization processes and the construction of gender relations, as mentioned earlier in this chapter, it has consequently been identified also as the Jamaican cultural specificity on which meaningful messages can be drawn, such as the one to eliminate violence against women. Similar to the previous respondent working directly with implementing the campaign, a senior BWA representative emphasized,

*“We got some of the popular artists, because dancehall culture is very popular in Jamaica, and people tend to listen to dancehall artists. We are hoping that through ... their positiveness that we will be able to get some of them to say to the nation that: ‘Look, don’t beat your woman! Don’t violate her rights, don’t abuse her in any way!’ So yes, our strategy is to use various media to get the word out and to get the messages out.”<sup>164</sup>*

Even if in a planning stage at the time of conducting this research,<sup>165</sup> a governmental response such as the UNITE Campaign is illustrative of the strategies that have the potential to translate norms and ideas in an impactful way and thus tackle specifically gender-based violence against women and its social and cultural root causes. Confirming that the BWA has employed preventive measures as a common approach in their work, one of the BWA senior representatives explained:

*“Prevention will involve public education. Prevention using the various media and all the channels that are there including print, electronic, artist, popular figure, endorsements, that sort of thing. Therefore, public education in the churches, public education in the schools, public education in the community, public education using the print media, public education using the electronic media, public education through interviews of anyone from the media.”<sup>166</sup>*

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163 Interview BWA, April 16, 2011.

164 Interview BWA, April 5, 2011.

165 The UNITE Campaign was in its planning stages at the time of conducting the research and taking the interviews, between December 2010 and August 2011.

166 Interview BWA, April 5, 2011.

Secondary data confirms that as early as 1978 attention was being given to changing attitudes in order to facilitate the employment of women in non-traditional jobs and provide for the economic empowerment of women. The then executive director of BWA stated “*Government can create all the opportunities for economic advancement but if there is no change in our mental awareness our effort will be futile.*”<sup>167</sup> Strategies used at that time to put that in practice were educational programmes among schools, women’s organizations, and unions “*to try to change the attitudes of teachers, parents, employers and women themselves who should ... consider new opportunities and new life styles.*”<sup>168</sup> In 1980-1981, the Bureau had the Schools Education Programme in place. Recognizing that it has as a “*major objective the changing of negative societal attitudes towards women, their roles and functions*”, the strategy identified to achieve this objective was targeting young people through education programmes in schools. Reports of the Programme reveal that the education sessions conducted interactively with the students addressed negative attitudes towards women prevailing in society, positive attitudes which should be displayed, and also sex stereotyping in the print media and in the text books.<sup>169</sup> As a result of the programme, the report specifies that students started to question the status quo concerning women. On this tone the report concluded that the school is “*a good institution through which to tackle the many negative attitudes which militate against women’s total development.*”<sup>170</sup>

Furthermore, a National Plan of Action as early as 1987, when the Bureau was part of the Ministry of Social Security and Consumer Affairs, recognized that among the problems and issues that Jamaica was facing at that time were “*social attitudes that condone physical abuse of women within the family*”.<sup>171</sup> The proposed measures in order to address this situation were awareness raising among communities by means of information and education campaigns directed towards men and women and the “*development of material for use in schools to change attitudes about family violence.*”

It emerges that that addressing the construction of gender identities, sex roles and gender stereotyping in order to change a culture of gender-based violence against women is not new to the measures undertaken by the Government. Education measures, raising consciousness through public education and awareness campaigns are among the main strategies taken to address such issues.

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167 BWA archives, “The Women’s Bureau”, September 1978, p. 3.

168 Ibid.

169 BWA archives, Bureau of Women’s Affairs, Public Education Unit, Report of Schools Education Programme, 1980-1981, July 28, 1981, p. 2.

170 Ibid., p. 4.

171 BWA archives, Bureau of Women’s Affairs, Ministry of Social Security and Consumer Affairs, National Plan of Action, [year of publication is not mentioned in the document], pp. 18-19.



*The Male Desk: considering and involving men and boys*

“We cannot look at one gender in isolation”,<sup>172</sup> especially not in relation to the social and cultural reproduction of violence against women. Engaging both sexes in the understanding of gender and the way it operates, especially through violence, and addressing and integrating the concerns of both women and men in the Government’s policies, plans and programmes is essential for creating an environment which is conducive to social and cultural transformation.<sup>173</sup>

Prior to the 2010 National Policy for Gender Equality, the National Policy Statement on Women of 1987 was speaking only to issues affecting women in Jamaica. Recognizing that focusing on and targeting only women in the efforts to eliminate violence against women was a one-sided action that easily became “*preaching to the converted*”, the Bureau launched a Male Desk in 2009.<sup>174</sup> This Desk represents a central point providing information on parenting, education, health, and the elimination of gender-based violence, with a focus on the role of men. With regard to gender-based violence in particular, male community leaders working with other men in their community are targeted in order to spread the message of ending gender-based violence against women.

*The Bureau of Women’s Affairs: a vernacularising actor*

The establishment of a Bureau of Women’s Affairs in Jamaica itself marks also a governmental response to the need to achieve gender equality. This initiative dates back to as early as 1974 when a Women’s Desk was established. The Desk was upgraded a year later to the Bureau of Women’s Affairs. As the Government’s branch in charge of the national machinery for women, the Bureau of Women’s Affairs spearheads policy development, programmes and projects pressing forward the empowerment of Jamaican women and promoting their rights. Given the impact of patriarchy and sexism, the Bureau represents a *reminder* within the Government apparatus that the problems that women are confronted with need to be addressed. Research and policy development, public education and training, project planning and monitoring are, to that end, the core functions of the Bureau.<sup>175</sup> By means of public education and programmes such as “School’s Education Programme” the Bureau addressed, over

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172 Interview BWA, April 5, 2011.

173 The rationale of the National Policy for Gender Equality puts emphasis on the need to address and integrate the concerns of both sexes in Government measures. See NPGE Jamaica, 2010, Rationale, p. 17.

174 Interview BWA, April 5, 2011.

175 Bureau of Women’s Affairs internet website: [www.bwa-jamaica.gov.jm](http://www.bwa-jamaica.gov.jm), last visited December 21, 2011.

the years, the notions of masculinity, gender socialization, gender expectations, and the meaning of being a male in Jamaican society.

It emerges from discussions and from artefacts and materials, i.e. T-shirts, posters, photographs, that the Jamaica Bureau of Women's Affairs facilitates implementation also by taking an active role in the vernacularisation of norms to rights holders. It targets communities in their activities through its department specialising in liaising with communities, in an effort to make ideas of women's human rights accessible to individuals. In this way, the Bureau takes implementation beyond the legal and policy frameworks and gender mainstreaming activities at the institutional level. It makes sure, through norm translation processes of its own, that norms are given meaning in the vernacular.

For example, drawing on students' understanding of concepts of gender and violence against women and on their knowledge of their own environment, the negative connotation of gender-based violence against women and the importance of taking action against it is conveyed by means of using slogans in the Jamaican vernacular. The slogans are printed on T-shirts worn by community individuals, and by representatives of BWA. Such an initiative reveals a way of using the vernacular in order to convey meaningful messages for the targeted audience. One BWA representative explained the process in detail,

*“We have actually asked them to develop T-Shirts with slogans, and they developed: ‘Tek a step, mek a choice’ and this means ‘take a step, make a choice, stop violence against women’; ‘be a man stop violence against women’; ‘love them tender touch them, stop violence against women’ because these are their sayings and they develop these messages. Then we have also posters that they’ve also developed with drawings that they would take back to their communities to spread the word; plus we had a training session for them and they did a cooking course and out of that they, actually, link to violence against women, so now they are able to do something for themselves. Now that they have been trained in this area it would help to reduce gender-based violence at home and among their partners and to take care of their women better and all of that.”<sup>176</sup>*

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176 Interview BWA, February 25, 2011; also Interview BWA, April 5, 2011.

Photo 1. Collage of T-shirt and poster slogans used by the Bureau of Women's Affairs<sup>177</sup>



All in all, the process employed at Government level through the Bureau of Women's Affairs appears to be a consultative one that channels knowledge and understanding with the support of different actors from governmental institutions and non-governmental organizations, and also from both public and private sectors. The consultative nature of policy formulation and the gender mainstreaming strategy taken for policy implementation indicate a combination of top-down and bottom-up approaches to the implementation of measures, norms and ideas of women's rights and gender equality. This role identifies the Bureau not only as a response to women's concerns, but also as a strategy and as an important actor in addressing the socio-cultural construction of sex roles and gender stereotyping that can perpetuate violence against women.

177 Photographs taken by the author with the permission of the Bureau of Women's Affairs. A clarification of the Jamaican Patois terms used in the T-shirt slogans is as follows: "Tek a step, mek a choice, stop violence against women" means "Take a step, make a choice, stop violence against women"; "Love dem, tenda touch dem, stop violence against women" means "Love them, tender touch them, stop violence against women". The poster slogan "Bredren, real man nuh beat woman" means "Brother, real men do not beat women."

*The role of the CEDAW in Government actions*

Findings show that CEDAW is part of the international and regional gender equality framework that gives strength to the action taken at the governmental level.<sup>178</sup> However, it was the situation of discrimination and violence scourging Jamaican society that primarily triggered many of the measures and strategies undertaken. BWA representatives observed that some of these measures have been put in place even before the Convention has entered into force in Jamaica.<sup>179</sup>

*“CEDAW was ratified in the 1980s, so even before we ratified CEDAW we have been working and dealing with some of the issues. We have national legislation in some instances before [CEDAW]. With the advent of CEDAW it only strengthens our results and actually bringing the international context into focus.”<sup>180</sup>*

The CEDAW ideas, values and norms are apparent in the public discourse of the Bureau’s officials. However, in being asked about the role of the CEDAW Convention in the actions and initiatives taken, this role seems to be limited:

*“We are not doing it because of CEDAW. Some of our legislation and policies actually predate CEDAW; but with CEDAW also we have to bear in mind that we have ratified this Convention and we have to ensure that what Government say that it will do, it will do. In doing our work also we do that with CEDAW in mind. And not just CEDAW, [but also] Belem do Para, the other conventions, the Domestic Violence Act and all the other instruments that are there to protect our people.”*

At the governmental level, CEDAW appears to give teeth to the actions and initiatives taken. Embedding the issues confronting Jamaican women in the framework of State obligations under CEDAW directs governmental attention to women’s rights.

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178 Jamaica is a signatory of the following regional and international agreements: CEDAW, the Nairobi World Conference on the Forward Looking Strategies for the Advancement of Women (1985), the Cairo Programme of Action (1994), the Beijing Platform of Action (1995), The Millennium Development Goals (MDGs) (2000-2015), Ten Year Review of the Beijing Platform for Action (Beijing+10), the Commonwealth Plan of Action for Gender Equality (2005-2015), the CARICOM Platform of Action, the Belem do Para Convention. See NPGE Jamaica, 2010, p. 16.

179 Interview BWA, April 5, 2011; Interview BWA, March 25, 2011.

180 Interview BWA, April 5, 2011.

#### 6.4 FACTORS INFLUENCING ACTION *FROM ABOVE* AND GAPS IN THE ACTION TAKEN

*“We need action, we need to see something happening”*<sup>181</sup>

These are the words of a woman participating in the protest of September 28, 2012 that took over parts of Kingston to expose the anger at the shocking incidents of sexual violence scourging the country. On this day, Jamaica wore black in solidarity with the five victims of the rape that took place Monday night, September 24, 2012 in St. James, Jamaica. Five women, including an eight-year-old girl, were attacked in their home and brutally raped at gunpoint. The police reported that *“two men — one of whom was armed with a firearm ... gained access into the house after they held onto one of the occupants, through a window, and demanded that the door be opened. All five [females] were held at gunpoint, tied up and raped.”*<sup>182</sup> The incident shattered and enraged Jamaica, from the Prime Minister, women MPs, the head of the Kingston and St Andrew branch of C.I.S.O.C.A.<sup>183</sup> to the common individual, who extensively debated the situation. The executive director of BWA said, in condemning the atrocity, *“women and children at times are no longer safe to carry out their regular activities as they are subject to violence on a daily basis. ... This violence takes many forms: physical, emotional, sexual and psychological.”*<sup>184</sup>

Despite the attention given *from above* to the social and cultural construction of gender relations, and the actions taken in relation to the occurrence of gender-based violence against women, as early as 1987, the endurance of gender roles and stereotyping does not seem to be broken and the escalating levels of gender-based violence against women is alarming. Notwithstanding the action taken and the legal, policy and programmatic measures that have been put in place since the last CEDAW country review in 2006, the CEDAW Committee still expresses concern and indicates in its Concluding Observations on Jamaica of 2012 that the situation in the country shows that *“gender-based violence is reportedly widespread”*.<sup>185</sup> The Committee continues, *“cases are underreported due to the prevalence of social and cultural norms”*<sup>186</sup> and points to *“the persistence of stereotypes and the adverse cultural norms*

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181 Jamaica Observer, September 28, 2012, ‘Rape-protest crowd swells Cross Roads’, available at <http://www.jamaicaobserver.com/news/Rape-protest-crowd-swells-in-Cross-Roads>, last accessed on September 30, 2012.

182 Jamaica Observer, September 26, 2012, ‘Horror in St.James! 8-y-o among five females brutally raped by gunmen, St James rape incident shocks CISOCA head’, available at [http://www.jamaicaobserver.com/news/Horror-in-St-James--8-y-o-among-five-females-brutally-raped-by-gunmen\\_12623938#ixzz27oWPaabx](http://www.jamaicaobserver.com/news/Horror-in-St-James--8-y-o-among-five-females-brutally-raped-by-gunmen_12623938#ixzz27oWPaabx), last accessed on September 30, 2012.

183 Ibid.

184 The Gleaner, September 27, 2012, ‘Stand Against Rape – Jamaicans Urged To Join National Protest Condemning Abuse’, available at <http://jamaica.gleaner.com/gleaner/20120927/lead/lead1.html>, last accessed on September 30, 2012.

185 CEDAW Co Jamaica, 2012, para. 21(a).

186 CEDAW Co Jamaica, 2012, para. 21(a).

*and traditional practices concerning the roles and identities of women and men in the family and in society”.*<sup>187</sup>

This section maps out the factors identified by the Government respondents as impeding the actions and initiatives taken to address social and cultural patterns of conduct that perpetuate violence against women. These factors are illustrative of the shortcomings in the measures in place so far, indicating the areas where further steps need to be taken.

### *Impeding factors*

Findings show that despite a general awareness about the social and cultural reproduction of violence against women, bringing about social and cultural transformation with a view to eliminate this type of violence is not a major priority concern at the governmental level. More specifically, the government ministries, departments and agencies that are not necessarily focusing their activities on women’s human rights do not employ gender analysis in their work. In that regard, the “*National Security Policy for Jamaica: Towards a Secure and Prosperous Nation*” (2007) of the Ministry of National Security (MNS) is one example in which the Ministry does not make use of gender analysis, thus failing to address experiences of violence differentiated along gender lines.<sup>188</sup> In fact, there seems to be a lack of consciousness of the gravity of gender-based violence against women that leads to a general acceptance of this type of violence in Jamaican society. It is only taken as a serious issue when it results in death. As a respondent from the JCF Statistics Department clearly pointed out, violence against women leading to death

*“would be more gruesome, so more attention would be given [to it]. Then, as rape and carnal abuse increase, there is an increased attention, but that attention is not being focused. It is only being focused on murder and other offences, which I think contribute to violence against women. So to be honest, I would say that other than that [violence against women] is a regular thing.”*<sup>189</sup>

The lack of gender mainstreaming and the resulting marginal attention given to gender-based violence against women in the broader picture of governmental priorities are indicative of the shortcomings of action taken to address this type of violence. Clearly, they are serious factors impeding the implementation and realisation of women’s human rights.

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187 CEDAW CO Jamaica, 2012, para. 19.

188 Interview Office of the Cabinet, May 4, 2011, female senior Government official. Secondary data confirmed the interview findings. See Government of Jamaica, Ministry of National Security, 2007, *National Security Policy for Jamaica: Towards a Secure and Prosperous Nation*.

189 Interview JCF Statistics and Information Management Unit, July 11, 2011.

Moreover, these actions have been taken in a disconnected manner, without financial or integrated governmental support. Depending heavily on external funding, initiatives and measures stop once these financial resources end. In most cases, therefore, the sustainability of the actions undertaken cannot be ensured.

The legal and judicial remedies, and support services in place come to the knowledge of common individuals only when they are involved with the system as victims.<sup>190</sup> Findings indicate an insufficient level of knowledge about the legal, judicial remedies and the support services in place. A case in point is the VSU, where individuals reach by referral from the collaborating institutions, such as the police, the courts, the hospitals, but not from a general sense of awareness of the institution's functions. Limited human and financial resources forced VSU to advertise less the work of the unit, in this way hindering the population's awareness of its existence.<sup>191</sup> VSU is thus illustrative of the impediments that financial and human resources can pose. The very fact that VSU undertakes its activities with the support of donations and volunteers is indicative not only of the need to raise the consciousness of the individual about the institutional arrangements in place, but also about the need for structural governmental resources to carry on with its functions.

The National Policy for Gender Equality states that it provides for “*tools to disavow and dismantle debilitating gender stereotypes, discrimination and patriarchy and its operatives*”.<sup>192</sup> As aforementioned and confirmed by interviews, actions in that respect have already been put in place by different institutions through various means before the approval of the policy document. However, a lack of support and integration of those measures in a governmental framework diminished their impact. Overall findings confirm what one senior Government official from the Broadcasting Commission detailed:

*“We are doing work and different people are doing different things. Media people have been exposed to this thing at one course or one seminar or a number of seminars. Is there a focus on this as a priority, requiring full resources available to the Government of Jamaica and its agencies? I would say not yet. ... The Broadcasting Commission is already taking interest in these matters in our information gathering to inform broadcasting policy generally. ... It is based on the information we have gathered that has indicated to us that it is a real problem, apart from the fact that in our own evaluation of content, let's say lyrics of songs, we would come to the conclusion that this is unacceptable violence, or this material is inappropriate for children, or inappropriate for broadcast at the time of the day, or inappropriate at all. I mean, that's part of our daily work. But framed within*

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190 Interview VSU, May 4, 2011.

191 Ibid; Interviews CISOCA, May 9 and May 17, 2011; Interview JCF April 29, 2011; Interviews JCF rural area, May 5, 2011.

192 NPG 2010, p. 28.

*the context now of gender policy, our work would be strengthened. Our regulatory base would be strong.*<sup>193</sup>

Besides the lack of consciousness of the measures already put in place, a sense of fear, fatigue and a lack of confidence in the justice system were identified by respondents as challenges to putting into *practice* the different measures undertaken.<sup>194</sup>

The national machinery for women does not have enough influential power within the governmental apparatus. Notwithstanding the significant role of the Bureau, its drifting positioning within the Government ministries cannot be overlooked. Once upgraded from the Women's Desk to the Bureau of Women's Affairs, the Bureau was positioned in the Office of the Prime Minister in 1975. In 1978, it was transferred to the Ministry of Social Security, following apparently the portfolio of the minister in charge of women's affairs, at that time in the person of Portia Miller Simpson. Over the years, from 1980 to 2002, the Bureau has experienced various shifts around different ministries: from the Ministry of Youth and Community Development (in 1980) to the Ministry of Labour, Welfare and Sport (in 1989), the Ministry of Tourism and Sport (in 2000) to finally find a place under the Ministry of Youth Sports and Culture. The Bureau's position shifts according to the position of the Member of Parliament (MP) with responsibilities for women's affairs. Once Mrs. Miller Simpson was elected as Prime Minister in December 2011, the national machinery for women was placed once again, as high in the governmental hierarchy as in the Office of the Cabinet. The Bureau's nomadic condition within various governmental ministries indicates that within the Government of Jamaica, women's issues are being pushed under the rug. In addition, the paucity of financial resources and personnel stifles the Bureau's capacity of action and confirms its marginal position within the Governmental apparatus.

An accurate mapping of the incidence of violence against women or the study of its social and cultural underlying causes falls short in Jamaica. As it does not represent a priority in the data collection activities in the country, a harmonized system of data collection for gender-based violence against women is still not in place.<sup>195</sup> Different institutions based on their own system take disparate data collection efforts. This

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193 Interview Broadcasting Commission, April 28 & May 6, 2011.

194 Interview JCF April 29, 2011; Interviews JCF rural area, May 5, 2011; Interview VSU, May 4, 2011; Interview BWA, March 25, 2011 (2); Interview BWA, April 6, 2011.

195 Interview STATIN, April 24, 2011, female senior management Government official. According to the STATIN respondent, there are no standard definitions and a harmonized system in terms of social statistics even around the world. The respondent explained that in the case of crime, for example, different countries have different structures. As a consequence, "*at country level, we have to begin to collect, begin to analyse, begin to put some categories to them and begin to move from there into a world system, start country, and then region ...*".



approach to data collection also represents a barrier to an accurate understanding of the magnitude of the issue in the country, which can impede taking adequate measures and actions in order to realise women's right to be free from gender-based violence.<sup>196</sup> Major crimes<sup>197</sup> include murder, shooting, robbery, and larceny.<sup>198</sup> Sexual violence in the form of rape in a case of murder, for instance, would be qualified as an *interest*. A police officer from the JCF Statistics and Information Management Unit observed that in terms of violence against women, the JCF looks at

“... *female crime that causes some form of injuries, some form of abuse. In Jamaica, at the department here, we have not really said: 'OK, violence against women is something that we need to look at.' It's always been research persons like yourself that would have come and get that information.*”<sup>199</sup>

An interchangeable use of the terms *domestic violence*, *sexual violence* and *gender-based violence* emerged from interviews and readings of different relevant material. This reflects a lack of established definitions and the inter-relationships among these different types of violence, which indicates a failure to understand the concept of gender in relation to violence.<sup>200</sup>

## 6.5 VOICES FROM ABOVE: CONCLUSIONS AND RECOMMENDATIONS

This chapter investigated at the level of Government actors: i) the *consciousness and understanding* of those social and cultural patterns of conduct that perpetuate gender-based violence against women; ii) *action and measures* undertaken to transform these social and cultural patterns of conduct; iii) *factors* influencing the putting into practice of governmental measures and *gaps* in the process of putting these actions into practice; iv) *recommendations* for further steps to be taken for the implementation of measures for social and cultural transformation and the realisation of women's right to be free from gender-based violence.

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196 This emerged from different interviews conducted at the Planning Institute of Jamaica (PIOJ), Statistical Institute (STATIN), CISOCA, JCF Statistics and Information Management Unit, Violence Prevention Alliance and from the ongoing field research activities during the entire period from December 2010 until August 2011.

197 This emerged from interview discussions on July 11, 2011 with a female police officer from the JCF Statistics and Information Management Unit.

198 Interview JCF Statistics and Information Management Unit, July 11, 2011.

199 Ibid.

200 These findings produced, at first, a great deal of research anxiety and confusion. In interviews I found myself often having to explain to respondents the term of *violence against women*. Field notes, July 1, 2011.

### 6.5.1 Summary of findings

The findings reveal that the duty-bearers are cognisant and have an understanding of the issues covered in Article 5(a), i.e. discriminatory sex roles and gender stereotyping which perpetuate gender-based violence and the need for a social and cultural transformation to eliminate this type of violence. However, in most instances, this did not result from any in-depth knowledge of the Convention. Interviews revealed that there is little knowledge of the content of Article 5(a), i.e. the obligations that the State has under this Article and the rights that need to be realised. Generally, there is a disconnect between the international human rights obligations under CEDAW and the understandings thereof at the Government level. It is clear that the ratification of CEDAW does not automatically lead to a consciousness and understanding of the Convention and the implementation of its provisions. This renders consciousness of the content of international norms at the duty bearer level a crucial ingredient for proceeding with the national implementation of international norms. Consciousness represents the groundwork for the subsequent stages in the implementation process of Article 5(a).

Over the years, attention has been given by the Bureau of Women's Affairs to the construction and reproduction of gender identities. A link between this area of focus and efforts to eliminate gender-based violence against women has been pursued in the action and initiatives taken, which aligns with the CEDAW Committee's recommendations of 2006 to "combat prevailing gender-based stereotypes with its efforts to combat violence against women".<sup>201</sup> However, it was the culture of violence in the context of the country, rather than CEDAW or Article 5(a) that triggered such understating and action. Findings indicate that legal measures, judicial measures and support services, a policy framework for gender equality, programmes and initiatives focusing on education, training and public awareness, are taken (some very recently in 2011) to put in place an infrastructure of measures conducive of social and cultural transformation. Actions are envisioned in collaboration with a wide range of stakeholders in the different sectors of society. Gender sensitization through gender mainstreaming, training, education and public information campaigns are directed at various target groups from Government levels to the private sector, non-governmental organizations and the common individual in order to address holistically the structural problem that the social and cultural construction of gender identities poses in gender relations. In the words of the CEDAW Committee in its Concluding Observations on Jamaica of 2006, such measures and actions appear to lay the ground for "*an enabling environment to transform and change stereotyped and discriminatory cultural values and practices.*"<sup>202</sup>

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201 CEDAW CO Jamaica, 2006, para. 16.

202 CEDAW CO Jamaica, 2006, para. 14.

However, there is not much change especially in the incidence of gender-based violence against women. Enduring social and cultural norms encourage a general attitude of *turning a blind eye* to the gravity of gender-based violence against women. Insufficient financial and human resources, inadequate data on gender-based violence and its social and cultural root causes, insufficient knowledge of the measures and services already in place at the level of the common rights holder, a disconnect between the various initiatives taken and the lack of sustainability of such initiatives stand out among the factors that impede action *from above* to effectively implement and realise women's rights to be free from gender stereotyping and violence.

### 6.5.2 Government actors' recommendations

In order to overcome the specified shortcomings in governmental action, Government actors have made a number of recommendations. Although not explicitly given in relation to Article 5(a), these recommendations inform an understanding of the implementing measures necessary for bringing about social and cultural transformation, and ultimately necessary for putting Article 5(a) into practice.

A holistic policy approach with particular focus on public education and training needs to be taken.<sup>203</sup> This education needs to target all stakeholders, i.e. the general public of all ages and the professionals working with and applying the instrument of law, in both urban and rural areas. Providing individuals with knowledge of: the law and of their rights and obligations under the law; the value of the remedies provided by the law; and the working of the legal machinery; and how to make use of it, emerged as being essential in the process of the implementation of norms, measures and actions. As one BWA senior representative explained in that regard,

*“Laws are passed but what happens next? If these things are put in place and people do not know that they are there to assist and to help them, at the end of the day it will be just writing reports, but no input. And this is not only for the citizens; It includes various entities, including our justice system. Because these laws are put in place, we have to make sure we refresh the persons who are going to be interfacing with the common man that these [laws and measures] exist. ... We have to inform them, sensitize them. Sensitize, sensitize, sensitize.”<sup>204</sup>*

Another BWA middle management representative emphasized the importance of informing rights holders about the measures in place,

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203 Interview Legal Reform Unit, July 13, 2011; Interview JCF, April 29, 2011.

204 Interview BWA, March 25, 2011 (2).

*“I really believe that the solutions are with the people. It has to be a national effort, so the father who rapes his daughter needs to know that he would be punished and that is the aspect for it. Violence against women is normalized in the society; it is like, ‘oh she get raped, okay you don’t see it as a problem’ ... You do it, you are not charged, you think you can do it again.”<sup>205</sup>*

Beyond ensuring a legal consciousness at all levels, the need for building a broader consciousness of the concept of gender and the adverse repercussions of the patterns of conduct based on sex roles and gender stereotyping was also recommended. This was seen as necessary in order to debunk the norms fostering the normalization of gender-based violence against women, and ultimately for initiating and sustaining a process of social and cultural transformation. The BWA senior representative explained the importance of building broader gender consciousness through sensitization, by referring to her work experiences:

*“It is expected that people understand what the issue of gender is. They don’t! They still see gender as woman: ‘that woman ting again!’ So you are not getting fulsome participation that one would get if persons understand what is gender. All of our sessions that we go to, all of them, the first thing we do is to define what is sex, what is gender and gender relations, and why it is important to understand that before you can move on to any discussions for the public education, whether in the school, in the churches, or any deep rural local community. You use any different method of explaining the masculinity vs. the femininity and gender roles. You explain from own experiences, and when you break it to their level, at the end of the day they will go away seeing things somewhat differently. They can see themselves that this barrier that they expect to be there, it doesn’t have to be like that! The Bureau, as part of the whole setting, we try to go in and sensitize at the very low community level [on] that. This is important for us to move on as people, as a nation ... So I can’t over stress how important it is to sensitize our population, if we are to erase all our issues of gender-based violence.”<sup>206</sup>*

Such consciousness would ensure a productive encounter with law enforcement institutions and an effective use of the legal and judicial measures that are already in place to address gender-based violence against women.<sup>207</sup>

An integrated institutional approach through collaboration between the various relevant institutions, ministries, agencies, and departments is also necessary to sustain the holistic approach recommended above. Respondents indicated that such dialogue between specialized branches of the relevant stakeholders is vital in the process of implementing measures within the parameters of the existing financial limitations.

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205 Interview BWA, April 6, 2011.

206 Interview BWA, March 25, 2011 (2).

207 Interviews Broadcasting Commission, April 28 & May 6, 2011.

As the group interview conducted at VSU pointed out, despite the limited financial resources, the networking is in itself a valuable resource, which can overcome the shortcomings caused by limited finances and allow the work to continue.

*“In a way I think there [are] a lot of resources because we have a lot of networking partners. I don’t think we are short of places that can help people, but maybe its just the coming together.”<sup>208</sup>*

Therefore, the existing collaborative mechanism needs a more adequate orchestration and coordination in order to integrate the measures already in place and the dispersed, *silo* initiatives. In this way, action can be sustained over time.

Mending the disconnect between the measures in place and the realities of the rights holders by taking a bottom-up approach emerged as an essential component in the process of the implementation of measures. Such an approach, as representatives from the Bureau explained, directly engages rights holders in the process. This enables their life realities to resonate with the measures that are taken to address issues that affect them directly. According to one BWA senior representative,

*“If we don’t take a bottom-up approach, we’re going to [make] a lot of mistakes. Let’s go out there and talk to the common man, let them tell you what they expect to be punishment for some of these things, let them tell you how they feel as an adult now after having an incestuous relationship! Because most of us, the law-makers who have never experienced that, don’t have a clue; so you can go and interface and take some of that information, having a participatory approach, take some of this information bottom-up, by the time we reach down there, it’s going to trickle down as a reverse. The common man would have been a part of [the decision-making] and is ready to accept [the measures taken]. But if you are going to put in place a big law up there and at the end, when it is passed, and the man down there doesn’t even know what that means, how are we going resolve the issues? They [the common individuals] have to buy in from very early. Let the common man feel a part of the policy and the law making. If we are not doing that, we are not doing anything.”<sup>209</sup>*

Notwithstanding the efforts that have been taken *from above* and detailed in this chapter, it is obvious, and is also stated clearly by Government actors, that the Government cannot stand alone in the fight against entrenched social and cultural mentalities that encourage violence against women. Other actors emerge as instrumental in this process. In the next chapter, attention is given to civil society as the actors *from the middle*, and to the strategies they use.

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208 Group interview VSU, April 19, 2011.

209 Interview BWA, March 25, 2011 (2); also, Interview BWA, April 6, 2011.



## CHAPTER 7

# VERNACULARISATION OF CEDAW: CIVIL SOCIETY ACTION AND STRATEGIES

*“We realised that we needed to find a way to break [CEDAW] down to the group of women that we were working with ... to bring it home, so that they could use it in their struggle. We wanted to make [CEDAW] very real ... to find a form that was therefore popular.”<sup>1</sup>*

Female senior management representative, WROC

### 7.1 INTRODUCTION

The CEDAW Committee calls for comprehensive multi-sectoral action by which all relevant actors participate in taking action, which is conducive for social and cultural transformation. Apart from the governmental level, the field research has therefore engaged in the exploration of action to bring about such change by the civil society actors as well. This chapter voices the perspectives of these actors in order to discuss the action to bring about social and cultural transformation as they understood and explained it. The aim of this chapter is to analyse and provide an insight into the extent to which Jamaican civil society actors are cognisant, have an understanding of and have taken initiatives to address the socio-cultural construction and reproduction of violence against women. Therefore, the findings are presented along the following structure: i) *consciousness and understanding* of provisions of social and cultural transformation to eliminate gender-based violence against women at the country level; ii) *action and strategies* undertaken to transform social and cultural patterns of conduct that perpetuate gender-based violence against women; iii) *factors* influencing the initiatives undertaken by civil society actors and the *gaps* emerging in this action; iv) *recommendations* to put in practice effective initiatives to bring about social and cultural transformation and the realisation of women’s right to be free from gender-based violence. These recommendations ultimately inform the manner in which Article 5(a) can be put into practice.

Civil society actors are also referred to as actors *from the middle*, which connotes their spatial and metaphorical situation within the multi-sectoral milieu and on the decision-making ladder. They are also referred to as *vernacularisers or translators of globally generated ideas, values and norms* to allude to the types of strategies that they undertake.<sup>2</sup>

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1 Researcher’s interview WROC, June 13, 2011.

2 See Chapter 3, section 3.2.

## 7.2 CONSCIOUSNESS AND UNDERSTANDING OF THE NECESSITY FOR SOCIAL AND CULTURAL TRANSFORMATION IN JAMAICA – A CIVIL SOCIETY ACCOUNT

The analysis of the interviews with civil society representatives reveals that understandings of the social and cultural underpinnings of the construction and reproduction of gender relations of these actors are analogous with the ones expressed by Government officials detailed in Chapter 6. Like the respondents from the Government level, civil society respondents derived their observations from personal experiences of living in Jamaica and also from knowledge informed by academic studies.<sup>3</sup> In their accounts, civil society interviewees voiced the experiences of individuals from the communities they work with to substantiate their views with the realities of the people on the ground. In this way, they put forward additional explanations for the views expressed by Government respondents about gender dynamics stemming from ascribed roles, beliefs and norms about femininity and masculinity.

This section provides insights into the consciousness and understanding at the civil society level of: 1) the social and cultural construction and reproduction of gender relations in Jamaica; 2) the integral link between constructions of gender identities, in particular masculinity, and manifestations of gender-based violence against women; 3) the necessity of social and cultural transformation in order to eliminate gender-based violence against women in Jamaica; 4) the international human rights provision of Article 5(a).

### 7.2.1 Consciousness and understanding of the social and cultural construction and reproduction of gender relations

Similar to Government officials, civil society respondents understood male and female identities as constructed according to ascribed roles, socially imposed norms, attitudes and behaviour through the process of socialisation. The Guyanese proverb “*tie the heifer, loose the bull*”<sup>4</sup> is emblematic for the construction of Jamaican femininities and masculinities along the binaries: private vs. public, care-giving and nurturing vs. breadwinning, provided for vs. provider, ruled and dominated vs. ruler and dominating, owned vs. owner, protected vs. risk-taking, fidelity vs. sexual freedom. One male gender advocate illustrated these binaries,

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3 A number of scholars with long-standing research and expertise in this area were mentioned to substantiate the expressed views, such as Professors Barrington Chevannes and Prof. Barbara Bailey, and Dr. Leith Dunn.

4 Interview FES, May 18, 2011, senior management representative; Interview freelance male gender advocate, June 21, 2011. A clear explanation of the proverb in this context is given by Rex Nettleford, which is discussed subsequently in this section.



*“Boys are left to navigate and find [out] on their own. [Men] are really allowed to take certain risks and do certain things that women are not allowed to do, and if women are doing that, they are perceived to be less of a woman ... Girls are taught to be nurturers, to be ladylike, not to be promiscuous.”<sup>5</sup>*

Various discussions in the printed media on gender socialization confirm respondents’ views.<sup>6</sup> Rex Nettleford explained in his *Gleaner* article “The male of the species ‘Endangered’ or ‘Extinct’”, of October 9, 2005,

*“Heifers and bulls are mere metaphors for women and men, reflecting the self-image of the Afro-Caribbean persona long crafted in terms of fertility functions and gender specificity. The phenomenon persists with a vengeance among most Afro-Caribbean people ... The Caribbean black male ... is reared with ... that legendary maternal indulgence which lets this proverbial ‘bull’ loose to roam; to ‘toughen’; to be assertive and aggressive in the face of any threat to his self-esteem; to be strong even when wrong; and, to hone his skills to be of service not to one, but to as many heifers as his mating prowess will allow. In short: to be ‘a man’ ... in contrast to his female counterpart who, as ‘heifer’, is ‘tied’ to house chores and maternal guidance leading to the discipline of routine activity. ‘Tie the heifer, loose the bull’ is, indeed, a black mother’s explanation of how to rear a fairly ‘protected’ daughter for personal independence and motherhood and how to prepare a son for adventure and survival ...”<sup>7</sup>*

Concurrent with the family upbringing, the church emerges as another socialisation agent that plays a fundamental role in individuals’ lives, from early school years along the entire life.<sup>8</sup> In deeply religious Jamaica, the church contributes significantly to the formation of gender identities and the moulding of the gender lenses through which the world is viewed. According to one respondent,

*“[T]he church is a bastion that has really, in many instances, justified or ignored discrimination against women. A lot of persons in the church, both men and women*

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5 Interview freelance male gender advocate, June 21, 2011; Similar views were expressed in the following interviews: Interview PNP Women’s Movement, July 1, 2011, senior management representative; Interview Jamaica Council of Churches, June 27, 2011, male minister, senior management representative.

6 The newspaper column ‘Winning back out boys. Raising achievement, closing gaps’ of the *Sunday Gleaner* of April 24, 2011, puts forward the idea of boys being socialized differently from girls, where the girls are closely supervised while boys are allowed a “historic privileging ... to do as they please”. See *The Sunday Gleaner*, April 24, 2011, ‘Winning back out boys. Raising achievement, closing gaps’, p. A8.

7 Nettleford, R, 2005, *Jamaica Gleaner*, ‘The male of the species ‘Endangered’ or ‘Extinct’’, October 9, 2005.

8 Interview Jamaica Council of Churches, June 27, 2011.

*internalized a lot of these values ... and the church has one of the most organized sections of women and men.”<sup>9</sup>*

In adult life, attaining the social brand of femininity or masculinity implies pressure to behave in certain ways, display certain attitudes and make certain choices, often against personal wishes and capabilities. The picture of Jamaican gender relations draws on codes about sexuality, marital status, children, economic support and viability, power and protection as indicators of fulfilled gender identities in adult life. To prove their womanhood, females are expected to associate with a man, ideally through marriage, and have children *for* or *to* a man. They negotiate their bodies and sexuality in order to gain the protection and the company of a male. According to respondents, “*in terms of gender identity formation, the idea is that you are not complete without a male.*”<sup>10</sup> Whereas the prerequisites of “*a real man*” are met by proving sexual prowess through multiple sexual relationships and *getting* children, often from different women, and the ability to provide and protect. As one respondent explained, to prove manhood,

*“... there must be clear, unequivocal standing that you are straight, heterosexual ... You prove that by the expression of your sexual prowess, very early, as soon as you can produce a child and by having multiple children. You should have multiple partners as well. There is the terminology in Jamaica that a man must be a gyallis, [meaning] you must have more than one female. Males seem to be boosted and their emotions strengthened by having several women and showing masculine identity, his heterosexual identity being formed by how he relates to women, in having more [women] and the control.”<sup>11</sup>*

Deviances from the hegemonic heterosexual masculinity or domestic, private femininity attracts social disapproval.<sup>12</sup> The patriarchal parameters of what it means to be a woman or a man within which the construction of gender relations operates can result in a “*clash*” of perceptions, attitudes, reactions and interactions between women and men.<sup>13</sup> In their effort to pierce through leadership barriers and advance their professional and political representation, Jamaican women are confronted with

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9 Interview WROC, June 13, 2011, senior management representative; Interview academic and gender advocate, June 9, 2011.

10 Interview freelance female gender advocate, June 11, 2011. The respondent continued by stressing that “*A woman on her own may not be seen as powerful and independent, but as missing something, no matter how financially independent she is.*”

11 Ibid; Interview United Theological College of the West Indies (UTC), June 24, 2011, female pastor, senior management representative.

12 Interview FES, May 18, 2011; Interview PNP Women’s Movement, July 1, 2011; It is important to note that subsequent to this interview, a female Prime Minister was elected to Office in Jamaica, in December 2011. However, this salutary event does not disprove the respondents’ view.

13 Interview WROC, June 13, 2011.

“a deep-seated resentment towards women equality”.<sup>14</sup> The findings from civil society interviews confirm understandings expressed at the Government level.

### **7.2.2 Consciousness and understanding of the social and cultural reproduction of violence against women: “woman haffi know dem place”<sup>15</sup>**

A common statement, such as “*women haffi know dem place*” illustrates that the box created by the dichotomous roles, societal norms and beliefs marking gender identities is clearly delineated. Stepping out of that box leads to an imbalance in the well-established power relations. Therefore men, as the keepers of the patriarchal order, assume the role of showing women their place, often by making use of violence.

Interviews with civil society respondents confirm the findings from the interviews with Government respondents: that the construction of gender identities surfaces in gender relations and accounts for incidences of gender-based violence against women. As a senior representative of the non-governmental organisation Women’s Resource and Outreach Centre (WROC)<sup>16</sup> explained,

*“The concept of our identity as women and men is a source of struggle and conflict. Our sense of identities as men and women impacts issues of HIV/Aids, sexual abuse, violence against women.”<sup>17</sup>*

The ascription of Jamaican males to an aggressive, tough and domineering identity translates into violent responses when the masculine power and authority is challenged. Using examples from gender awareness training with men, respondents explained that while women “*naturally*” talk or seek counselling, the requirements of masculine identity channel men’s expression of emotions into violence, most of the time directed at their female partners.<sup>18</sup> If their sense of ownership and entitlement over the woman is threatened, violence may be used as a means of discipline. One respondent clearly explained the manner, in which male identity is reflected in behaviour,

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14 Ibid; Interview freelance female gender advocate, June 11, 2011.

15 Jamaican Patois for “Women should know their place”.

16 WROC is a women’s NGO involved in the promotion of gender equality and empowerment of women and youth through, *inter alia*, community capacity building. See WROC website at [www.wrocjamaica.org](http://www.wrocjamaica.org).

17 Interview WROC, June 13, 2011.

18 Interview freelance female gender advocate, June 11, 2011; Interview freelance male gender advocate, June 21, 2011; Interview WROC, June 13, 2011; Interview PNP Women’s Movement, July 1, 2011; Interview community of practice, May 9, 2011, female gender advocate.

*“Men are told that the man is the head, the man is in charge, the man has the final say: ‘I decide what is done, when it is done, with whom it is done.’ And so ... the man feels entitled to the woman’s body, he feels that he must discipline her if she falls out of line or challenges his authority, as it relates to the raising of children or the spending in the house or her own freedom of movement.”*<sup>19</sup>

Subverting norms of female identity can directly affect the perceptions of hegemonic heterosexual masculinity.<sup>20</sup> Escaping a situation of dependency and abuse by leaving the relationship, or taking up employment and becoming self-reliant creates tension and *“upsets men because women have been breaking that box that they’ve been placed in – women haffi know dem place”*.<sup>21</sup> A sense of emasculation is brought about and may manifest itself in violence against the female partner.<sup>22</sup> *“When the woman no longer wants that relationship because she now becomes empowered, self-sufficient and wants to change, the man feels almost emasculated and that influences violence.”*<sup>23</sup> In turn, aggressive sexuality seems to exert control over women and validate manhood. Sex *“has become an aggressive tool”* used to discipline women.<sup>24</sup> Discussions in the media confirm these findings.<sup>25</sup>

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19 Interview freelance male gender advocate, June 21, 2011.

20 Interview FES, May 18, 2011. Interview PNP Women’s Movement, July 1, 2011; Interview community of practice, May 9, 2011; One respondent recounted a friend’s experience: *“I have a male friend who does hair very well, but he was afraid to get certified and get himself established, because of the stigma which says if you are a male and you go into cosmetology, you are a homosexual.”* Interview WROC, June 6, 2011, middle-management representative.

21 Interview WROC, June 6, 2011.

22 Interview Jamaica Council of Churches, June 27, 2011; Interview PNP Women’s Movement, July 1, 2011.

23 Interview Jamaica Council of Churches, June 27, 2011.

24 Interview freelance male gender advocate, June 21, 2011. The respondent continued: *“... and that’s very prevalent in the music and the culture that we have here. ... So those things have been fed to young girls and young boys.”*

25 Jamaica Observer, All Woman, May 9, 2011, ‘Men, Stress and Murder/Suicides, available at [http://www.jamaicaobserver.com/magazines/allwoman/Men--stress-and-murder-suicides\\_8775700](http://www.jamaicaobserver.com/magazines/allwoman/Men--stress-and-murder-suicides_8775700), last accessed on October 15, 2012.

### 7.2.3 Consciousness and understanding of the necessity of social and cultural transformation

*“The survival of Jamaican society is dependent on a radical transformation of how we socialize our boys and girls ... If we want to advance as a country and to meet certain standards and development goals, we have to address the whole matter of gender and how it is that males and females relate.”*<sup>26</sup>

Without exception, civil society representatives acknowledged and indicated that gender relations in Jamaica, as they are constructed and reproduced along established social and cultural norms, roles and stereotyping need to be transformed. Such transformation is needed not only to balance gender asymmetries but also to reduce their expression as gender-based violence against women. Emphasizing the need to expand choices so that Jamaican women and men transcend societally imposed limitations, a senior civil society respondent observed that there is a necessity in Jamaica for *“a massive reorientation around what it means to be a man [and] what it means to be a woman. We need to engage so that education and conscientization are important facets of that.”*<sup>27</sup> Conscious individuals resist the control of hegemonic structures and are thus liberated to facilitate the necessary change.

Yet, most men and women are mired in these structures and sustain with their daily routines a status quo built on entrenched mentalities about sex roles and gender stereotyping that contribute to a climate of violence against women.<sup>28</sup> A tendency towards silence is prevalent around expectations of femininity and masculinity and the way they affect and manifest themselves in gender relations in Jamaica. According to the respondents, there is a reluctance to transform the deeply embedded structures of inequality in society. This reticence prevents an understanding of the detrimental effects of certain social and cultural *“givens”*.

*“We don’t speak about it on a large scale in the society, unless you are gender oriented and you are looking at it from a particular lens. But then, persons will say: ‘This is how it has been forever and so there is no changing. It is something that is in the culture, it is part of who we are, it is not going to change.’ So it is a major issue that we try to work with daily.”*<sup>29</sup>

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26 Interview freelance male gender advocate, June 21, 2011.

27 Interview WROC, June 13, 2011.

28 Interview freelance female gender advocate, June 11, 2011.

29 Interview freelance male gender advocate, June 21, 2011; Interview WROC, June 6, 2011; Interview freelance female gender advocate, June 11, 2011.

Similar to the interviews conducted with Government officials, the realities of gender relations and their interconnectedness with violence against women triggered the call for change, which emerged in the interviews with civil society respondents. The next section explores the extent to which CEDAW norms, and in particular by Article 5(a), also trigger this call for change.

#### **7.2.4 Consciousness and understanding of Article 5(a) provisions of social and cultural transformation**

Generally, CEDAW emerged not only as a well-known international human rights treaty, but also as a tool used by civil society organisations and respondents selected for this research in their different activities. However, findings at this level of inquiry revealed that understandings of social and cultural reproduction of gender relations and the interface with gender-based violence against women did not specifically draw on knowledge or familiarity of the meaning and content of the provision in Article 5(a). Interview questions in relation to this Article therefore needed further probing. Most respondents asked for reminders and details of the content of the provision and, in general, they did not make referrals to it at all (unlike most respondents from the Bureau of Women's Affairs who made immediate and explicit references to it).

Respondents' consciousness and understanding of the issues covered in Article 5(a) was informed by social realities: specialized work on women's rights and discrimination, and violence against women, either through advocacy or grass-roots activities at the community level; leading and having undergone gender awareness training; and involvement in the reporting process to the CEDAW Committee on the implementation of the Convention in Jamaica.

To conclude, these illustrations drawn by civil society actors reveal that they are fully cognisant and have an informed understanding of the social and cultural construction and reproduction of gender relations in Jamaica. Their understanding of the socio-cultural construction of violence against women is formed by their own realities, their work with governmental departments, the private sector, communities, and local and international academic studies. Needless to say, they not only acknowledged the need for change in those social and cultural patterns of conduct that account for gender-based violence against women, but they recommended it, thus laying the indispensable ground for action in that regard.

### 7.3 ACTION AND STRATEGIES UNDERTAKEN *FROM THE MIDDLE*

*“We have to recognize that where your culture impinges on your rights as a human being then we have to seek to change”.*<sup>30</sup>

This is the succinct remark of a civil society representative discussing the necessity of social and cultural transformation in order to address gender-based violence against women in Jamaica. The question arises, in what manner do civil society actors contribute to bringing about such transformation? This section examines whether respondents’ awareness of the social and cultural construction and reproduction of violence against women translates into action, and what type of action they undertake in that regard. Therefore, this section focuses on strategies and techniques to translate international women’s human rights norms that facilitate their local implementation. The voices in this section are only of a selected group of the Jamaican civil society actors that emerged as relevant to this study.<sup>31</sup> These actors are mostly women’s organisations that anchor their activities in CEDAW and CEDAW Concluding Observations.

#### 7.3.1 Vernacularisation: translating women’s human rights in the Jamaican vernacular

The transformation of social and cultural patterns of conduct based on sex roles and gender stereotyping is addressed by civil society organisations’ initiatives focusing on gender-based violence. Through community-oriented initiatives, women’s organisations undertake downstream action in order to create “*a space of conversation on the ground*”<sup>32</sup> conducive to understanding and the internalization of norms, ideas and values of women’s human rights, which have the potential to lead to change. Overall findings indicate that during community gatherings, at parent-teacher association (PTA) meetings, in school, in church, on the street corner – in other words, within their familiar realities- individuals in their communities are engaged in discussions and analysis of the issue of gender-based violence and related ideas of gender constructions.<sup>33</sup> Such *spaces of conversation* accommodate a cultural

30 Interview PNP Women’s Movement, July 1, 2011.

31 See Chapter 5 for the selection criteria used.

32 Interview WROC, June 13, 2011; Interview WROC, June 6, 2011; Interview community of practice, May 9, 2011; Interview freelance female gender advocate, June 11, 2011; Interview freelance male gender advocate, June 21, 2011; Interview Women’s Media Watch, (WMW) May 25, 2011, senior management representative; Interview SISTREN Theatre Collective (SISTREN), May 26, 2011, middle management representative; Interview SISTREN, June 17, 2011, senior management representative.

33 Stakeholders, such as the police, social workers, civil society representatives, civil servants, and academia are relevant to and are involved in this conversation with rights holders.

negotiation process by which well-established understandings about gender-based violence and the underlying gender constructs are debunked while new values, ideas and norms of women's human rights are translated into the Jamaican vernacular. This strategy implies an adaptation of the rhetoric of women's human rights to local perspectives and circumstances in order to give them meaning and make them popular in local spaces. This strategy is referred to in this book as vernacularisation.

Various Jamaican civil society organisations<sup>34</sup> commonly make use of translation strategies and techniques in raising awareness campaigns and education initiatives, such as training, seminars, and workshops. Documentary forms that simplify CEDAW norms and performing arts, such as street plays, drama or popular theatre emerged as significant strategies and modes of communication to take the message of international women's human rights across to individuals. These strategies are employed by women's organisations to trigger and enhance the internalisation process, and enable a change in social and cultural patterns of conduct.<sup>35</sup> Observing that such an approach prompts "*a very deep internal process*" of change, a senior representative from the NGO Women's Resource and Outreach Centre (WROC) stressed that the translation

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34 WROC, Women's Media Watch and SISTREN Theatre Collective are women's organisations, which are well known for taking up training activities aimed at raising awareness on women's human rights and/or constructions of gender. They take such initiatives in partnership with international organisations such as Friedrich Ebert Stiftung (FES), United Nations Development Fund (UNDP), United Nations Population Fund (UNFPA), UN-Women and academic institutions, such as Institute for Gender and Development Studies (IGDS), the University of the West Indies, Jamaica. Interview WROC, June 13, 2011; Interview WMW, May 25, 2011; Interview SISTREN Theatre Collective (SISTREN), May 26, 2011; Interview SISTREN, June 17, 2011; Interview FES, May 18, 2011; Interview UNDP, June 14, 2011, female senior management representative; Group interview UNFPA, June 28, 2011, female senior management representatives. Also, international and regional organisations, such as PANOS Caribbean, CUSO-VSO, CAFRA, take up training initiatives independently; Interview PANOS, July 4, 2011, female middle management representative; Interview CAFRA, July 8, 2011, female senior management representative; Participatory observation, March 10-11, 2011, CUSO-VSO "Jamaica Gender Workshop, 'Towards a Regional Gender Strategy for Latin America and the Caribbean'", Kingston.

35 WROC and SISTREN Theatre Collective (SISTREN) are Jamaican women's organisations that use performing arts as a technique to trigger behaviour change in the development of programmes addressing issues of gender-based violence. SISTREN, in particular, clearly affirms as its mission "to provide consistent popular theatre that reflects socio-economic issues as they relate to gender roles in an entertaining and educational atmosphere that influences society to change". See SISTREN website at <http://sistrentheatrecollectiveja.org/default.html>. Observations I conducted at the UN WOMEN Colloquium on Gender, Culture and Law in the Caribbean on June 21-23, 2011, the IGDS Seminar on Tivoli Gardens Incursions on May 31, 2011, and the Celebration of the International Day for the Elimination of Violence Against Women on November 25, 2009 confirm that the technique of popular theatre is used a great deal in workshops, seminars and training initiatives of different actors, ranging from academia to the Bureau of Women's Affairs who collaborates with SISTREN on the vernacularisation strategy of popular theatre.



of women's human rights is an effective way to make individuals cognizant of rights and norms, and to bring about change in understandings and attitudes.<sup>36</sup>

Observations of training sessions revealed the use of multiple vernacularisation techniques. Visual material – videos and posters depicting incidents of violence against women occurring in Jamaican communities and popular music presenting demeaning portrayals of women were employed as eliciting techniques. Simplified versions of CEDAW and of the CEDAW Committee's Concluding Observations on Jamaica of 2006, and dramatizations and skits of different scenarios were employed to bring new ideas and values and replace the negative well-established ones. Through these multiple methods, issues of gender-based violence and myths about the socio-cultural constructions of gender were debated among participants, and between the moderators of the training sessions (usually an NGO representative) and participants. The community perspective was encouraged, a legal and policy perspective was introduced by the NGO moderator and by guest speakers from other agencies or organisations, and information about international women's rights, norms and documents was conveyed in accessible ways. The training process was completed with dramatizations of the issues discussed, performed by the trainees to demonstrate the new perspective they had gained. This depicts the process of giving meaning to and transferring knowledge of international women's human rights, norms, ideas and values to local individuals.<sup>37</sup>

*Bringing CEDAW home: the strategy of vernacularisation and techniques utilized by Jamaican women's organisations*

The distance between the international norms provided by CEDAW and local realities is significant. The specialised wording and meanings of the CEDAW norms are not a familiar ground for most rights holders at the local level; on the contrary, they are rather obscure. Bringing CEDAW norms closer to rights holders by using the vernacular language proves crucial.

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36 Interview WROC, June 13, 2011.

37 Unobtrusive observations, WROC steering committee planning meeting for the 'Leadership Training and Community Capacity Building for Eliminating Gender-Based Violence' workshop, May 31, 2011. Unobtrusive observations, WROC 'Leadership Training and Community Capacity Building for Eliminating Gender Based Violence' workshop, July 15-August 9, 2011. At the time of the field research, in July 2011, WROC initiated, with the financial support from an external funder – AVON, the project called "Leadership Training and Community Capacity Building for Eliminating Gender-Based Violence". Key community members were trained as community facilitators: individuals who would educate women in their communities about relevant policies, laws and the CEDAW. Another example of such successful training is the WROC initiative "Strengthening Women's Leadership Programmes".

“Rights a di plan, wid CEDAW in wi han’. CEDAW for Jamaicans”:  
vernacularisation through documentary forms<sup>38</sup>

WROC is well known in the Jamaican civil society landscape as the organisation that spelt out CEDAW norms in a way which would appeal to the average Jamaican in the booklet “*Rights a di plan, wid CEDAW in wi han’. CEDAW for Jamaicans.*” After having observed the “constructive dialogue” between the Committee and the Government of Jamaica in August 2006 in New York, several women’s organisations took the decision to make Jamaicans cognisant of CEDAW and of the Concluding Observations the Committee had issued on Jamaica. This decision materialized in WROC’s initiative to produce the booklet. One WROC representative who played an instrumental role in the drafting of the NGOs Shadow Report to the CEDAW Committee noted:

*“We took a very proactive decision in 2006 ... that we wanted to raise focus on CEDAW and ... that we would make people know about what they [CEDAW Committee] said and that’s why we did CEDAW for Jamaicans.”*<sup>39</sup>

The need to relate to people at the community level in the training programmes and other outreach activities triggered this translation strategy. Explaining the incentive for simplifying CEDAW norms in the booklet, a WROC senior management respondent emphasized,

*“We realized that we needed to find a way to break it down to the group of women that we were working with ... to bring it home, so that they could use it in their struggle. We wanted to make it very real ... to find a form that was therefore popular.”*<sup>40</sup>

In order to tailor information about the meaning of CEDAW norms, the booklet uses pictures and scenarios depicting dialogues between women to draw on appealing social expressions and popular practices among Jamaicans, particularly music, singing, role playing and “reasoning”.<sup>41</sup> One WROC representative explained the rationale for the techniques used in the booklet:

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38 Translation from Jamaican Patois: “Rights are the plan, with CEDAW in our hand”.

39 Interview WROC, June 13, 2011.

40 Interview WROC, June 13, 2011. Secondary data confirms the respondent’s explanation. The chairperson of WROC, Linnette Vassell, states in the introduction of the purpose of the booklet: “to encourage women to know their rights ...; to inform women and men about the Concluding Comments (CC) and Recommendations that were made to Jamaica by the UN CEDAW Committee at the United Nations in 2006 ...; to inform and educate men that women’s rights are human rights and that they have a role in promoting these rights to establish fairness and justice for all”. See “*Rights a di plan, wid CEDAW in wi han’. CEDAW for Jamaicans*”, Introduction, pp. vi-vii.

41 ‘Reasoning’ is a common word used among Jamaicans to mean a profound discussion.

*“Because to the persons who we wanted to reach, mainly the inner-city people, the document and the wording wouldn’t work for them. So we use animation and short stories and just bullet points. We use music, we use words from famous DJs. They can definitely identify with Beenie Man. Everybody loves Beenie Man.”*<sup>42</sup>

The booklet depicts daily life occurrences that violate women’s rights under CEDAW. It explains situations in *wrong* and *right* terms according to the Convention. The Concluding Observations of 2006 for Jamaica are explained in accessible language, as well as the Convention’s articles and the CEDAW Committee’s Concluding Observations. In fact, the booklet goes beyond transferring knowledge of CEDAW and deciphering individuals’ rights and State obligations. It elucidates concepts of gender and gender identities, entrenched norms and beliefs, and the way they affect daily life in Jamaica. The booklet shares information about the situation of gender-based violence against women in Jamaican and builds awareness of the local legal framework and institutional infrastructure available in Jamaica. In this way, WROC’s practical work with women and communities is connected *“within a framework that encourages women to articulate and press for demands to the Jamaican government for economic, social and institutional power.”*<sup>43</sup> Such framework is anchored in a rights-based approach guided by CEDAW.

The following excerpts from the booklet are illustrative of the way ideas, values and norms of women’s human rights are presented to women in order to make the CEDAW message meaningful to them.

The first scenario entitled *Home* illustrates a common situation where three women chat while hanging clothes out to dry in their yard to explain the concept of discrimination against women. The women discuss in Patois about the negative portrayal of women in some lyrics of popular Jamaican songs, and the impact they can have on behaviour. Without mentioning the content of Article 5(a), they address the issues of the asymmetric societal expectations of women and men, and explain it as discrimination against women.

*“Marcia: Many of the songs dem [them] now a days talk ‘bout women in a very negative way ... what under woman skirt, what a man want to do to a woman, what the woman must do to get this or that ... It really disgusting! ... You know, the negative lyrics play a big part in teaching youth to disrespect women, and men take it as excuse and feel they can handle women in any way. From what I see, the society not really level where man and woman is concerned.*

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42 Interview WROC, June 6, 2011; Beenie Man is a well-known Jamaican dance-hall artist.

43 WROC, 2006, *‘Rights a di Plan Wid CEDAW In Wi Han’*, Research Proposal to Support Advocacy for Registration of Women in the National Insurance Scheme (NIS) and the National Housing Trust (NHT), p. 1.

*Jean: Of a fact, in Jamaica the society have different treatment for men and boys as against women and girls. Mek we even go back to a old time song [It makes us go back to the old time song] ... "Girls you can't do what the guys do and still be a lady too ..."*

*Marcia: yes, it shows that there is a different standards of behaviour for men and women in the society. That is called discrimination against women.*"<sup>44</sup>

The second scenario entitled *Meeting* elucidates through a dialogue between women the meaning of gender and of the terms encompassed in the title of the Convention. They start by clarifying what **Convention** means. Paulette, the meeting's moderator says: "*We are not talking here about church convention, but about a special law or legal agreement. In this case, CEDAW is a special legal agreement that countries of the world came to through the United Nations.*"<sup>45</sup> Next, the word **Elimination** is clarified. Yvonne observes: "*Elimination means 'to get rid of' something. For example, when people talk about eliminating violence from their community, it means that they want to get rid of violence in the community.*"<sup>46</sup> In relation to the word **Discrimination**, Marcia opines, "*I believe discrimination means 'unfair treatment'.*" Yvonne continues, by using a familiar situation that confronts women in the workplace, "*... sometimes you will get a job and the boss might want you as a woman to put up wid [with] certain slackness and if you stand up in your dignity, him discriminate 'gainst you and fire you!*"<sup>47</sup> In the end Paulette concludes by explaining the CEDAW definition of discrimination: "*... what the big words really mean is that if the State or a business place takes actions against women just because they are women ... for example, leave them out of things, treat them differently from men in a bad way or hold them back from benefits, just because of their sex as women, that is what CEDAW means by exclusion, distinction and restriction.*"<sup>48</sup> Paulette explains the necessity to change patterns of conduct, "*... to put an end to discrimination against women, men have to take a lot of actions to change their attitudes and behaviour and to help to create a level playing field in the society for everybody to enjoy their rights! For example, men who disrespect women through music have to stop; men who sexually harass and beat women have to stop; and men who leave all the pressure of housework and family responsibilities on women have to stop!*"<sup>49</sup>

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44 Women's Resource and Outreach Centre (WROC), 2008, *Rights a di plan, wid CEDAW in wi han', CEDAW for Jamaicans, Convention on the Elimination of all forms of Discrimination Against Women*, Kingston: Litographic Printers Ltd., pp. 3-4.

45 Ibid., p. 8.

46 Ibid., p. 9.

47 Ibid.

48 Ibid., p. 10.

49 Ibid., p. 11.

In relation to violence against women, in a language of wrongs against women and rights under CEDAW, the booklet presents data on the prevailing types of violence in Jamaica and the levels it reaches. It presents the applicable Jamaican legislation and the existing institutional structure to respond to cases of violence against women. It also explains that the Jamaican Government has an obligation to address this situation under CEDAW and presents the Committee's Concluding Observations on Jamaica of 2006.

*“WRONG! Despite the passing of the Domestic Violence Act (1995) and its amendment (2004), gender-based violence against women physically, sexually and emotionally is still widespread. Between 2002 to 2006, the number of cases at the Victim Support Unit (VSU) doubled. Over 70% involve violence against women such as rape and carnal abuse – half the victims are children under 16. You have the RIGHT to protection from harm or abuse. The UN CEDAW Concluding Comments Para. 16 say that the Jamaican government should give priority to designing and carrying out a comprehensive strategy to combat and get rid of violence against women in line with General Recommendation 19 and seek help from the UN's Special Rapporteur on Violence Against Women.”<sup>50</sup>*

The booklet concludes with the text of the Convention and the Committee's Concluding Observations on Jamaica of 2006 translated into accessible language. Article 5 is presented as follows,

*“Article 5: Sex Roles and Stereotyping  
Governments will strive to eliminate cultural and traditional practices that perpetuate discrimination and gender stereotyping of women.”<sup>51</sup>*

In sum, through this booklet, WROC presents CEDAW provisions of women's human rights in socially and culturally well-known images and in a familiar language in order to facilitate the understanding and internalisation of the ideas, values and norms of women's rights. The booklet is an example of initiatives to tailor women's human rights to local cultural conditions in a manner that acknowledges the power dynamics and the symbolic resources of the local context. Such translation of CEDAW brings this international instrument closer to the rights holders, thus connecting the international norms, ideas and values to their worldviews and life realities. At the same time, it translates the local realities of rights holders into the normative language

50 Ibid., pp. 14-15. Sources used in the booklet for data, Women's Media Watch, 2007, *Looking Out*. Vol. 3 (1), May 2007.

51 Ibid., Appendix 1, 'CEDAW At A Glance' of *Rights a di plan, wid CEDAW in wi han'*, CEDAW for Jamaicans\_ UNIFEM, 2004, *CEDAW Made Easy: Questions and Answers Booklet* was the source used in the booklet.

of CEDAW, thus connecting and giving further meaning to Jamaican situations in the framework of Convention. Consciousness of norms and rights, of relevant Jamaican legal instruments and institutional infrastructures is framed in CEDAW terms, in this way preparing an environment which is conducive to the implementation of the Convention. It becomes clear that in the larger context of translating the Convention, WROC applies this strategy to addresses gender constructions and the necessity of social and cultural transformation – issues that are within the scope of Article 5(a). This booklet is therefore an example of a strategy that has the potential to put this Article effectively into practice.

**Photo 2. WROC Booklet “Rights a di plan, wid CEDAW in wi han’. CEDAW for Jamaicans”<sup>52</sup>**



52 The photographs of the WROC booklet “*Rights a di plan, wid CEDAW in wi han’ CEDAW for Jamaicans*” were taken by the author during research observations conducted at the session of the WROC Community Facilitators Training on Elimination of Gender-Based Violence held on July 29, 2011 in Kingston.

## Vernacularisation through the performing arts

Knowledge of the local specificities, mores and language is key to putting international human rights norms into practice. Socio-economic factors and cultural particularities have an important influence on framing the vernacularisation process in a way that can render it effective or not. Training sessions, seminars or workshops, although relevant as education tools and commonly used by organisations, do not always ensure that the message gets across and is internalised by the audience. As one respondent explained,

*“If it’s going to be something like a workshop on gender-based violence, yes, people will come, but does the message really set in? You give them some hand-outs to go home and read. They have no time for that! How can you tell someone to come and sit in a workshop or a seminar for four hours, when they can go out there hustling, doing something to get food on the table. So you have to really know how you are going to address it.”<sup>53</sup>*

Usually, training, seminars or workshops entail specific spaces that have a limited scope: they are restricted to a limited number of people, who are chosen according to certain criteria set by the organising NGO. Moreover, the message can be easily forgotten thereby making these initiatives unsustainable. In turn, explaining that Jamaica is a “culture of entertainment” the respondent continued:

*“We love dancing, we love singing, we love acting. Acting is an everyday thing, even in the community. Whether it is on the corner, on the street, or in little groups, I think that’s the best way.”<sup>54</sup>*

For that reason, the performing arts represent a very popular vernacularizing technique used by several organisations to translate ideas of rights into a communicable message with appeal to potential rights holders. For example, the acceptance of violence that is conducive to its normalisation in Jamaica challenges the initiatives undertaken by civil society organisations to eliminate violence. According to a respondent with long experience in community intervention work:

*“For the average person it is okay to beat anyone, whether it is male or female, whether it’s going to be beating on a child. It’s okay. It is a challenge to show persons otherwise.”<sup>55</sup>*

Although the aim of techniques, such as dramatization, popular theatre or skits is to make rights holders cognisant of the norms of women’s human rights, the CEDAW

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53 Interview WROC, June 6, 2011.

54 Interview freelance male gender advocate, June 21, 2011; also, Interview WROC, June 6, 2011.

55 Interview WROC, June 13, 2011.

language of rights and obligations is not used as such by these techniques. Rather, vernacularisers/translators talk about “*accepting others*”, “*respect*”, “*dignity*”. They make use of daily routines and situations familiar to individuals in order to identify and name the harm that they embody according to the normative language of rights and obligations in CEDAW and in the national legislation. Hence, the use of a colloquial language that makes sense to the local individuals in the community and to the routines of their daily life. Ultimately though, this language alludes to rights and justice. In explaining the rationale of using drama as a strategy, a community mobilizer mentioned,

*“In dramas, when we present cases, persons will see that there’s a right way and there’s a wrong way. We point out to them that even the mere fact of restricting the woman from talking to a friend, from even standing by her gateway and look out sometimes, you are depriving this person and this is not right.”*<sup>56</sup>

The debate that is expected to follow after dramatization is usually sparked by the powerful effect of such artistic performances. According to one respondent,

*“When issues come up, they are so able to relate to them because they are speaking of themselves, and it is so real as if they are actually in the situation right there.”*<sup>57</sup>

The anticipated result of this strategy is *the ripple effect*, where individuals who attend the dramatizations pass on the message to other community members, and apply it in their daily lives. Respondents from different organisations pointed to the rationale of this strategy.

*“In this community, we start with [drama] and one person can see something happening on the road, and have the courage to say no, this is not the way! Eventually that one person will lead to two, and that ripple effect will start.”*<sup>58</sup>

All in all, it emerges from illustrations that Jamaican social and cultural expressions, such as acting, singing and poetry, complement the global women’s human rights discourse. Such artistic expressions of Jamaican culture are engaged in the process of translating international norms in order to reach the grass-roots communities and the Jamaican population at large. Drawing in this way on the positive elements of Jamaican culture and social life, the vernacularisation technique opens the possibility for negative cultural practices to be replaced with alternative social and cultural

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56 Interview WROC, June 6, 2011.

57 Interview SISTREN, June 17, 2011; also, Interview WROC, June 6, 2011; Observations, May 31, 2011, IGDS Seminar; Observations, June 21-23, 2011.

58 Interview WROC, June 6, 2011; Interview SISTREN, June 17, 2011; Interview community of practice, May 9, 2011; Interview freelance male gender advocate, June 21, 2011.



expressions that are positive. Both people's well-established understandings of the world and their everyday realities, and the international women's human rights ideas, norms and values, as formulated globally, are negotiated.<sup>59</sup> Not only do these local understandings and realities accommodate international ideas, values and norms, but also the international human rights ideas accommodate the local realities. These seemingly detached discourses are thus connected and resonate with each other through the process of "cultural negotiation" that is engendered through vernacularisation strategies.<sup>60</sup>

*Jamaican vernacularisation actors: from "cosmopolitan elites"<sup>61</sup> to "foot soldiers"<sup>62</sup>*

Vernacularisers of international ideas, values and norms occupy different and various social positions. Their positioning within the web of civil society actors is crucial for conveying the message of rights, getting the message across, and enabling its internalisation.

"Cosmopolitan elites" – NGOs staff, executive directors, project officers – are highly educated individuals who may have lived and/or studied abroad. These individuals belong to activist and academia networks; they are sometimes civil servants who have turned to civil society work.<sup>63</sup> At the same time, they are active on the international stage where women's human rights norms are generated.

Beyond this group of vernacularisers, the beneficiaries of rights also enact translation strategies. They are local women and men who learn of norms through the activities of the women's organisations to which they are attached. These translators may be: sometimes survivors of violence against women;<sup>64</sup> counselled battered women who have organized themselves in support and empowerment groups or collectives;<sup>65</sup> women who attend leadership-training programmes;<sup>66</sup> women and men who attend gender-based violence facilitator-training programmes;<sup>67</sup> or they may be interested attendees of street theatre performances. Once aware of ideas, values and norms of

59 Levitt and Merry, 2009; Levitt and Merry refer to women's human rights norms, ideas, values, documents and strategies as they are formulated internationally, as global women's rights packages.

60 CHR, 2003, UN Doc. E/CN.4/2004/66, para. 55(b).

61 Levitt and Merry, 2009, p. 449.

62 Interview WROC, June 6, 2011.

63 Interview academia, June 9, 2011, activist and academia representative.

64 Unobtrusive Observations, July 15-August 9, 2011.

65 Examples of such groups are WROC/Women Working for Progress; 1077 founded SISTREN Theatre Collective.

66 WROC "Strengthening Women's Leadership Programme".

67 Unobtrusive Observations, July 15-August 9, 2011.

women's human rights, these individuals involve themselves in the work of different organisations and become community mobilizers, grass-roots activists, drama actors. In this way, they contribute to interpreting and giving meaning to women's human rights ideas, values, norms and documents in the vernacular. As a consequence they ensure the *ripple effect*: they carry on the vernacularisation by spreading knowledge among the other community members, their peers, their neighbours, their families and friends.<sup>68</sup> Thus, they become the *foot soldiers*.

The local brand of the foot soldier vernaculariser is an imperative. It is important that some vernacularisers are directly and organically connected to the local communities and the people who live there. Knowing and even living the everyday reality of the community and its members, being known by the community members become imperatives for engaging with conventional understandings and transmitting the empowerment message. On the other hand, outsiders and individuals in bureaucratic positions, although still civil society representatives, are perceived as being too formal and distant to connect at the local level. For example, one community mobilizer involved with a women's NGO clearly explained the rationale behind the local brand of vernaculariser from her own working experience:

*“Me, Sharene, as the community mobilizer, I am going in the community. I used to live in the community, I know people in the community, so they would talk to me. So you can share something, rather than a Ms. Johnson would come down in the community. People know that Ms. Johnson is a manager [at our organisation] and from her is a more formal thing. But if Sharene come, Sharene can just sit down on the corner and talk. So it is more easy to get across or simply not to go by the book. Just simply start a conversation.”<sup>69</sup>*

When the conversation moderator, i.e. community mobilizer or grass-roots activist, is a local person from or close to the community, who speaks Patois, even “*reasoning on the corner*” becomes a culturally resonant technique that has the potential to facilitate meaningful and effective engagement with community members on issues such as women's human rights, gender-based violence, stereotyped ideas. Civil society organisations, such as WROC or the SISTREN Theatre Collective, make use of these *on the corner* gatherings to reach out to community members, address issues of interest and facilitate new ideas and options. In this way, the vernacularisers gain the trust of the community members and build relationships, which are essential ingredients for engaging with community individuals and conveying ideas, values

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68 Local individuals as enactors of norms and rights, and facilitators of a horizontal implementation of rights are discussed in Chapter 8.

69 Interview with a “foot soldier” from a women's groups involved in women's rights implementation in different communities around Kingston; The names of persons have been changed and the identity of the organisation has not been disclosed for confidentiality reasons.

and norms.<sup>70</sup> As Sharene explained, Marlon, a male development specialist with responsibility for corner reasoning for SISTREN confirmed,

*“We go to the actual corner and start discussions with the men there. We talk about male identity; you find that for many of them being a man is defined by how much girls you have, how much gun you fire.”<sup>71</sup>*

To sum up, the authenticity provided by the local actors legitimises the vernacularising actors and the techniques they use. The more connected the actors are to the locality, the greater is the piercing effect of the translation strategies. The *ripple effect* ensured by the translating strategies and the local brand of the vernacularising actor makes visible a horizontal process of implementation. This horizontal or *ripple effect* way of reaching out to individuals becomes an essential aspect in the implementation of Article 5(a). It has an actual potential to tackle individuals’ ideologies, beliefs, values, traditional attitudes and ultimately to bring about the social and cultural modification that Article 5(a) requires.

### 7.3.2 Action from the middle and the actors involved

#### *Upstream and downstream action*

Civil society organisations combine downstream activities by which they reach out to community members with bottom-up or upstream initiatives. In the latter case, they target relevant Government officials responsible for the implementation and realisation of women’s human rights in general. As noted in Chapter 6, women’s rights can easily be swept under the governmental rug in Jamaica. Hence, civil society organisations employ advocacy activities to remind the Government of its commitments under the CEDAW.

Besides building consciousness among individuals, downstream activities lay the groundwork for upstream activities to push women’s agenda forward. They also lay the groundwork for raising consciousness among decision-makers of the concerns and

70 “*On the corner*” in Jamaica is a common concept that indicates the spaces where people gather and discuss issues, which are important to them. These discussions are also referred to as *reasoning*, which is explained earlier in this chapter. Usually, it is the unemployed young and adult males that gather on the corner, but women may also participate in such gatherings. SISTREN, for instance, has launched a Corner Challenge Quiz by which they engage individuals in learning techniques, otherwise unavailable to them. The organisation has held such a quiz in Hannah Town, one community in Kingston. See the article in the Jamaica Observer, May 10, 2011, ‘SISTREN takes reasoning to men on the corner’, available at [http://www.jamaicaobserver.com/news/Sistren-takes-reasoning-to-men-on-the-corner\\_8779344](http://www.jamaicaobserver.com/news/Sistren-takes-reasoning-to-men-on-the-corner_8779344), last accessed on October 15, 2012.

71 Excerpt from the Jamaica Observer, May 10, 2011.

interests on the ground, and of the ways to put women's human rights into practice. Community-based initiatives provide a platform for discussions and consultations with local women and men. This is done in order to learn from the reality on the ground and from the everyday experiences and plights of local people. At the same time, it allows the voices of local individuals and their knowledge to be taken into consideration in decision-making activities. By emphasizing the importance of such consultations, one respondent enthusiastically emphasized,

*"You have to let them understand that we are all equal. I may have more education, but that doesn't mean that you are less than me. You have something rich to bring to the table, and we can all learn from each other."*<sup>72</sup>

From consultations with local individuals, organisations extract lessons to inform advocacy and ultimately policy. One senior civil society respondent explained:

*"One thing that we try to get out of ... all the projects that we do, is that we want to learn lessons to say to the State: 'This is how development can happen'. So, for example, if we find trainings with the community persons effective so that they continue the conversations among their community dwellers ... we can carry it to a policy level, to say 'Yes, this works.' ... I think we have the role in talking about what we are finding out to raise awareness."*<sup>73</sup>

In this way, civil society organisations involved in advocacy emerge as actors who connect the levels of the rights holders and of the decision-makers by channelling information and building consciousness at both these levels. Consultations thus have the potential to substantiate decision-making as well as legal and policy implementation measures regarding women's rights, with informed knowledge of reality.

#### *Horizontal action: collaboration with other civil society actors*

Collaboration with other actors emerges as another strategy for the implementation of women's human rights. Governments themselves have competing interests. Furthermore, these governmental interests compete with the interests brought on the table by different public and private stakeholders. Building "*alliances*" with broader and more influential civil society groupings, including the private sector, emerges as a useful strategy to ensure that "*gender [is] inserted as a core principle*" into the activities of the wider civil society.<sup>74</sup> One example of such an alliance, although not

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72 Interview WROC, June 6, 2011.

73 Interview WROC, June 13, 2011.

74 Ibid.

focused on gender-based violence against women, is the formation of 51% Coalition in November 2011. The Coalition brings together different women's organisations and individuals that collaborate to advocate for quotas.<sup>75</sup> As one respondent with long-standing experience in advocacy activities explained, referring to civil society activities,

*“You both have to advocate in your own interest to the State, as well as you have to try to form strategic alliances to insert your issue, to insert gender on the agenda of civil society itself; because it is not automatic that these organisations are supporting the gender agenda.”*<sup>76</sup>

Civil society actors appear to have a three-fold role in raising consciousness: 1) at the individual/community level, they take downstream action to facilitate a conscious realisation of norms and rights governing women's and men's lives; 2) at the Government level, they take upstream action to raise consciousness of the reality at the grass-roots level, i.e. community's concerns, interests and community-feasible solutions; and 3) through collaboration with similar, as well as different organisations from the larger civil society community, they take horizontal action to raise consciousness about the importance of women's rights and gain endorsement for addressing these rights.

*The role of the Government of Jamaica in civil society organisations' initiatives – a civil society perspective*

*From the middle*, the Government is viewed by organisations as the actor with a primary role and responsibility in addressing social and cultural patterns of conduct that perpetuate gender-based violence against women. That is because the Government had committed itself to fulfilling its obligations under CEDAW. Although the Government does take initiatives in this area, these initiatives have not been related to implementing Article 5(a) or to focusing on the modification of behaviour based on sex roles and gender stereotyping at the root of violence against women. Rather, it is only in the context of violence against women that social and cultural transformation is addressed. The Domestic Violence Act, C.I.S.O.C.A. and the BWA are governmental initiatives to address the issue of violence against women.

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75 The organisations involved are, WROC, Friedrich Ebert Stiftung (FES), Women's Business Owners Jamaica Ltd., SISTREN Theatre Collective, Institute for Gender and Development Studies (IGDS), PANOS Caribbean, Women's Media Watch (WMW), Young Women's Leadership Initiative, Association of Women's Organisations in Jamaica (AWOJA), and Jamaica Women Political Caucus.

76 Ibid.

Overall, the interviews with civil society actors indicate that they perceive the Bureau of Women's Affairs and its function to oversee the implementation of CEDAW as essential in the work to push women's rights forward on the Governmental agenda. However, the Bureau is also perceived by these actors as having limited influencing powers at the Government level. A similar view emerged from the analysis of findings at the governmental level, which is noted in Chapter 6.

Over the years, a collaborative relationship has developed between the Bureau and women's organisations. The Bureau is invited to participate in trainings activities undertaken by organisations with Government officials, other civil society professionals and rights holders.<sup>77</sup> The Bureau shares information about the legal and policy framework that is put in place in Jamaica to address issues that confront women. The Bureau thus has the role of making visible in these training sessions the CEDAW norms and the measures that are born out of or related to the Convention. The participation of a governmental actor in the training sessions held by civil society also reassures participants (especially inner-city or garrison community members) that the Government is concerned about this segment of the population.<sup>78</sup>

The Bureau also uses vernacularisation through dramatisations, as demonstrated at the celebration of the International Day for the Elimination of Violence Against Women on November 25, 2009.<sup>79</sup> Moreover, the Bureau and civil society organisations share vernacularisation strategies: the booklet prepared by WROC to simplify CEDAW and the Committee's Concluding Observations is also used in the training sessions conducted by the Bureau and in education initiatives with the private sector or in schools.<sup>80</sup> By adopting vernacularisation strategies and collaborating in that regard with civil society actors, the Bureau takes the implementation of women's human rights beyond law and policy. Similar to women's organisations, it becomes a potential vernacularising actor, significant in putting Article 5(a) into practice.<sup>81</sup>

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77 Participatory observations, March 10-11, 2011.

78 Unobtrusive observations July 15-August 9, 2011.

79 Unobtrusive observations, November 25, 2009, BWA Celebration of the International Day for the Elimination of Violence Against Women, Kingston.

80 Interview WROC, June 6, 2011.

81 The Bureau's role as an actor in the implementation of Article 5(a) is discussed in detail in Chapter 6.

### 7.3.3 Positioning CEDAW in action and initiatives undertaken from the middle

Given that different types of action have been undertaken by civil society actors in the areas of gender-based violence against women and social and cultural transformation, the following question arises: what role do CEDAW and the reporting process to the CEDAW Committee play in taking this action?

#### *CEDAW as a trigger for civil society organisations' action and initiatives*

Working with rights holders in their communities, having direct contact with their daily lives, their experiences of discrimination and violence surfaced in the interviews as incentives for prompting action at the civil society level. For example, one WROC middle management representatives explained

*“WROC has been in this community for over 25 years, and they have seen first hand what has been going on. On any given day, you'll just hear some noise out on the road, and if you look out there, you'll see a man beating down a woman, I mean kicking, everything you can think of ... So based on that information WROC saw that there was a need for some intervention. ... We also have a women's group here: Women Working for Progress, and most of the women from this group, they were victims at some point of gender-based violence. And they would speak freely and honestly about their own experiences, so again, there was really the need for intervention.”<sup>82</sup>*

#### *The empowering function of the CEDAW*

Interviews indicated that CEDAW is an instrument that is used to expose situations that are usually taken for granted in daily lives. Organisations such as WROC and Women's Media Watch incorporate the simplified version of CEDAW into most of their activities, namely community outreach, public education and awareness training at the various levels of community, private sector and Government. In structured activities, such as training sessions, seminars and workshops that target selected audiences, the CEDAW language of rights and obligations is used to a certain extent. In the more informal community-based initiatives, such as *on the corner* discussions, drama or street theatre, the ideas behind the norms and concepts are expressed, rather than using the CEDAW language.<sup>83</sup>

Findings revealed that the women participating in training programmes aimed at raising awareness of the Convention not only become cognisant of their rights under

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82 Interview WROC, June 6, 2011.

83 Ibid. Chapter 8 explains how encounters with CEDAW create cognisant rights holders.

CEDAW, but also gain confidence in their daily life. Knowledge of the Government's obligations under CEDAW and that their struggle is supported at the international level has an empowering effect. One senior management respondent from WROC observed,

*"I think that they know about CEDAW, they depend themselves to a level on the rights of CEDAW. So I think that it is just greater confidence ... Now, they know that the Government committed to women's rights. They understand what Beijing Platform is, they understand what MDGs are, they understand what CEDAW is."*<sup>84</sup>

CEDAW emerged as a vehicle for building knowledge and empowerment. This knowledge facilitates the internalization process and thus the action aimed at a change in social and cultural patterns of conduct. As the respondent remarked,

*"I think that capacity building works ... because impulses to change identity coming from inside [together with] information are key to bring conscious realization."*<sup>85</sup>

### *The legitimizing function of CEDAW*

Overall, interviews with women's organisations that anchor their activities in CEDAW indicate that the Convention and the Committee's Concluding Observations lay the groundwork for legitimately voicing upstream the issues and concerns expressed by women on the ground. Framing the predicaments confronting women within the context of rights and obligations under CEDAW underscores their relevance and urgency in the eyes of the decision-makers. The recommendations made by the CEDAW Committee in its Concluding Observations become a tool, which strengthens civil society requests for governmental action. These requests are also informed and substantiated by the realities of rights holders. According to one respondent,

*"We feel that the Concluding Comments are a very good instrument for us [women's organisations] to say 'The CEDAW sessions happened in 2006. We signed the Convention in 1982. We went to the CEDAW Committee in 2006, we got some comments. This is how people see us, they have reported, and this is what we are encouraged to deal with. We took them, we have done this research on the ground, we have identified this problem ... 83 women are saying that they want to participate at the level of boards and commissions.'" <sup>86</sup>*

Moreover, when the concerns expressed by the CEDAW Committee are corroborated with real concerns on the ground in the civil society advocacy initiatives, the requests coming from the CEDAW Committee are validated. Consequently, putting into

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84 Interview WROC, June 13, 2011.

85 Ibid.

86 Ibid.



practice Government obligations under the Convention is relevant and urgent. The respondent further explained that the Convention and the Concluding Observations

*“... are not only to remind the Government that it has an international commitment around these issues, but also that it is not just a whim. It is documented research to support the thrust, and that there is interest on the ground.”<sup>87</sup>*

Participation in the reporting process to the CEDAW Committee through drafting the NGO Shadow Report, and attendance at the “constructive dialogue” between the Committee and the Government of Jamaica in August 2006 in New York determined several women’s organisations to take the decision to raise knowledge about CEDAW and the Committee’s Concluding Observations among Jamaicans. As a result, they produced the booklet mentioned in a previous section of this chapter (*“Rights a di plan, wid CEDAW in wi han’. CEDAW for Jamaicans”*). One WROC representative noted,

*“We took a very proactive decision in 2006 ... that we wanted to raise focus on CEDAW and ... that we would make people know about what they [the CEDAW Committee] said and that’s why we did CEDAW for Jamaicans ... We want to use the experience of that and build it up in the same kind of way and use it around the violence against women, and at the end of our project to be able to say ‘This is what we have learned. This is what we think needs to be done’... similarly with anything that we do – work in that kind of conscious practice way.”<sup>88</sup>*

It appears that rooting upstream advocacy action in consultations with rights holders, and corroborating it with the use of the Convention and the Concluding Observations render women’s organisations’ contribution to the implementation process a *“conscious practice”*. It provides consciousness of what is relevant for the substantive situation of women and men rights holders and of international women rights and obligations, to prompt incentives for conscious governmental action in the area of women’s human rights.

To summarise, the findings show that actors *from the middle* devise initiatives to address social and cultural patterns of conduct based on sex roles and gender stereotyping. However, Article 5(a) as such may not be used explicitly. Most of the time, these initiatives are incorporated as a component of broader action that is focused on manifest and urgent issues, such as gender-based violence against women, women’s leadership and political participation, or poverty and hunger. CEDAW

87 Ibid. Interview AWOJA, June 17, 22011, senior management representative; Interview WMW, May 25, 2011.

88 Interview WROC, June 13, 2011.

emerges as a tool used to legitimise and strengthen upstream action. At the same time, it is used in downstream action to empower women with knowledge of their rights and of Government obligations to realise their rights. Generally, individuals' daily life and struggles are, and should be, the trigger for action and initiatives to address entrenched ideologies, beliefs and values, and ultimately to change behaviour. The substantive situation of rights holders lays the groundwork for the downstream and upstream mechanisms of action undertaken at the civil society level. Even if not stated as such by respondents, it can be argued that this is instrumental in putting Article 5(a) into the practice.

#### **7.4 FACTORS INFLUENCING ACTION *FROM THE MIDDLE* AND GAPS IN THE ACTION TAKEN**

This section maps out the factors identified by the civil society respondents as impeding the actions and initiatives taken. These factors are illustrative of the shortcomings in the actions taken so far, thereby indicating the areas where further steps need to be taken. Spelling out the factors and pinpointing the gaps lay the ground for recommendations for effective action to bring about social and cultural transformation, which ultimately informs an understanding of the manner in which Article 5(a) can be put into practice.

##### *Factors impeding civil society action*

Effective action is usually dependent on the availability of resources. The lack of financial resources impedes focused and sustained long-term action, covering a large segment of the population. As a result, dispersed initiatives with a short lifespan and limited audience characterize the action taken by civil society actors. Despite efforts to raise awareness about CEDAW, the Convention is still not a widely known women's human rights instrument in Jamaica. One civil society representative explained: "*We are a little NGO and don't have a lot of money; there is a limit to what we can do.*"<sup>89</sup>

Scarce financial resources lead to changeable action dependent on international donors. The focus of action easily shifts in accordance with the interests of the funding agency. And crucially, the focus of the action stops when the funding stops. The lack of sustainability of action combined with insufficient financial resources and little awareness of the CEDAW Concluding Observations at the level of the Government foster the tendency of Government actors to take women's human rights with little priority. One civil society respondent held the opinion that a Government that is not cognisant of the Convention's provisions and of the Committee's Observations

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<sup>89</sup> Interview WROC, June 13, 2011; Position also shared in Interview WMW, May 25, 2011.

on Jamaica is not likely to understand the urgency of fulfilling its obligations under CEDAW. Some civil society actors held the opinion that the State obligations under CEDAW turn into a symbolic action of writing a report to the CEDAW Committee with fragile impact on the responsibilities that the State, as a whole, takes. One respondent went as far as to state that,

*“I don’t think [the Government] knows about obligations under CEDAW. They are going to go back [to the CEDAW Committee] and they just tick off and say ‘Oh well, now we have a national gender policy’, but the implementation is going to be something else.”*<sup>90</sup>

As viewed by civil society actors, the Bureau is under-resourced and “*on the margins of bureaucracy*” which obstructs its influence on the Governmental agenda. Given that the Bureau is the governmental department mandated with the implementation of CEDAW, its dependency on the larger governmental apparatus and consequently its little influential power at Government level limits the extent to which its action has an impact. This impedes making the CEDAW Concluding Observations more meaningful to the Government as a whole. Hence, actions, which are conducive to the implementation of the Convention, and in particular of Article 5(a), are hindered.

*“The Bureau is so dependent on the State, it is wrapped up in carrying the message of the State and it doesn’t have an independent advisory board which is what it needs to be able to set the agenda.”*<sup>91</sup>

The implementation and realisation of women’s human rights cannot be fulfilled by the Government alone through the small, under-resourced department that the Bureau is. Neither can under-resourced women’s organisations carry on with their activities to promote women’s plights.

Overall, civil society initiatives concerning gender-based violence against women have not been taken in a concerted and orchestrated manner. Despite initiatives such as 51% Coalition focusing on introducing quotas, most action is rather fragmented, taken *in silo*,<sup>92</sup> which scatters and weakens their effect. Different civil society actors have responded with different initiatives, such as training the media, the police or the judiciary, community-based initiatives to raise awareness on gender-based violence, providing support and shelter to women, and advocacy activities. These different initiatives were taken according to the nature of organisations’ activities and according to their possibilities to secure financial resources. Only a handful of organisations

90 Interview WROC, June 13, 2011.

91 Ibid.

92 Interview FES, May 18, 2011; Interview Community of Practice, May 9, 2011.

continue the struggle for the realisation of women's rights under CEDAW.<sup>93</sup> Women activists and academics indicate that the momentum for women's rights and the enthusiasm supporting the struggle have weakened over years. A general sense of accomplishment of women's goals once the UN decade for women had ended and an attitude of "*again this woman thing!*" and "*what more do women want?*"<sup>94</sup> poses an obstacle which slows down action and tires women's activists themselves.<sup>95</sup>

## 7.5 VOICES FROM THE MIDDLE: CONCLUSIONS AND RECOMMENDATIONS

So far, this chapter has described at the level of civil society actors in a detailed way: i) consciousness and understandings of the necessity for social and cultural transformation; ii) action and strategies to address social and cultural transformation; iii) the actors involved in these efforts, iv) factors influencing action and gaps in this action. Having regard to the fact that this research is aimed at understanding the manner in which Article 5(a) can be put into practice, the role of CEDAW has been constantly investigated. Civil society recommendations are subsequently presented and inform ultimately the understanding of the ways to put Article 5(a) into practice so that women's right to be free from gender-based violence is realised.

### 7.5.1 Summary of findings

The necessity for social and cultural transformation of sex roles and gender stereotyping that perpetuate gender-based violence against women is acknowledged by civil society actors. Moreover, they do address this in their actions. However, as a result of attention to the realities on the ground or of the agenda of the funding agencies, these actors focus on evident problems such as gender-based violence, HIV/Aids or women's representation in leadership positions. Social and cultural patterns of conduct based on sex roles and gender stereotyping are addressed as constitutive elements of these problems. Therefore, social and cultural transformation, as provided in Article 5(a), is secondary to the efforts to address overt manifestations of discrimination against women.

As actors *from the middle*, civil society organisations operate in three directions to raise consciousness of women's human rights ideas, values and norms: downstream, upstream and horizontally. While downstream action is aimed at raising consciousness at the rights holders level and upstream action has the goal of raising consciousness at

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93 Ibid; Interview AWOJA, June 17, 2011; Interview community of practice, May 9, 2011.

94 See Bailey, 2011, p. 8.

95 Interview AWOJA, June 17, 2011; Interview female gender advocate, former director of BWA, June 28, 2011. Interview WROC, June 13, 2011.

the top, decision-making level, the horizontal action entails a “*strategic alliance*” by which women’s organisations raise consciousness about women’s human rights and their relevance among their civil society peers.

Consultation with rights holders provides the groundwork for the implementation and realisation of rights, while CEDAW norms and the Committee’s recommendations legitimize the three-fold action by *the middle*. Engaging rights holders in the conversation about women’s rights and State obligations through vernacularisation and consulting them on their lived reality and opinions enables evidence-based upstream action taken by civil society actors. Moreover, framing such upstream action in the provisions of rights and obligations under CEDAW is essential for putting Article 5(a) into practice and creating an environment, which is conducive to social and cultural transformation.

### **7.5.2 Civil society actors’ recommendations**

Civil society actors have made a number of recommendations for tackling the barriers to effective action. This section pinpoints those aspects perceived to be essential for bringing about social and cultural transformation and for the realisation of women’s rights be free from gender-based violence. These recommendations implicitly provide ways to put Article 5(a) into practice in Jamaica.

#### *Building consciousness*

Civil society respondents pointed at gender consciousness as the means for achieving transformation. Consciousness of the detrimental effect that gender constructions can have on relations between women and men at all proposed levels of inquiry – governmental, civil society and rights holders – is a pre-requisite for putting Article 5(a) into practice and realising women’s right to be free from gender-based violence. Moreover, consciousness of the rights and obligations under Article 5(a), especially at the Government and civil society level, is conducive to bringing about social and cultural transformation.

Recognising that “*too little work is being done*”,<sup>96</sup> respondents indicated that “*continuous education*” would constitute the springboard for the needed change in Jamaica, as it “*would get people to analyse their situation and motivate them to change the situation of oppression*”.<sup>97</sup> In that regard, opening the dialogue with

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96 Interview PNP Women’s Movement, July 1, 2011; Interview Jamaica Women’s Political Caucus, July 4, 2011.

97 Interview United Theological College of the West Indies (UTC), June 24, 2011.

men on violence against women and its social and cultural root causes, and ensuring information-sharing with both women and men on gender-related issues would provide people with the necessary gender consciousness to critically assess their situation and the need for change.<sup>98</sup>

Various discussions in the printed media support these recommendations. Focusing on inner-city males, Dr. Herbert Gayle, well-known Jamaican anthropologist of social violence, called for a focus on education in order to tackle fragile masculinities prevalent in inner-city environment in the *Sunday Observer* (August 2011).<sup>99</sup> In response to the *Daily Gleaner's Letter of the Day* (March 2011) calling for a quota system to ensure women's participation in the public sphere, a female reader stated that a boost in the number of women in the public sphere without gender consciousness would not necessarily end discrimination.<sup>100</sup> Unless individuals are gender-cognisant, they remain controlled by hegemonic structures and situations of entrenched gender discrimination can easily be ignored.

### *Involving radio and visual media*

The vast majority of civil society respondents, especially those representing women's organisations, confirmed that the vernacularisation strategy created individuals cognisant of the rights and obligations deriving from CEDAW. The impact of that strategy was especially clear at the grass-roots level. However, strategies to give meaning to CEDAW ideas, values and norms have been aimed only at selected audiences, i.e. in training sessions and workshops or in community-related work. For a wider impact, respondents said it was imperative to bring the mass media on board. Several respondents recommended the use of the vernacularisation techniques of street theatre and dramatization on radio and television as *vignettes* for spreading knowledge aimed at the national audience. Precedents for such initiatives were identified, such as Women's Media Watch's hour-long morning radio programme, where speakers addressed issues and dramatized scenarios while audience comment was solicited. Respondents recommended a similar strategy for television. As one respondent from WROC emphasised,

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98 Interview freelance female gender advocate, June 11, 2011; Interview PNP Women's Movement, July 1, 2011.

99 The *Sunday Observer*, 'Primitive male = more violence. Anthropologist urges renewed focus on education for inner-city males', August 7, 2011 (accessed in print on August 7, 2011).

100 *The Gleaner*, 'Letter of the Day: Jamaica needs more women leaders', March 8, 2011, available at <http://jamaica-gleaner.com/gleaner/20110308/letters/letters1.html>, last accessed on February 15, 2012.

*“The print media won’t be of much help to the extent that we want. But if we could get little snippets, skits and scenarios on the television stations, or on the radio stations, the local cable stations, to just have little of these [scenarios] running for a period of time, I think it would go a far way.”<sup>101</sup>*

However, such approaches appeared to be challenged yet again by a lack of funds.

### *Collaborative action among the relevant actors*

Since social and cultural transformation is a multifaceted issue, a multifaceted response is necessary. Strategic, concerted action is essential. For that reason, a collaborative approach taken by relevant actors was recommended as crucial in order to avoid *in silo*, dispersed initiatives. The State, through entities like C.I.S.O.C.A., VSU, and mainly the Bureau of Women’s Affairs, was considered to be a crucial actor. From the perspective of civil society respondents, the Government has the potential and should pursue strengthened coordination between the relevant actors. The other relevant actors include civil society organisations, particularly human rights and women’s groups, the media, the private sector and funding agencies. The church was also highlighted as an important actor since it plays a fundamental role in individuals’ lives. Moreover, collaboration should also include consultations with local rights holders and consequently inform upstream action and ultimately governmental measures with knowledge from the ground.

This chapter explored ways in which ideas, values and norms of women’s human rights, as provided in CEDAW, are translated for the Jamaican rights holders by civil society actors, in order to identify the ways in which Article 5(a) is put into practice. Although not referred to as the implementation of this Article, the strategies used point to ways of ensuring that its elements are put into practice. (Women’s) human rights do not occur in the abstract; they occur in social spaces, as do their violations. Understanding the actors situated in these social spaces and the actions and strategies they undertake are essential to devising a realistic process of putting human rights into practice. The next chapter will focus on rights holders as actors and will explore the implementation and realisation of women’s human rights *from below*. It will detail the way that translated ideas, values and norms are appropriated into the local context of rights holders, and will investigate the manner in which this context responds to those ideas, values and norms. As Levitt and Merry put it, attention will be paid to the manner in which “*the local talks back*”.<sup>102</sup>

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101 Interview WROC, June 6, 2011; Interview WROC, June 13, 2011.

102 Levitt and Merry, 2009.





## CHAPTER 8

# RIGHTS HOLDERS: BENEFICIARIES AND ACTORS OF VERNACULARISATION

*“Emancipate yourselves from mental slavery; None but ourselves can free our mind.”*<sup>1</sup>

Bob Marley

### 8.1 INTRODUCTION

On July 12, 2011, I conducted a second focus group discussion at the WROC premises with the women from the inner-city areas in Kingston. The discussions started much later than planned because some of the women could not leave their houses. Turf war had overtaken the community confining them to their homes, depriving them of their freedom of movement and changing their plans for the day. While waiting, two respondents were talking about *daily issues*. They were calmly sharing recent incidents in their neighbourhoods, as if nothing out of the ordinary was happening: another pregnant *pickney* girl, men easily pulling the trigger and killing with or without intention, the war occurring at that very moment in the community.<sup>2</sup> I felt unsettled. I worried not just for my own life. Fortunately, an hour later the rest of the women made it to the discussion.

This is just another situation that makes evident that violence and abuse are modes of life for certain rights holders.<sup>3</sup> Violence is creeping in every aspect of their lives. In this “*culture of abuse*”,<sup>4</sup> as respondents recounted with an obvious sense of dissatisfaction, “*we have to give thanks to God because many times with the situation we go through we might never know if we survive. Anything is possible.*”<sup>5</sup> Given the exposure to an aggressive environment, pressure from various sources leads male youths to engage in aggressive behaviour and develop a type of masculinity characterized by control and aggression. Respondents repeated over and over again that aggressive behaviour affirms masculinity and secures respect, while “soft” behaviour risks disrespect, humiliation and marginalisation. “*You are wanted to develop from growing up as a man to be rough, to*

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1 Bob Marley, lyrics from ‘Redemption Song’.

2 *Pickney* in Jamaican Patois means child.

3 This was not the only time during my field research in Jamaica that the sense of violence became palpable. Daily newspaper stories made the violence visible, especially at the community level. In order to step out of the house and continue my research at the relevant institutions and sites (some of them also referred to by Kingston residents as “volatile areas”), I had to stop reading at some point the front page stories of beheadings, arbitrary killings in the road traffic, sexual abuse and killing of a 6 year old girl, murder-suicides due to intimate partner conflicts. In such a context, it was unavoidable that fear crept in or that one becomes numb to the ongoing violence of all sorts.

4 Focus group discussion (FGD), BWA women group, July 14, 2011.

5 FGD, WROC men group, July 8, 2011.

*be strong, to be retaliative.*<sup>6</sup> Within this context enveloped in violence, violence against women is just another aspect of daily life.

In order to understand the ways in which Article 5(a) can be put into practice, the aim of this chapter is to understand the manner in which rights holders benefit from and make use of actions and initiatives put in place by the Government and civil society actors. Therefore, it gives voice to the rights holders in order to engage with their understandings and perceptions of such actions. It also exemplifies the idea that the rights holders are themselves actors in the process of putting women's human rights in practice.

The chapter first displays local understandings of the social and cultural root causes of violence against women and whether rights holders themselves perceive change as necessary to be brought about in their own realities. It then explores rights holders' perceptions of the structures and measures in place to respond to violence against women and its socio-cultural root causes. Next it illustrates the manner in which rights holders receive, benefit from and make use of the translation of CEDAW. These illustrations also inform the study of the factors influencing the implementation of women's human rights. Finally, the chapter voices rights holders' recommendations as to what is necessary and feasible for putting women's human rights, and ultimately Article 5(a), into practice.

This chapter is based on findings from focus group discussions (FGDs) conducted separately with women and men from the Kingston Metropolitan Area and from rural areas.<sup>7</sup> The FGDs conducted in Kingston were composed of rights holders, women and men, associated with the women's organisation WROC. These respondents came from inner-city and garrison communities of Kingston.<sup>8</sup> In the rural areas, focus group discussions were conducted with women associated with the Bureau of Women Affairs. The chapter draws also on findings from subsequent unobtrusive observations of a month of community facilitators' training sessions with both women and men on eliminating gender-based violence held by WROC and a questionnaire distributed upon the completion of the training, which supplemented the observations.

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6 FGD, WROC men group.

7 The composition of the rights holders groups participating in the focus group discussions is detailed in Chapter 5 focused on the methodology of the research.

8 Inner-city and garrison communities, also referred to as the ghetto, are poor communities. Male respondents living in these areas of Kingston explained that garrison communities in particular are characterized by gang violence, turf wars, which makes them extremely dangerous. FGD, WROC men group, July 8, 2011. In the literature these communities are described as "below the poverty line" where "violence is embedded in their past, pervades their present, and threatens to overrun their future." Tafari-Ama, 2008, p. 14.

## 8.2 PERCEPTIONS AND UNDERSTANDINGS OF THE NECESSITY FOR SOCIAL AND CULTURAL TRANSFORMATION IN JAMAICA – RIGHTS HOLDERS’ ACCOUNTS

*“If a woman wants to excel she would look to a money man to achieve her goals, while a man would bust the gun, rob or steal.”<sup>9</sup>*

This categorical view put forward by one male respondent from a garrison community sums up the way gender identities may manifest themselves in behaviour along dichotomous roles and expectations. The narratives of people on the ground illustrate in this section their understanding of the issues underpinning gender-based violence against women and their perceptions of the necessity for social and cultural transformation in Jamaica.

### 8.2.1 Understandings of the social and cultural construction and reproduction of gender relations

The stories shared by grass-roots individuals during focus group discussions confirmed the depiction of gender relations made by Government and civil society actors. The similar understandings across the different groups of actors that were studied reveal that the depicted social and cultural patterns of conduct underpinning violence against women is systemic to Jamaican society. With their grass-roots accounts grounded in their urban and rural reality, women and men both confirmed the dichotomous sex roles and stereotyping governing gender relations in Jamaica. Focus group discussions revealed that, overall, patriarchal expectations of nurturing/care-giving, obedient women confined to the domestic sphere, and of breadwinning, dominant men enjoying domestic and sexual freedom, define gender identities. Shaped through socialization, these identities result in realities burdened by societal expectations and ultimately in conflicting relations among individuals.

*“In our society, if you reached a certain age and you nuh [no] have sex with a girl, they consider you a bored man. There are a lot of names: they might call you homosexual because you no want nuh [no] woman. There is a pressure on you from a boy stage from the parental background: the male, you free to go have sex even with a likkle [little] girl your age; but if the child is female, you female stay inside ... There is a push and pull.”<sup>10</sup>*

Societal pressure perpetuates a brand of masculinity that should not associate in any way with feminine characteristics. In fact, it should be diametrically opposed to femininity; contraventions of this distinction risk humiliation and the marginalization of men. Such indirect ascription of women to a position of inferiority is entrenched

9 FGD, WROC men group.

10 Ibid.

in and expressed by the Jamaican vernacular. Language thus reveals the categories of individuals that Jamaican society places at its margins. Not surprisingly, the homophobic sentiment prevalent in Jamaica manifests itself by pinning feminine characteristics and roles on men who breach the norm of hegemonic heterosexual masculinity.

Rights holders shared some stories about their daily lives that enriched the explanations of the construction of male identity in Jamaica. According to women, men who help with domestic chores are exceptions who risk humiliation. One woman from the inner-city recalled a peculiar situation for the typical male behaviour, “*For the past years, [only] last week I see a situation where the man rinsing, while the wife washing. You no get that, no way in Jamaica!*”<sup>11</sup> Women in the group confirmed, and one made a general remark: “*Some men, if they have the intention to do it, they can’t do it, as persons brand them as mamma man.*”<sup>12</sup> Women drew on these exceptional situations to illustrate the societal pressure that occurs when there is deviance from the ascribed sex roles. In the Jamaican vernacular, *mamma man* stands for male homosexual.<sup>13</sup> The expression is commonly used as a derogatory label for a man who performs domestic tasks and shares parenting responsibilities; in this way, he associates himself with feminine roles, instead of exerting his freedom, dominance and control and thus wielding the well-established “masculine” traits.<sup>14</sup> Consequently, men should assume the hegemonic, heterosexual identity to protect themselves from disapproval, often expressed violently particularly in violence-prone environments, such as the inner-cities and garrison communities. One young man from a Kingston garrison community explained,

*“A man ting is very hard, because you have to be very firm and very strong. It is dangerous to behave softly, like a girl, especially in the garrison community because of the association with a batty bwoy and it becomes physical, it becomes negative.”*<sup>15</sup>

*Batty bwoy* is a stigmatising term for male homosexual in the Jamaican vernacular, which is illustrative of the strong homophobic fabric of Jamaican society. The alternative option is displaying *badman* characteristics. Various accounts reveal that

11 FGDs, WROC women group, July 7 and 12, 2011.

12 Ibid.

13 Explanations of the Patois terms used in this research are based on definitions given by respondents and meanings gathered during the author’s two field research periods in Jamaica and previous visits to the country. See also the dictionary explanation of the term in the online dictionary “Patwa Organization, Jamaican Patwa Audio Dictionary”, internet website <http://patwa.org/> and the online Jamaica/Patois Dictionary at <http://niceup.com/patois.html>, last accessed March 27, 2012.

14 Various respondents from the different levels of inquiry undertaken in this research pointed to this understanding of the term.

15 FGD, WROC men group.

*badman masculinity* is the required inner-city male identity: an overt representation of aggression and the related power crucial for coping with the inner-city/garrison community lifestyle.

The more aggression a man exerts, the more power he has and thus the greater chance of his survival. Structural deficiencies, more pronounced in these poor communities, encourage the formation of masculinities that are aggressive, and perpetuate their reproduction. Recounting the life of continuous struggle with poverty and violence which respondents perceived to be ignored by the Jamaican Government, one man stressed: *“This also plays on you being a man, as a youth growing up, because you starting getting numb and say: the system nuh go [will not] change. This is how we try to live fi [to] survive!”*<sup>16</sup> The young man concluded by making the categorical remark: *“Life conditions impact on the way people act out.”*<sup>17</sup> Given such a context, it is not surprising that aggressive behaviour is expressed in all areas of life and in the various types of interpersonal relationships.

### **8.2.2 Understandings of the social and cultural reproduction of violence against women**

#### *Perceptions of gender-based violence against women*

Within the community, men are pressured to display aggressive masculinity in order to protect their family. *“If you grow [up] in the community, you don’t have nobody to defend you. So that is a pressure on you as a male. You see yourself as the main backbone to defend your family.”*<sup>18</sup> Hence the dominant, in control, protective masculinity is perpetuated. Within the family, manifestations of tough and aggressive masculinity are expected also by their female partners. Men attested that women can be the ones who encourage men’s aggressive behaviour: *“If you say I am a peace maker, it a go [is going to] make you look so soft to them. Even your own woman would pressure you to go war.”*<sup>19</sup>

Within some community schools, there is excessive exposure to violence. Children, in such schools, are introduced to gangs, guns, peer pressure and violent behaviour, which make the school a volatile environment. As early as primary school years, boys are thus required to build up a tough, aggressive identity; engagement in gang activities proves their manhood and protects them from gang harassment. Boys aged

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16 FGD, WROC men group.

17 Ibid.

18 Ibid.

19 Ibid.

from 12 to 17 years old recounted that joining a gang affirms power and protects against vulnerability. In the words of a 15-year-old boy, *“In the school you have gangs and if you don’t walk with a crew you are a fool. If you don’t walk with certain people, they come box you, beat you, they will do all sort of things to you ... and they know when you make a complaint.”*<sup>20</sup> The school thus becomes a space for the manifestation of violence. The media has documented this situation as well. One excerpt from the Jamaica Gleaner of December 2012 says:

*“More than 600 weapons have been confiscated from students at educational institutions islandwide since the start of the year [2012]. Constable Ricardo McCalpin, a school resource officer with the Safe Schools Programme, told The Gleaner yesterday that knives accounted for the majority of weapons seized between January and September this year. ‘So far we have confiscated 403 knives, 37 ice picks, nine machetes and we have made 157 arrests from various schools islandwide and this is a mixture of both traditional and non-traditional high schools across the island.’”*<sup>21</sup>

Boys’ stories of violence occurring in their schools suggest that girls are exposed to sexually aggressive behaviour. One 12-year-old boy shared stories about the sexual harassment of girls in schools. Girls’ rejection, as he explained, often triggers boys’ violent conduct. According to another young man, this occurs because of a sense of entitlement that boys develop over a girl’s body, which is further transferred into adult life: *“The man believe him have the authority to touch and that is same from childhood years: that a man can just go out there and do what him want to do.”*<sup>22</sup> Women’s refusal of this behaviour is perceived as defiance of men’s authority and a breach of the relations of power; the normal response is referral to violence. Aggression is thus integral to the way men express themselves with women. This aspect of their masculinity is one of the links and root causes of gender-based violence against women. *“Men bully young women to be in relationships.”*<sup>23</sup> As the respondents emphasized, this is illustrative of the ways masculine identity manifests itself in relations between women and men not only in the low economic income communities, but also at the higher economic income levels.

20 In Jamaican Patois, *box/bax* means to slap hard or to hit someone. FGD, WROC men group.

21 The Gleaner, December 4, 2012, ‘Student Gangsters – Hundreds Of Knives, Machetes, Ice Picks Seized At Schools’, available at <http://jamaica-gleaner.com/gleaner/20121204/lead/lead1.html>, last accessed on December 4, 2012.

22 FGD, WROC men group; FGDs, WROC women group.

23 FGD, WROC women group.

*Social acceptance of violence against women: “If he doesn’t beat me, he doesn’t love me”*

Reality, as depicted by grass-roots individuals, yet again affirms the normalisation of violence. Aggression is accepted and expected in all aspects of life, even in intimate relationships. Women are the habitual targets of men’s violence. Further, this is not seen as problematic and worrisome, but it is expected as a normal way to behave. It occurs in different shapes and forms.<sup>24</sup> Women confided, “*women are expected to become beating sticks for men*”.<sup>25</sup> Correspondingly, men participating in the focus group discussions confirmed that observation: “*common men beat women*”.<sup>26</sup> Evidently, violence against women becomes an integral part of life. It is noteworthy that most women participating in focus group discussions had experienced different types of violence: from battering to gang rape. They made general remarks drawing on personal experiences. One woman from the inner-city group recalled,

*“Me [I] get black and blue eye, fractured jaw bone ... Every man I talk to [I am with] who no [does not] beat me with gun, do me all kinds of things ...”*<sup>27</sup>

The ingrained belief “*If he doesn’t beat me, he doesn’t love me*” which encourages and perpetuates the acceptance of violence against women was brought up and attested by accounts of women and men participants in all focus group discussions without exception. The rural women explained, “*some of the women love the beating. They say if the man don’t beat them they don’t love them.*”<sup>28</sup> What emerges from the focus group discussions with the men is that women in the inner-city/garrison areas encourage the normalisation of violence by taking pride in their bruises and exposing them as a mark of love. One young man explained, “*Some women are the problem. If you don’t box her cross her face she go a road and say the boy deh him no love me. As soon as she get beaten and she show her scars, they boy love her. She help the problem.*”<sup>29</sup> Another young man jumped into the conversation to confirm: “*Women with black and blue eye come out and a talk to her friends. Is praise to she to come and say a man do this. Violence against women is a norm, is accepted.*”<sup>30</sup>

24 Incest appears to be common as well. Joyce, a little girl sexually abused by her uncle, sister and her sister’s boyfriend, is one of many examples provided by participants. In Joyce’s case, as with others, the abuse was ignored by her mother. FGDs, WROC women group.

25 FGDs, WROC women group.

26 FGD, WROC men group.

27 FGDs, WROC women group.

28 FGD, BWA women group.

29 FGD, WROC men group.

30 Ibid.

A young man who participated sporadically in the focus group discussion conducted in the rural area gave a clear account of the entrenched nature of violence against women,

*“Visually, you will see violence against women more in the rural and ghetto area because the woman wears it just like when you dress and go to a party. People abuse each other on the roads, even police sometimes do it. So it [violence] just comes in like nothing. If you call the police it doesn’t make sense, so you just take it or take it up in your own hands, because the entertainers do it, the bigger heads do it, the police do it, everybody do it.”<sup>31</sup>*

The account illustrates that violence against women occurs across classes and geographic areas in Jamaica and its acceptance fosters its perpetration at the interpersonal level and at the institutional level, by those with the responsibility to protect from violence. The lived realities of women and men therefore show that in the bigger picture of violence that cripples most dimensions of life, violence perpetrated against women becomes a normal element of that picture.

### **8.2.3 Understandings of the necessity for social and cultural transformation**

Rights holders spoke of the need for change in relation to poverty, inner-city stigmatization and marginalization, lack of respect and spiralling violence. They also indicated the need for a change in the social and cultural behaviour based on sex roles and gender stereotyping. Therefore, a consciousness of the need for change generally emerged from the focus group discussions. People want a change and realities on the ground trigger the need for it.

Women revealed a sense of entrapment by economic dependency and men’s constant abuse. Men revealed a sense of entrapment by women’s very economic dependency on them. Male respondents depicted women as taking advantage of men by relying on them and expecting to be supported by them. All focus group discussions pointed to the need for personal and economic independence, and therefore implicitly for a change in socio-cultural gender constructions. Women confessed to their desire to break out of their dependence on men, because *“women who are independent do not often experience violence.”<sup>32</sup>* Moreover, *“A woman has responsibilities, can’t depend on a man to take care of her.”<sup>33</sup>*

Men agreed that the dichotomous roles and expectations do not benefit relations between women and men and a change in roles and attitudes is needed.

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31 FGD, BWA group.

32 FGDs, WROC women group.

33 Ibid.



*“Beliefs that a man being the breadwinner, this idea that this man has to be the man of the house, including providing for the family, I think we passed that now. Even if the woman is working, the expectations are that the man provides. I think we are supposed to be independent.”<sup>34</sup>*

When asked what change they would like to see, rights holders spoke generally and passionately of a change in mind-set. *“We need to forget our biases!”* stressed the men vehemently.<sup>35</sup> Referring to the ingrained belief *“if he doesn’t beat me, he doesn’t love me”*, they suggested that the *“mentality towards life”* needed to be changed.<sup>36</sup> *“Like what Bob Marley say, you need to free yourself from this mental slavery or otherwise you will always be in a chain.”<sup>37</sup>* Similarities emerged in the focus group discussions with women who perceived themselves as agents of change. Women from both Kingston and rural areas made use of an empowering language, and showed confidence in their own capabilities. They stressed, *“Women can make changes in our society.”<sup>38</sup>*

### **8.3 PERCEPTIONS OF THE NATIONAL ACTIONS IN RESPONSE TO GENDER-BASED VIOLENCE AGAINST WOMEN**

Government and civil society actors have undertaken a host of measures, initiatives and strategies to address the widespread incidence of gender-based violence against women and the social and cultural behaviour that underpins it. Nevertheless, if the violence is still pervasive, as rights holders’ illustrations demonstrated, and accordingly a social and cultural transformation is urgently needed, there is obviously a gap between the action taken so far and the realities on the ground.

This section illustrates the way rights holders perceive and understand initiatives undertaken by governmental and civil society actors, i.e. legal, protective and preventive measures that are in place to respond to gender-based violence against women. Since the Jamaica National Policy for Gender Equality (NPGE) was approved by the Cabinet during the field research period (in March 2011), its implementation could not be investigated. Hence, perceptions of this policy and its potential impact could not be assessed and remained outside of the parameters of this research.

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34 FGD, WROC men group.

35 Ibid.

36 Ibid.

37 Ibid. Virtually all rights holders referred to the lyrics of Bob Marley, the well-known reggae artist whose work is an integral part of the Jamaican ethos. Marley’s message in his music came up also in the training sessions observed for the purpose of this research and during informal gatherings and discussions.

38 FGDs, WROC women group.

### 8.3.1 A context of mistrust and dissatisfaction

Among the rights holders interviewed, mistrust and dissatisfaction are the common sentiments vis-à-vis the Government of Jamaica, showing the disconnect between the duty-bearer and the rights holders, especially at the grass-roots level. This disconnect is explained by rights holders' perceptions of a Government that ignores and disrespects their realities. The inner-city women gave the straightforward explanations that *“at the end of the day, we have a slack Government. Our Government don't care! Them don't care about the poor people. Them care only for the rich.”*<sup>39</sup> All respondents, especially those from the Kingston inner-city and garrison community areas, spoke generally of the Government ignoring and disrespecting poor communities and thus sustaining their marginalization. Different treatment according to class, where *“the rich have different rights from the poor”*,<sup>40</sup> is reflected in the conduct of the police, referred to repeatedly in focus group discussions. According to respondents, the police act with impunity in poor communities, arbitrarily using force, entering houses without warrants and neglecting to read individuals their rights. This implicitly creates an environment where rights are customarily disregarded.

*“I never hear a policeman in Jamaica read somebody them rights before. Instead of that they tell you bad words and yet still them charge you indecent language. I never see a Jamaica police come to a person house and say I have a warrant. (Instead) them kick off your door.”*<sup>41</sup>

When it comes to women's realities, predicaments and rights, the Government reinforces patriarchal mentalities by applying similar attitudes: issues pertaining to women are swept under the rug and ignored. Respondents view that the problems confronting women are not at the forefront of the Government's concerns.<sup>42</sup> Although the underpinning of violence against women emerges as social and cultural, the failure of the governmental institutions to take appropriate action to deal with violence against women on the ground is another contributory factor to the perpetuation of violence in relations between women and men. A climate of impunity surrounding intimate partner violence and sexual violence prevails, allowing the normality of

39 FGDs, WROC women group.

40 FGD, WROC men group; FGDs, WROC women group.

41 FGDs, WROC women group.

42 FGDs, WROC women group. This view is corroborated by the disproportionate male-female ratio at the decision-making levels. In political and public life, women make up 6 of the 60 Members of Parliament (10%); 2 out of the 17 members of the Cabinet (11.8%); 6 of the 21 members of the Senate (28.5%); and 3 out of the 7 Judges in the Court of Appeal (42.9%). See Bureau of Women's Affairs, “Statistic at a Glance on Gender Indicators in Jamaica, 2009-2010”; also Economic and Social Survey of Jamaica, 2009; Survey of Living Conditions, 2007; CIA-The World Factbook, 2012.

gender-based violence against women. This, in turn, plays out in rights holders' acceptance of the issue.

### 8.3.2 Perceptions of the legal measures in place: legal consciousness

*“Give everybody them freedom, give everybody them rights! People need to get them rights exercised where the justice system is concerned!”<sup>43</sup>*

The context of mistrust and the disconnect portrayed above between rights holders and duty-bearers impacts on the legal knowledge of grass-roots individuals as well. Limited knowledge of the legal measures addressing violence against women came out recurrently from focus group discussions. Phrases such as *“a lot of things happen to women and them no really know them rights”*,<sup>44</sup> *“we don't know enough our rights”*,<sup>45</sup> or *“to me Jamaicans don't have a clue about their rights”*<sup>46</sup> were abundant in women's accounts. Similarly, when asked about the right to be free from violence and laws to provide protection, men laughingly exclaimed: *“Rights? ... right!?! We have no rights.”*<sup>47</sup>

Clearly, knowledge of the law in place and of the rights provided could enable access to the justice system. Unfortunately, as respondents emphasized across focus group discussions, people do not know their rights; they do not know about the remedies that are in place to assist them; they do not know where to access these remedies or how they should be treated by the authorities. According to focus group discussions with inner-city women, there are *“people who have rights in them hand but them can't enforce it; they don't know how to go about it.”*<sup>48</sup> When asked about the legal system assisting the exercise of their rights, men again laughed derisively. Talking in general terms, men stressed that the laws in Jamaica *do not have enough teeth*, so they do not necessarily lead to enforcement. *“The law is there but is not there. Law is not enforced ... We do not know how to use rights.”*<sup>49</sup>

Findings from all focus group discussions reveal, generally, that the law is not being enforced, making it a dead letter. Respondents stressed that the law has no impact in real life. In women's own words,

43 FGDs, WROC women group.

44 Ibid.

45 Ibid.

46 Ibid.

47 FGD, WROC men group.

48 FGDs, WROC women group.

49 FGD BWA women group.

*“Let me tell you something straight out of my mind: there is no law in Jamaica. There is a book to show whatever law, but them no exercise the law in Jamaica.”*

Men confirmed,

*“When you lay down a rule is how you enforce it decides how it works. Jamaica just have some laws thrown and the light post and we just walk under it. It means the law is there but is not there. The law has no teeth.”<sup>50</sup>*

Rights holders believe that they live in an environment of abuse and disregard for rights, which is aggravated by limited knowledge of the law and of the benefits under the law, and by a justice system that does not cater to their needs.

### **8.3.3 Perceptions of the judicial measures in place: legal consciousness**

The treatment dished out by enforcement personnel is a cause of grass-roots rights holders’ apprehension. Police officers are perceived as trivializing women’s experiences of intimate partner violence, which discourages them from reporting incidents of violence. A large number of cases of violence against women are thus not reported, hindering the reporting procedures and condoning violence against women.

In the focus group discussions, women shared similar accounts of battering or sexual violence, experienced by them or their neighbours and acquaintances. To escape abuse, most women depended on networks of family and friends rather than the police. Reporting to the police was a frightening experience for women or did not ensure them any confidence in their situation being solved. Instead, the re-victimization of women and girls can occur at the police station while reporting their cases. As one woman explained, *“out there you go and report rape and police is going to rape you.”<sup>51</sup>* Another woman illustrated how police officers may trivialize women’s experiences of abuse, *“Based on what I see, if you go to the police station and say your husband or baby father rape you them laugh at you”*. According to these respondents, police officers do not take enough effort to deal with this type of violence; nor do women know enough about their rights to deal with incidents of violence against them and to demand action from the police.

Patterns of differences in relation to legal consciousness emerged between the focus group discussions with the WROC-related women and the BWA-related women. The women who associated with the civil society organisation made use of a human rights language in discussions and appeared to place hope on organisations that take

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50 FGD, WROC men group.

51 FGDs, WROC women group.

initiatives with regard to women's human rights, rather than on the infrastructure put in place by the Government to respond to gender-based violence against women. In the words of one woman, "*the way how sexual abuse is going right now on woman, it is only about human rights.*"<sup>52</sup> The WROC women group, for instance, displayed knowledge of the existence of legal aid services, provided at a small fee, and of C.I.S.O.C.A.

In the rural area, however, focus group discussions revealed that despite the connection with the Bureau of Women's Affairs, women were unaware of the remedies available for women victims of violence, such as C.I.S.O.C.A.<sup>53</sup> A sense of helplessness surfaced in discussions regarding the support services to refer to in situations of violence. These women, a significant number of whom were survivors of intimate partner violence, did not make use of the legal remedies in place because their encounter with "*the law*" stopped at the level of the police. Discouraging experiences with the police created subjects alienated from the law. Furthermore, these women did not access services that should cater for victims of violence, either because an infrastructure, such as a rural shelter, is not in place or because they were unaware of its existence. Therefore, even if structures to address situations of violence are in place, they cannot be accessed because the population is not cognisant of them.

Accounts of women from the rural area revealed that although women know they are wronged, they allow and accept the abuse because they may not have another choice.<sup>54</sup> The story of Latoya, one of the rural women, illustrates this worrisome situation.<sup>55</sup> She spoke about being abused by her spouse over and over again from 2006 up to 2011, the time of the focus group discussion. Ironically, the worst violent incident took place on Mother's Day. "*Sunday 2006 was Mother's Day and I got a lick<sup>56</sup> in the left eye. That was my mother's day present. In 2011 I get another hit in the right eye.*"<sup>57</sup> Today, Latoya's vision is impaired because she could not afford treatment. With no financial resources, family to rely on or knowledge about the remedies in place to respond to her situation, she eventually returned to her abusive spouse.<sup>58</sup> Another woman participating in the focus group discussion explained the situation drawing on a general observation: "*In most cases the women get killed in*

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52 FGDs, WROC women group.

53 Interviews with C.I.S.O.C.A. representatives explained that this special police unit has a network of stations across the island, also covering the rural areas. Chapter 6 examines C.I.S.O.C.A. in more detail.

54 FGDs, WROC women group.

55 The name of the respondent has been changed in order to respect her confidentiality.

56 *Lick* means *to hit* in Jamaican Patois.

57 FGD, BWA women group.

58 *Ibid.*

*these situations. Because she had no source of income than her husband's, she feel she can't leave because she won't have anywhere to live.*<sup>59</sup>

### 8.3.4 Perceptions of the preventive measures undertaken

The only initiatives directly addressing a change in social and cultural behaviour that were brought up in the discussions were WROC initiatives in Kingston. Generally, it was rights holders' own realities and experiences that informed the understandings unravelled above about gender constructions, the need for change and the remedies that address violence against women.

The group of rural women did not mention any initiatives taken by the Bureau to address social and cultural transformation. Furthermore, apart from a community mobilizer who was in frequent contact with the BWA's Community Liaison Department, respondents did not remember the training sessions and the other initiatives that the Bureau had taken in the area, let alone their content. Nevertheless, these women did speak confidently of their rights and proposed solutions. However, this was in response to the necessities on the ground, not education by outside agencies.

Despite the actions taken by the Government, through the Bureau of Women's Affairs, such initiatives are rare, on special occasions, such as the International Women's Day. This provides for an incidental exposure to CEDAW and women's human rights instead of a consistent and sustainable engagement with such knowledge. All respondents said that action and initiatives are fragmented and thus yield only short-term results. As the BWA rural women group stressed, "*Once a year can't do the work.*"<sup>60</sup> Men confirmed that initiatives taken on a short-term basis render those efforts inefficient, especially when they concern behaviour change,

*"Government and persons that want to join in they can't come give a likkle [little] temporary thing. It has to be sustainable. Because a bad habit is easily developed and a good habit is the hardest one to get."*<sup>61</sup>

Looking at the general context, findings showed that a lack of sustainability was common to outreach actions targeting rights holders. Such a lack of sustainability created a sense of hopelessness in people. As respondents from the inner-city stressed, people in their communities did not have expectations of being assisted. Initiatives were believed to be ephemeral.

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59 Ibid.

60 Ibid.

61 FGD, WROC men group.

*“You think they are the saviour development programs and [think] the right person will just help. After two years persons come and it just damp the spirit ... Nobody is expected to have this good heart of doing anything in the community.”<sup>62</sup>*

#### **8.4 PERCEPTIONS OF TRANSLATING WOMEN’S HUMAN RIGHTS IN THE JAMAICAN VERNACULAR: VERNACULARISATION STRATEGIES**

*“Women’s human rights means a lot to me. I can stand up and speak for my rights without being afraid. I cannot be pushed around or be discriminated because I know what to do and where to go to get justice. I am so overwhelmed to know now that women are now able to do any job she wishes to do, that once was a gender base issue. Women are now involved in sports that was male dominated.*

*Violence against women is totally wrong. It’s a no-no. Too many times our women are been treated disrespectfully. These men who are involved in this type of behaviour must stop now. Every time you decide to carry out this act of violence, always remember you are from a woman. No woman should stay in a violent relationship. It is lowering your self-esteem and can also lead to death. It can also be an impact on your children. All women who are violently abused should stop covering up! Put fear behind! You have your rights. Stand up for it and make a change in your life. This will be good for you, your family, even persons around ... I will pass on what I have learnt during my work in the community ... to train women so that they will be able to know their rights.”<sup>63</sup>*

This account by a trained inner-city woman is illustrative of the impact that consciousness of ideas, values and norms of women’s human rights can have on individuals. Women cognisant of their human rights use an empowering language of rights and are ready themselves to take action at their level on the ground.

Chapter 7 focused on the strategies taken to vernacularise or translate international women’s human rights norms in the Jamaican vernacular. In order to understand feasible ways that have the potential to put Article 5(a) into practice, it is important to explore how the knowledge transmitted through such vernacularisation initiatives benefits rights holders. This section therefore discusses the way cognisant women come to see their experiences of discrimination and violence in terms of CEDAW rights. It also examines the way rights holders make use of knowledge about women’s human rights further in their daily lives.

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62 Ibid.

63 Participant response to the author’s questionnaire, August 11, 2011, WROC Eliminating Gender-Based Violence Community Facilitators’ Training.

#### 8.4.1 Women rights holders as beneficiaries of vernacularisation: consciousness of women's rights

The CEDAW booklet “*Rights a mi plan wid CEDAW in wi han – CEDAW for Jamaicans*” prepared by WROC is an example of a vernacularisation tool, which presents the CEDAW ideas, values and norms in ways that are understood by the common individual. A simplified language of the provisions that is accessible to any Jamaican reader, and socially and culturally familiar images are the techniques used to bring the Convention closer to individuals and thus facilitate the transmission of the message of CEDAW. This section explores whether and how the encounters with CEDAW through the vernacularising booklet have benefited women.

Focus group discussions with the WROC-associated women group revealed that the encounter with CEDAW ideas, values and norms through the booklet produced individuals cognisant of their rights, of the State obligations to address the problems confronting women, and of the established institutional structures to address women's human rights in Jamaica. Such consciousness of CEDAW seemed to equip women with a sense of empowerment. “*So you know you have rights. We stand up for our rights.*”<sup>64</sup> In a language of rights, women gave examples from their daily lives to explain how learning about CEDAW and women's rights had impacted them.

Women acknowledged that the booklet allowed them to explain and assess life experiences and their own attitudes through the lens of women's rights. They spoke confidently about their ability to defend themselves from daily discrimination coming from men by displaying knowledge of their rights and of the judicial remedies in place to protect them, and by employing a language of rights. Enthusiastically, women shared, “*This booklet allows you to know your rights, be more aware of things you take for granted. It allows [to] be more open-minded. We are more alert and aware of the institutions.*”<sup>65</sup> In the light of the knowledge of CEDAW, they started to pay attention to the entrenched sex roles, which altered their outlook on life. As one woman explained, “*It kind of push you in a position to think, especially after going through the training. From Sunday to Sunday, everybody has to wash the dishes. Me [I] would have normally wash my son clothes, now my son wash him clothes like anybody.*”<sup>66</sup> Another woman revealed that knowledge of CEDAW had an emancipatory effect on her. She realised that she was not obliged to be confined to the domestic sphere and bear the brunt of the household work alone. “*I learn from the book as being a housewife doesn't mean you have to stay in the house and do all the house work and*

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64 FGDs, WROC women group.

65 Ibid.

66 Ibid.



*the man is supposed to share. You are allowed to go out and work.*<sup>67</sup> Knowledge of women's rights apparently empowered them to reject demeaning behaviour or abuse. One woman confided that she felt empowered to dismiss insulting approaches, such as "gyal", from men.<sup>68</sup> In terms of intimate relations, women confirmed that they became cognisant of their rights to say no, instead of submitting to the control and dominance of the men. They realised that they "*can put in trouble*" husbands who force sexual intercourse on them. Emphasizing the empowerment effect of the knowledge gained through the CEDAW booklet, one woman stressed: "*I don't put up with people anymore. That's what I learn about from the CEDAW booklet. You have rights to say no when it comes to the bedroom and it teaches me about discrimination.*"<sup>69</sup>

Moreover, some women felt they could take a stance against marital rape. Some were familiar with the Sexual Offences Bill and its progress in Parliament: "*Right now that bill is on the house of Parliament to pass the law. The law is not like is 100% passed. They are still negotiating.*"<sup>70</sup> However, such understandings did not seem to be widespread among women rights holders. Respondents illustrated that radio debates about marital rape showed little acceptance of the issue: "*Trust me, the amount of women calling saying it is not rape! Some women just live with things like that and say them can't do no better because him is the breadwinner and they take every disadvantage.*"<sup>71</sup>

To draw on women's accounts, consciousness of the negative impact of sex roles and gender stereotyping, and of their human rights appeared to have the potential to bring about a change in attitudes. As one woman explained, "*only the uneducated one is afraid of [change].*"<sup>72</sup> Thus, the encounter with CEDAW ideas, values and norms, created women who are cognisant of the issues covered in Article 5(a) and affected the way they thought about themselves in fundamental ways. Women did not speak the language of provisions under the Convention, or refer directly to the Article, but they were aware of the ideas and values covered in this provision. The strategy of vernacularisation through the booklet appeared to have facilitated the adoption and internalisation by women of ideas and values of women's rights, while the consciousness they gained about their rights and the structures in place to protect and promote them proved to have an empowering effect.

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67 Ibid.

68 *Gyal* is the Jamaican Patois term for *girl*, which is used with a derogatory connotation.

69 Ibid.

70 Ibid.

71 Ibid.

72 Ibid.

#### **8.4.2 Women rights holders as vernacularisers: putting women’s human rights into practice from below**

Focus group discussions were supplemented by unobtrusive observations of the community facilitators’ training sessions, “Leadership Training and Community Capacity Building for Eliminating Gender Based Violence”, held by WROC for a one-month period with women and men from different inner-city communities in Kingston and from the rural parish of St. Thomas.<sup>73</sup>

According to the discussions and materials circulated during the WROC staff meeting organised for the preparation of the training sessions, the aim of this initiative was to educate the trainees in the relevant policies, laws and United Nations instruments that address violence against women, and to implement a public education and awareness campaign on gender and violence.<sup>74</sup> In other words, the training sessions represented a vernacularisation initiative, which employed techniques to translate the ideas, values and norms in national and international documents on gender-based violence against women in order to facilitate their understanding and internalisation by participating rights holders. Therefore the training sessions were intended to produce cognisant individuals prepared to further disseminate the knowledge they had received in their community, and thus facilitate the local appropriation of ideas on the elimination of gender-based violence against women; the trained community facilitators would become vernacularisers themselves.

To create an understanding about the elimination of gender-based violence, WROC representatives who moderated the sessions first discussed gender and socialisation, gender identities and roles, gender stereotyping, abuse of power and violence, ideas of human rights and women’s rights as human rights, and CEDAW. They used the booklet “*CEDAW for Jamaicans*” and discussed the types of gender-based violence. Representatives from the Bureau of Women’s Affairs and the police presented the national measures to address gender-based violence. For example, moderators explained ideas about violence in the following way:

*“Violence that is perpetrated is something that is picked up, systematically nurtured, learned and encouraged in many societies. Men’s violence is a result of the way many men learn to express their masculinity in their relationship to women, children and also to other men. ... Men’s violence continues because explicit or tacit permission is given to men by social customs, legal codes and even by religious norms. ... When man is violent against woman, sexism is the source of men’s choice to use violent tactics to*

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73 I participated in the training sessions as an unobtrusive observant for the entire period of the training, July 15-August 9, 2011.

74 Author’s unobtrusive observations, May 31, 2011, Staff meeting held to prepare the training sessions and the meeting’s agenda, *AVON-WROC, The Elimination on Gender-Based Violence Project*.

*wield power and control over a woman. Sexism is discrimination or prejudice based on person's sex. In the context of violence, Sexism is Gender Prejudice + Power.*<sup>75</sup>

By the end of the sessions, participants were expected to be able to anchor the new knowledge and understanding of key concepts and ideas in concrete, familiar situations of discrimination and violence.<sup>76</sup>

Observations of the training sessions revealed that meanings and consciousness about violence and women's rights were not only transmitted to participant rights holders as simple receivers. They were created through a constant and active engagement between WROC moderators and the rights holders. During the training sessions the rights holders engaged with their own worldviews and understanding of the dynamics of their locality, in this way shaping an understanding of ideas, values and norms that was grounded in and resonant to the social and cultural context. WROC moderators clarified issues that came out in discussions, focused the discussions, solicited views, synthesised differences and highlighted agreements. They also contextualised the discussions by referring to Jamaica's history of slavery and the intersection of sexism with class and racial discrimination.

Participants explained the concepts conveyed to them by connecting them to derogatory language and music or discriminatory situations they confronted on a regular basis in their community. Trainees gave examples of "*slack*" popular music lyrics to illustrate the objectifying portrayal of women conveyed by dancehall artists on a regular basis.<sup>77</sup> "*One woman can't satisfy me*", "*Fi get gal dat a easily supn nuh; dem legs dem easy fi open*"<sup>78</sup> and "*Tump har up*"<sup>79</sup> are examples of male artists' lyrics expressing their manhood, their understandings of women and preference for aggressive sex. Given that music is a significant aspect of Jamaican culture, songs have a powerful effect, especially on the youth. "*The teenagers seem to not care. My*

75 WROC, Reading material handed out to participants during the AVON-WROC 'Community Facilitators Training Programme on Elimination of Gender-Based Violence' of July 15-August 9, 2011.

76 WROC, "Training Programme for Participants" handed out to participants during every sessions of the AVON-WROC 'Community Facilitators Training Programme on Elimination of Gender-Based Violence' of July 15-August 9, 2011.

77 *Slack* in Jamaican Patois means "lewd, vulgar lyrics popular in DJ singing". See <http://patwa.org/>, last accessed October 28, 2012.

78 Translation from Jamaican Patois: "*To get women that is something easy; their legs are easy to open*". *These are lyrics used by Vybz Kartel*, the famous dancehall figure in Jamaica, in his song "Get Gyal Easy".

79 *Tump har up*, means literally to physically hit a woman. Mavado, another well-known Jamaican dance-hall artist, uses this expression in his song "Tump (Har Up) to allude to aggressive sexual intercourse.

daughter listens to Mavado, but she nuh [does not] listen to me.”<sup>80</sup> Participants used these disrespectful lyrics as examples to also frame forms of gender stereotyping and discrimination, according to the understandings they had built during the training sessions. Instead, Bob Marley’s lyrics, “*Emancipate yourself from mental slavery; None but ourselves can change our mind*”, were used by moderators to support and anchor the new ideas, values and concepts of non-discrimination and rights conveyed during the training.<sup>81</sup>

Participants suggested solutions to gender-based violence and discrimination occurring in their communities: “*education is the key to know how to deal with issues*”, “*more trainings for the young ones*”, and “*we need to know more about agencies [that address violence against women]. We need to give people information, ‘cause [it is] wicked out there.*”<sup>82</sup> Participants also suggested that “*the court system needs to be a lot more stronger*” and that there should be “*strong legal measures against violence against women*”.<sup>83</sup> They explained that despite the animosity towards the police, it is important for them to know how to engage with the police and highlighted the need for more information from the police. Using drama in community mobilisation to reach community members and impart knowledge about rights, setting community networks to address violence against women and using mediation emerged as strategies to deal with issues from a community perspective.<sup>84</sup>

Through their active involvement in the discussions, participants already engaged in a cultural negotiation between deep-seated mentalities about gender-based violence against women and new ideas and values, and shaped meanings of norms and rights according to the local context. On a general note, such cultural negotiation has the potential to inform a process of local implementation and realisation of women’s human rights that is socially and culturally relevant.

Upon the completion of the training period, a questionnaire was distributed among the participants to explore the impact of this vernacularisation initiative.<sup>85</sup> The questionnaire was designed to find out how the respondents perceived such an initiative and whether and how they thought it could benefit them in their daily life. An important finding that emerged was that the discussions and solutions provided by the

80 Observations, Field diary, August 2, 2011. Mavado is a well-known Jamaican dancehall artist.

81 Ibid.; Lyrics from Bob Marley, “Redemption song”.

82 Observations, Field diary, July 29 and August, 2, 2011; *Wicked* in this context means *dire* or *difficult*.

83 Observations, Field diary, August 2, 2011.

84 Observations, Field diary August 2 and August 9, 2011.

85 The questionnaire was answered by 11 out of 17 participants. The respondent cohort was comprised of women and men, between 20 and 60 years old, from the urban inner-city areas of Kingston and the rural area of St. Thomas.

participants equipped them with empowering knowledge, and increased moderators' understanding of the reality and views on the ground. This information had the potential to inform NGO's upstream advocacy initiatives,<sup>86</sup> while the participants used the messages to inform their own lives and disseminated them among their peers. Therefore, the vernacularisation initiative had a twofold impact: it provided useful knowledge for the organisation's upstream activities and prompted horizontal action at the level of the rights holders.

According to questionnaire responses, the encounter with CEDAW and women's rights during the training sessions aroused consciousness of women's rights and gender equality. While men answered in a language that was aware and respectful of women's rights, "*Women also have rights as any other human and that we should respect their rights. We should not discriminate women like in the Beenie Man song, 'Man fi have nuff gal an' gal inna bungle; gal from Rema, gal from Jungle, and it is wrong to discriminate against women.'*"<sup>87</sup> the knowledge gained determined women to answer in an empowering manner, "*It is our rights as women to exercise our rights and take a stand. CEDAW ... lets you know about rights as women, what to accept and what not to.*"<sup>88</sup> All respondents unanimously mentioned that the training sessions opened their eyes to the negative impact of the ascribed gender roles and to violence against women as a manifestation of unequal power relations. As one respondent wrote, "*I understand now more clearly what gender is all about, that stereotyping covers a lot of areas and sometimes cause conflict and discrimination.*"<sup>89</sup> Another respondent wrote, making the link between the constructions of male identity and expressions of violence against women: "*The perpetrators induce fear, pain and humiliation, to play out their self-proclaimed dominance over the female. Them a [are] the head, them own things, them a [are] the ruler.*"<sup>90</sup> They gained an understanding of the serious nature of violence against women, how to deal with this type of violence and what institutional remedies were available. A representative answer about the meaning of CEDAW stated: "*It educates and empowers women to know their rights and how to go about to get justice.*"<sup>91</sup>

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86 Chapter 7 details the impact of the findings from the ground on civil society actors' upstream advocacy initiatives.

87 Author's questionnaire, August 11, 2011, participants in the WROC Eliminating Gender Based Violence Community Facilitators' Training. The song alludes to the requirement that men have multiple female partners as characteristic to manhood, referring to women by the Patois word "gyal", which means girl and has a derogatory connotation.

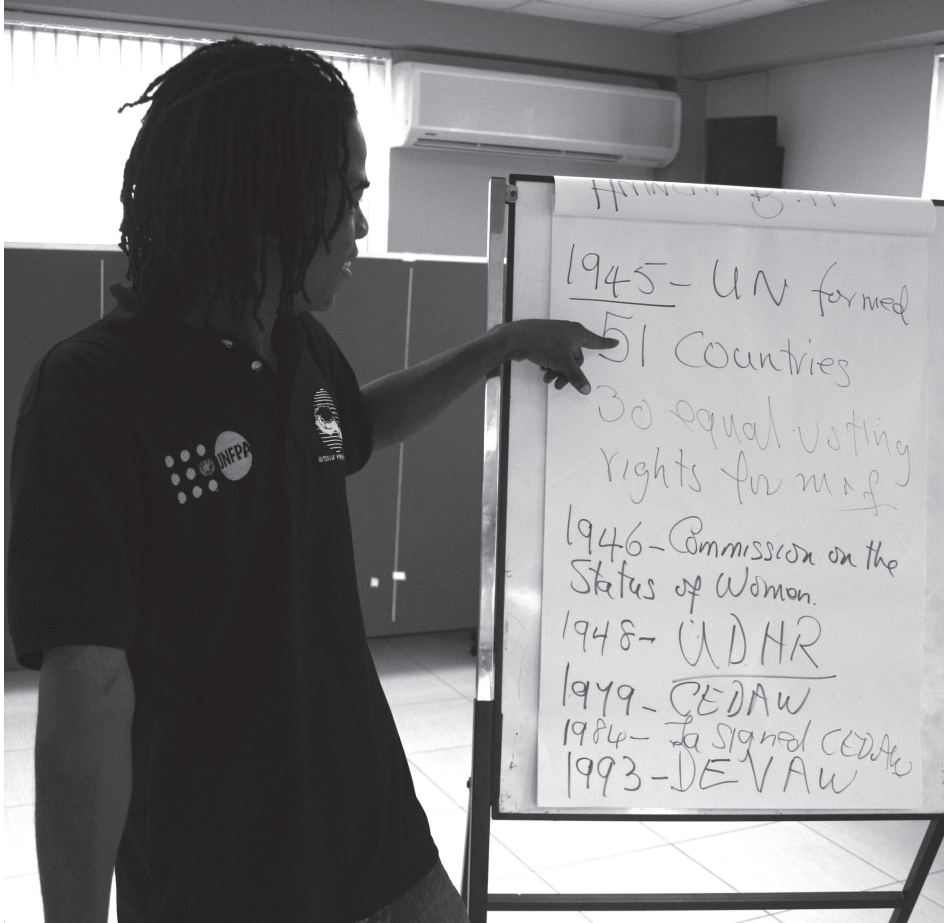
88 Questionnaire, August 11, 2011.

89 Ibid.

90 Ibid.

91 Ibid.

Photo 3. WROC training session introducing CEDAW to rights holders<sup>92</sup>



Findings also showed that once they are cognisant of rights and norms, individuals become vernacularisation actors themselves. They spread their knowledge within their own environment, such as their family, neighbours, church members, or the community at large. This type of action is referred to in this book as horizontal action of outreaching peers through “the ripple effect”, or putting women’s human rights into practice *from below*. As one respondent wrote,

92 Photograph taken by the author during research observations of the WROC Community Facilitators Training on Elimination of Gender-Based Violence. The photo shows a participant pointing to the main international instruments related to women’s human rights.

*“Knowing that I was able to be part of this programme and learning a lot of lessons on gender based violence that I did not know, I will pass on what I have learnt during my work in the community to see how much I can help in the transformation of persons that are at risk, and to train women so that they will be able to know their rights.”<sup>93</sup>*

Another respondent explained the mechanism of horizontal action at the community level, *“I will pass on all that I learnt in my community and a lot more will learn so they can pass it on to others.”<sup>94</sup>* Respondents’ local knowledge was useful to identify actions and strategies that are practicable in the local context. They unanimously indicated that the vernacularisation of ideas, values and norms of human rights through the booklet “CEDAW for Jamaicans” was a relevant tool to empower women through rights consciousness and thus to change entrenched beliefs about gender-based violence. They suggested that both women and men should have a copy of the booklet. *“The women would be more aware of their rights, and the males would know that women have their rights.”* The strategies they suggested included education through creative means, such as quizzes and competitions focusing on gender-based violence, debates or essays, participatory learning action (PLA) drawing on imagery, and small drama presentations around the booklet’s Wrong and Rights section. These strategies were proposed by respondents because of their potential to provide *“better understanding”*, *“information for help”* and *“empower women about their rights”*.<sup>95</sup> One answer is worth noting, *“this way is proven to be a keen learning process as we are a culture of entertainment. I would like persons to see the need for change as something they want to do rather than something that is forced upon them.”<sup>96</sup>* The respondents suggested the street as a space to attract individuals’ attention, and also forums such as youth club meetings, political meetings, the church, schools and community-based organisations. Overwhelmingly, however, respondents indicated the home as the space where change should begin with a personal scrutiny of biases.

In sum, respondents suggested that for action to be effective, messages must be presented in engaging and familiar ways, in places where people will notice and listen. On a general note, such horizontal action at the rights holders level shows the potential to contribute significantly to putting Article 5(a) into practice. *“I know that the violence against our women is not going to end immediately but it will be a work in progress.”<sup>97</sup>*

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93 Ibid.

94 Ibid.

95 Ibid.

96 Ibid.

97 Ibid.

Focus group discussions with the WROC women group confirm these findings by illustrating the techniques that rights holders had already put in place for undertaking horizontal action, creating “a ripple effect”. Based on women’s illustrations, consciousness of CEDAW rights sensitizes women and informs their own attitude in the family context. During the WROC training, one woman shared her experience of being beaten as a girl. In her adult life, she applied similar treatment to her children, until the various training sessions and workshops organised by WROC or other organisations made her reconsider and transform her behaviour. During focus group discussions, women confirmed a similar pattern of transformation, “*That book now motivates me, curve me and calm my temper. So we as women we have to know how to deal with children.*”<sup>98</sup> One woman added,

*“One of the ways I use the book is with my girls and my son as well. I tell my son: him no suppose to hit a woman. I use words from the book, whatever the book say about discrimination or violence against women. My girls know how to carry themselves and make sure men respect them and they respect themselves.”*<sup>99</sup>

Women attributed consciousness of rights to their association with women’s organisations. “*Not every woman know they have rights and that the law is there for them. A few might know, mostly such as those in the women groups or so, but not really every woman knows.*” In this context, as women explained, they made use of their knowledge by transmitting it to their fellow community members. Knowledge was thus spread through a ripple effect, “*You to go out there or if you see something on the road you speak up and tell the mother: you can’t let your son lay down in bed till 12 and your daughter has to get up 6 o’clock go work!*”<sup>100</sup>

Dramatizations of real-life situations of discrimination and violence, through popular theatre were a popular suggestion among respondents. Pamphlets and fliers were not considered useful since some people cannot read, or they are too busy with daily activities to read them at home.

*“Some of them read and don’t understand them, that’s why we use dramatization. When we do the dramatization people have a better understanding. When you act it out and people see what happens in front of their eyes, they understand 100% better. During the dramatization we present issues. After each presentation, we do discussions, questions and answers and we ask them what they think about the scenarios we put up and we hear their opinion.”*<sup>101</sup>

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98 FGDs, WROC women group.

99 Ibid.

100 FGDs, WROC women group.

101 Ibid.



Similar to findings from the interviews with civil society actors, focus group discussions with rights holders revealed that street theatre initiatives prove to be feasible techniques to convey the message in a meaningful way so that it impacts people's understandings.

*"[When] we do skits, people would say: 'we didn't have a clue what our rights were'. This is one of the main things that this group does. We take it up in hand and go out and help educate others."*<sup>102</sup>

Visual material displaying slogans such as "*Be a man, Stop violence against women*", "*Love dem, tenda touch dem [Love them, tenderly touch them], No to violence against women*" or "*Tek [take] a step, Mek [make] a choice, Stop violence against women*" printed on T-shirts supplemented the feasible tools for the translation of ideas to the Jamaican socio-cultural context.<sup>103</sup> These messages were created with the input of community members who knew how to catch the attention of their peers.

Making use of artistic expressions, such as music and dramatizations on the street, on the television or radio, emerged as powerful strategies to impact on the Jamaican population. It becomes obvious that for a local adaptation and appropriation of women's rights, the vernacularisation techniques need to be tailored to directly relate to rights holders' work and life in the community, and activities, framed to meet the background of participants, for the new knowledge to be conveyed. When familiar local values and meanings are taken as the starting point for strategies of action, individuals become receptive and willing to adapt and accommodate the international women's human rights ideas, values and norms in their daily practices.<sup>104</sup> By presenting CEDAW ideas, values and norms in simplified and culturally sensitive forms, the Convention is brought closer to the realities confronting daily Jamaican women, and made meaningful to their understanding. Women gain knowledge of the importance of the law, the remedies they are entitled to and how to access them; crucially, they also gain a sense of empowerment.

Moreover, the constant engagement of rights holders in vernacularisation activities facilitates the internalisation of ideas and the spreading of knowledge. Women rights holders also become active actors producing meanings of rights that resonate with their social and cultural realities. They have the potential to further diffuse such meanings and drive action on a horizontal level that is relevant for putting women's human rights into practice in their contexts. The position of the rights holder vernaculariser in the

102 Ibid.

103 These T-shirts were created upon the initiative of the Bureau of Women Affairs and UNFPA. See Chapter 6 for a discussion on this vernacularising technique.

104 An – Na'im and Hammond, 2002, pp. 24-25.

community structure is important for the process of local translation and adaptation of ideas, values and norms of women's human rights. Leadership skills, influence in and endorsement by the community, and their residence in the community influence this translation. In that regard, it is important to note that the selection of trainees for community facilitators was based on these criteria.<sup>105</sup>

In sum, findings from the rights holders' level of inquiry confirm the importance of employing the vernacularisation strategy for the translation and local adoption of international women's rights. These findings inform the understanding of practicable ways to put Article 5(a) into practice.

### **8.5 FACTORS INFLUENCING THE VERNACULARISATION PROCESS**

In talking about CEDAW, the WROC-associated women group showed great enthusiasm and passion. The motivation they mentioned in their accounts became more palpable when they asked me to return for a second session of focus group discussions to share their knowledge about CEDAW and women's rights. I gladly did that and that session was an eye-opener about how CEDAW can be operated in women's lives. In turn, focus group discussions conducted with the BWA rural women did not reveal a similar consciousness of CEDAW. Their knowledge stemmed from their daily needs and from their personal experiences of violence against women. They did not know of the remedies in place nor did they remember CEDAW-related training activities; they talked about the law in general terms and they lacked the action drive of the Kingston women group. It emerged that sporadic exposure to information and not having an active organisation nearby prevented these women from internalising the ideas and values in the Convention, an active engagement in receiving and producing knowledge of rights and thus becoming vernacularisers in their own communities.

As well as specific training aimed at the translation of CEDAW, the constant contact between rights holders and WROC and continuous involvement in activities related to women's rights and gender equality at WROC premises facilitated consciousness-raising and the implementation of initiatives. WROC's location in the proximity of several communities encouraged women's sustained and regular involvement. Some women even helped with cooking and cleaning at the WROC premises and therefore spent a great deal of time there. On the other hand, the distance from the Bureau of Women's Affairs and the various civil society organisations, which are mostly

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105 Minutes of WROC staff meeting held for the preparation of the training sessions AVON-WROC 'Community Facilitators Training Programme on Elimination of Gender-Based Violence', May 31, 2011.

located in Kingston, coupled with scarce initiatives in the area, impede building up consciousness of CEDAW and the effective implementation of initiatives, as revealed by the focus group discussions with the rural women.

Findings show that the exposure of respondents to CEDAW has been different. The urban-rural distinct location, the organisational connection and the strategies used to expose respondents to CEDAW emerged as the factors that have accounted for the different consciousness of CEDAW between the two women group.<sup>106</sup> Probably, the systematic exposure to CEDAW of the urban women as opposed to an incidental exposure of the rural women influenced a different process of creating rights-cognisant individuals. It points to the importance of exposing rights holders to CEDAW ideas, values and norms by using the vernacularisation strategy in a consistent and sustainable manner.

## 8.6 VOICES FROM BELOW: CONCLUSIONS AND RECOMMENDATIONS

### 8.6.1 Summary of findings

*“I have experience and seen cases of domestic abuse and child abuse. I really think something more should be done to prevent this from happening and even for the younger generation we should target them and get rid of this culture of abuse, the mentality that children ought to be abused and it is the right of the husband to beat their wife. We have a lot of cases of women being murdered by spouses and leaving children to suffer. I really think there is something we can do to prevent that from happening. I have sleepless nights just thinking about these women, some of them I know, who have been killed since the year started: murder suicides. It’s happening far too often.”<sup>107</sup>*

This remark, made by one woman supervisor for one rural parish, indicates that just as violence is an everyday reality, gender-based violence against women is an integral and accepted part of life. In sharing personal experiences of violence, mostly battering, rather than sexual violence, women depict the violence inflicted upon them as emerging from a culture that accommodates abuse and allows it to settle in and become normalised.<sup>108</sup> Women’s economic dependence on men, domestic vs.

106 It is important to note that men respondents had not been exposed to CEDAW previous to the discussions.

107 FGD, BWA women group. When mentioning “the mentality that children ought to be abused” the woman respondent referred to incest.

108 Although sexual violence is more spoken of and dealt with than before, there is still a sense of silence around it leaving open scars. Even if some of the women participating in the focus group discussions were survivors of sexual violence, they did not talk about it in the group discussions due to its sensitivity and the sense of shame still existing around the issue. During the focus groups, they tended to talk more about others’ experiences rather than their own. When they did share their

breadwinning stereotyping and a controlling, aggressive masculinity interplay and entrap women into a mentality of acceptance of violence and men into believing that they have an entitlement to inflict that violence on women. Respondents therefore believed that change is urgently needed. Unfortunately, the currently available means of addressing the situation are inadequate.

Conversely, the vernacularisation of ideas, values and norms of women's rights produces cognisant women who are not only beneficiaries of knowledge, but also active participants in the translation of those ideas within their locality. Consciousness of their rights emerges as an empowering tool for women to make positive changes in their personal life, and also for conveying their knowledge to others. Engaging in horizontal action, women themselves became vernacularisers in the immediate environment of their family, friends or neighbours, or through mobilized action in the larger context of the community, creating a ripple effect of CEDAW knowledge.

Observations of the WROC Community Facilitators' Training on the Elimination of Gender-Based Violence revealed that the vernacularisation strategy created men who are aware of the other side of the story: the problems that women face and their experience of violence. Vernacularisation also facilitated a deeper understanding of their own male experience of violence, such as community violence, violence against women and violence against men, from the perspective of gender identities, relations of power and dominance, and discriminatory stereotyping and not the least, women's human rights. This training initiative was described as eye-opening: "*we learn from each other. [WROC's initiative] develops you as an individual and this gives you a wider scope of what is out there.*"<sup>109</sup> In that regard, as men explained, the knowledge received could empower them to build a constructive community.

### 8.6.2 Rights holders' recommendations

The constant problem with human rights is that their incorporation in legal and in policy instruments, even if successful, does not automatically lead to their successful practice. Rights holders' realities prove this. However, their realities can also provide valuable knowledge as to how to adequately make rights substantial in those realities

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personal stories, they spoke of battering, not sexual violence. We built a deeper rapport over time. Therefore, some women started sharing experiences of sexual violence during informal, individual conversations. The special circumstance of the WROC Community Facilitators' Training on Gender-Based Violence allowed some of the women to voice sensitive experiences of sexual abuse which most of them concealed for many years. The silence around this issue led to the persistence of the trauma.

109 FGD, WROC men group.

and to take action that leads to putting them into practice. Their knowledge of their own context informs understandings of realistic ways to put Article 5(a) into practice.

### *Consciousness of rights*

*“I have to open my mind in order to start the change.”*<sup>110</sup>

Findings show that education is most needed at the rights holders’ level. One way of altering the habitual mind-set, as rights holders proposed, is to focus on the youth and introduce them to new and constructive approaches to life.<sup>111</sup> Legal education from an early age, in particular, is crucial. The WROC-related group of women emphasized: *“We need more [knowledge of our] rights and people to educate our kids.”*<sup>112</sup>

Public education by reaching out to the population in their familiar settings is put forward in order to make the law known: *“Come and talk to people! You can unite people. Just come out of air conditioning office and get little fliers and just come out and say this is how it is supposed to be.”*<sup>113</sup> Schools and streets, where young people spend most of their time, should be targeted.

Respondents said that increased efforts to publicise CEDAW are necessary: *“in schools, where children can learn about this, they need to highlight it more”*.<sup>114</sup> Referring to the CEDAW booklet, the WROC-related women group stressed: *“We really need the book and we really need something more to be out there.”*<sup>115</sup> Knowledge of the booklet is equally needed at the governmental level, added the women: *“In the government, someone living with the Prime Minister and the opposition need to read this book”*<sup>116</sup>

Consciousness can also be raised by using the media. For example, respondents believed that participating in radio or television talk shows, using social media could facilitate building awareness. Most importantly, drama/street theatre was recommended as an effective vernacularisation technique to capture attention, elicit discussions about gender-based violence and women’s human rights, and facilitate a process of learning in socially and culturally relevant ways.

110 Observations, Field diary, August 2, 2011.

111 FGD, men group.

112 FGDs, WROC women group.

113 FGD, men group.

114 FGDs, WROC women group.

115 Ibid.

116 Ibid.

*Sustainability of action*

All these initiatives would not have any long-term impact if they were not planned in a sustainable manner. The truth of the matter is that the issues that rights holders face on a daily basis are not limited to gender-based violence. At the grass-roots level, problems related to sustainable livelihoods, housing and food may overlap and become a priority. New information delivered through training in such issues may trump what rights holders have learnt during one or two sessions of training on gender-based violence. Therefore, the sustainability of initiatives needs to be ensured. Failure to secure the sustainability of initiatives obstructs the effective nature of the efforts undertaken. On the last day of the community facilitators' training, rights holders stated, "*the trainings can't stop here*".<sup>117</sup> They suggested holding monthly meetings in the communities and other follow-up activities "*in order to remember next time about the training, about what we have learnt*".<sup>118</sup> According to one of the women in the BWA-associated group, "*it is like planting a plant: you need to return to it, water it and nurture it to grow. That's how action in these matters should be taken*".<sup>119</sup> Men agreed that support was necessary, and seemed confident that transformation was possible with long-term action: "*I believe a change will be made. The more and more activity and action is taken, change will come*".<sup>120</sup> For ensuring sustainable action, the proximity of the organisations is important. It proved crucial that civil society organisations take initiatives within the communities. This ensures the immediacy of their actions.

*Showing respect*

More than anything, respect is greatly valued in the Jamaican culture. However, a sense of being disrespected and not listened to by the governmental authorities emerged from focus group discussions. Women's accounts show that problems that confront women are not always taken into consideration by these authorities. Consequently, the administration of justice is hindered. A lack of recognition and a denial of respect emerge as recurring motifs, which inevitably lead to the emergence of alienation from and mistrust of governmental structures among the marginalized ones.<sup>121</sup> Inner-city women urged government representatives to:

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117 Observations, August 9, 2011.

118 FGD, BWA women group.

119 Ibid.

120 FGD, WROC men group.

121 Tafari-Ama, 2008, p. 213; see also Levy, H., 1996, *They Cry 'Respect': Urban Violence and Poverty in Jamaica*, Centre for Population, Community and Social Change, Kingston: University of the West Indies, Mona;

*“Respect women more. They don’t do that. If them don’t respect the women they won’t do the right things. They don’t allow the law [to] pursue where women is concerned until they start to show some respect. The government doesn’t respect!”<sup>122</sup>*

The rights holders believed that demonstrations of respect would facilitate collaboration between the Government and the people on the ground.

### *Collaboration among actors*

Listening to and giving voice to communities, allowing communication and taking the opinions of the grass-roots rights holders into account was repeatedly mentioned. Rights holders indicated that a horizontal collaboration between women and men rights holders was needed, as well as vertical collaboration between rights holders and duty-bearers.

In focus group discussion women repeatedly said that they themselves are agents of change. However, bringing men into the conversation about violence against women is important in this endeavour. In women’s words, a change can occur if women and men unite, and men are involved in actions to eliminate gender-based violence against women: *“We tear each other. It can work but not until we break that cycle.”<sup>123</sup>*

Additionally, inter-agency collaboration was pointed out. Referring to CEDAW as a meaningful document, one respondent suggested that the Government and other agencies should *“come together to stand for our rights, to make a change to get things done, not by just talking, but by action also.”<sup>124</sup>* Such actors’ collaboration would ensure the sustainability of action.

In the preparatory stages of the training session, WROC planned to collaborate with the Citizen Security and Justice Program (CSJP), Violence Prevention Alliance (VPA), Dispute Resolution Foundation (DRF), CARIMAN, the police and the church<sup>125</sup> in order to channel the trainees into additional, sustained activity and employment. Despite a sentiment of mistrust in the Government, focus group participants acknowledged the need for governmental involvement in the community. One young male, the president of a youth club, stated,

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122 FGDs, WROC women group.

123 FGDs, WROC women group; FGD, BWA women group.

124 Questionnaire, August 11, 2011.

125 Minutes of WROC staff meeting held for the preparation of the training sessions, AVON-WROC, The Elimination of Gender-Based Violence Project, May 31, 2011.

*“We have to come together so everybody can understand each other. Once they communicate and stop marginalizing, but be there near the people and feeling what people feel, acting and making reachable goals, once we can come together and put things on a table, we can start working. Because when people start to see things happen people will start leading in a different direction.”<sup>126</sup>*

These recommendations of the rights holders, as agents of local knowledge, are indicative of the necessary elements for effective ways to put Article 5(a) CEDAW into practice in Jamaica.

In sum, this chapter has detailed the manner in which the local context adopts and reflects international women’s human rights ideas, values and norms; or, as mentioned in previous chapter, it has explored the ways *the local* responds to requirements of social and cultural transformation.<sup>127</sup> Rights holders are not only receivers of women’s rights implementation measures and strategies, but also active actors in putting these rights into practice. Consequently, rights holders are both receivers of and active actors for measures and strategies to put Article 5(a) into practice. Moreover, such explorations of rights holders’ realities revealed that even if there is a consciousness of the need for social and cultural change – a necessary condition for transformation – there must be adequate infrastructure, legal, judicial, support services that are sustainable and individuals who are cognisant of such provisions, prior to encounters with the legal and judicial system, for actual transformation to take place.

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126 FGD, WROC men group.

127 Levitt and Merry, 2009. See Chapter 7, the concluding paragraph.



## CONCLUSION



## CHAPTER 9

# WOMEN'S RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE UNDER ARTICLE 5(a) CEDAW

*“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>1</sup>*

CEDAW General Recommendation No. 25 (2004)

### 9.1 FROM WOMEN'S RIGHTS IN THE BOOKS TO WOMEN'S RIGHTS AS LIVED REALITIES – BRIDGING THE GAP

The research in this book has explored the transformation of sex roles and gender stereotyping, and interrogated, in a specific context, the implementation of Article 5(a) for the realisation of women's right to be free from gender-based violence. At the international level, Article 5(a) CEDAW provides for an agenda for social and cultural transformation: it imposes on States parties to CEDAW an obligation to modify sex roles and stereotypical social and cultural patterns of conduct, and thereby provides for the protection of women from violence stemming from such gender norms. Yet, the lived realities of women are frequently disconnected from this agenda. Nonetheless, as Baxi reminds us, it is the reality of the local that is crucial for the articulation, implementation and realisation of internationally set human rights norms.<sup>2</sup> The question that therefore arises, and that has guided my research is:

**In what manner can Article 5(a) CEDAW be put into practice at the country level in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women?**

Jamaica has been chosen as the site to explore the multi-level processes involved in putting Article 5(a) into practice in order to reveal the difficulties and the concrete possibilities to achieve the agenda of social and cultural transformation set in this provision. Based on the findings that emerged from the three-tiered qualitative field research conducted in this country and the subsequent analysis, I answer the above research question by presenting a synergistic model for the implementation of

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1 CEDAW GR 25, para. 10.

2 Baxi, U., 1998, 'Voices of Suffering and the Future of Human Rights', *Transnational Law and Contemporary Problems* 8, 125-169, p. 149.

Article 5(a) so that women's right to be free from gender-based violence can be realised in a concrete country setting. The model is grounded in context-based demands and recommendations for social and cultural transformation as a remedy for the incidence of gender-based violence against women, which are supported by the analytical study of theory. This synergistic model provides a comprehensive understanding of a multifaceted transformative process to put Article 5(a) into practice.

The book has been structured in the following manner. In the first part, I presented Article 5(a) as it is established at the international level and the conceptual paradigms on human rights implementation that have the potential to put this Article into practice. In brief, Article 5(a) was introduced as it is on paper. In the second part of the book, the concrete realities of putting this Article into practice in a three-tiered fashion were presented as they emerged from my field research. I explored and documented the reality of the implementation measures of State actors (the duty bearers), the strategies of civil society actors (the vernacularisers), and the lived experiences of rights holders. In this context, the dissonance emerging between frameworks of law and policy measures responding to Article 5(a) *in the books* and the life realities of women (and men) has also been examined.

Based on the findings from the qualitative field research, I start this concluding chapter by presenting the lesson learnt from the Jamaica case study. I indicate the actions, the multiple actors and their strategies, and the patterns of interactions between and among these actors for creating an environment conducive to social and cultural transformation and putting Article 5(a) into practice. In this context, I discuss the importance of a consciousness of Article 5(a) ideas, rights and obligations in the process of putting this Article into practice. Next, I propose a synergistic model to put Article 5(a) into practice and I present the concept of consciousness (i.e. legal consciousness and consciousness of gender norms) as an essential component of the synergistic model in particular, and of the implementation of human rights in general. In this way, this book contributes to understanding the process that is necessary to bridge that gap between women's human rights norms set by the international standards of CEDAW and women's lived realities of discrimination and violence.

## 9.2 LESSONS FROM JAMAICA

For the study of the complexity of the implementation and realisation of women's human rights, and of bringing about social and cultural transformation as required by Article 5(a), it is inevitable to move the investigation beyond the macro analysis of States (in the abstract), and to focus on the method of case studies and "concerted

attention to micro level interaction”<sup>3</sup> My findings from the field research show that international provisions regarding gender-based violence, norms of women's human rights and the obligation of social and cultural transformation are not simply adopted by States. These international norms and obligations are contested and revised,<sup>4</sup> as much as the national measures are created and/or adapted for an alignment to the international obligations. The implementation and realisation of women's human rights comprise a dynamic process of continuous adaptation and translation from the international and national sites to the local site of rights holders and the other way around; the local informs, just as much, the national sites of law and policy-making and even further up, the international site of “human rights production”, through national actors.<sup>5</sup>

The Jamaica case study illuminates the multiple actors, actions and strategies, and the interplay between and among them, that are instrumental, at the country level, in bringing about social and cultural transformation with a view to eliminating gender based violence against women. This section sets out the lesson learnt from this case study. It brings into the spotlight, firstly, the main actions for social and cultural transformation, secondly the three levels of actors, strategies and interactions, and thirdly, the underlying element of consciousness for the transformation process.

### 9.2.1 Actions for social and cultural transformation

The field research findings laid out in Chapters 6, 7 and 8 reveal a number of actions that are essential for the creation of an environment, which is conducive to social and cultural transformation and the elimination of gender-based violence against women. These actions were salient across the levels of inquiry, i.e. the Government, civil society organisations and rights holders.<sup>6</sup>

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3 Hirsch, S.F., 2003, ‘Problems of Cross-Cultural Comparison: Analysing Linguistic Strategies in Tanzanian Domestic Violence Workshops’, *Law and Social Inquiry*, 28 (4), 1009 – 1044, p. 4.

4 Lazarus-Black, M., and Merry, S.E., 2003, ‘The Politics of Gender Violence: Law Reform in Local and Global Places’, *Law and Social Inquiry*, 28 (2), 931-939, p. 933.

5 “Human rights production” is a formulation used by Merry to refer to the “*production of documents and resolutions that define human rights and gender justice: major treaty conventions, policy documents that come out of global conferences, and resolutions and declarations of the UN General Assembly and its commissions such as the Commission on the Status of Women and the Human Rights Commission.*” Merry, 2009, p. 19.

6 It is important to note that most of these actions are also recommended in international documents, such as CEDAW General Recommendation No. 19 (1992) on violence against women or the CEDAW Concluding Observations.

*Public education and gender-sensitive training*

Education has long been cherished in Jamaican society. A well-known Jamaican saying stresses: “*Labour for learning before you grow old, for learning is better than silver or gold. Silver and gold will perish away, but a good education will never decay.*” Education lays the groundwork for the necessary social and cultural transformation in Jamaica. The focus should be on public education and training in women’s human rights, gender-based violence against women and gender in general, and should be linked to a wider and sustained dissemination of CEDAW. All levels of society should be targeted, from the general public of all ages in both urban and rural areas, to professionals making and applying the instruments of law and policy, educators, health professionals and social workers, and all private sector actors. In order to permeate and debunk entrenched mentalities, education endeavours must address the process of socialisation and therefore engage with all agents of socialisation, such as the family, the school, the church, the community, the mass media, which “inculcate and validate gender-appropriate behaviour.”<sup>7</sup>

*A strong infrastructure responding to gender-based violence against women*

An infrastructure that gives a strong response to gender-based violence against women, and ensures public acknowledgement of the gravity of violence against women is crucial. Such an infrastructure should consist of a legal system that is strengthened through measures comprising: 1) unbiased laws, 2) efforts to combat impunity, namely adequate investigation, prosecution and punishment measures, 3) civil sanctions, such as protection and occupation orders, and 4) immediate means of redress for victims, namely shelters, support services, and compensation. The State response has the authoritative voice for exposing the social beliefs that foster the normalisation of gender-based violence and for acknowledging it as a social wrong, and can ultimately break the persistence of discriminatory sex roles and gender stereotyping. This State-based infrastructure must be corroborated with community-level networks in order to ensure alertness and response to incidence of violence against women starting from the level of rights holders. Instead of continuing to turn a blind eye to this type of violence and accepting its normality, the community at large, and rights holders in particular, must take the responsibility to be their “*sisters’ keeper*” and thus reject the social beliefs that allow the normalisation of gender-based violence against women.<sup>8</sup>

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7 Beyon, J., 2002, *Masculinities and Culture*, Buckingham-Philadelphia: Open University, p. 54.

8 FGD, BWA women group.

### *Harmonised data and systematic data collection*

The harmonisation of data, as well as a systematic collection and analysis of data on gender-based violence against women and its social and cultural underpinnings must be ensured. Harmonised data that are accurate and complete allows the mapping and measurement of the types and levels of gender-based violence against women and also facilitate the monitoring of State accountability for violence against women. Documentation of the social and cultural causes and consequences of violence against women gives a clear understanding of the manner in which gender roles and stereotypes, and power relations operate in Jamaican society. This knowledge indicates the aspects that need to be addressed for effective action against gender-based violence against women.

### *National Machinery for the Advancement of Women*

The Bureau of Women's Affairs needs a strengthened capacity, through more human and financial resources. Moreover, a well-defined mandate and a stable position within the State apparatus provides the Bureau with a strategic location to promote women's human rights and accord them a higher priority on the governmental agenda.

### *Collaboration between the relevant actors*

An integrated approach, through a coordinated and consistent collaboration between the relevant actors, strengthens action and avoids dispersed initiatives. It enables the various human and financial resources to be jointly channelled towards the same target, which render actions effective and sustainable. Such actors range from specialised branches of the State to civil society organisations and rights holders. Within this mix of relevant actors, the national machinery for women emerges as the main orchestrator and overseer of a collaborative action for the development and implementation of legislation, policy and programmes addressing women's human rights.

### *Sustainability of action*

Follow-up activities to all initiatives undertaken by the Government or civil society actors at the community level ensure the visibility of these actors and a long-term impact of their actions. The proximity of organisations to the communities in which they undertake action and their constant interaction with rights holders provide a continuous involvement of individuals with the ideas of women's rights and gender equality they have been trained in. This supports the shaping of those ideas "in the crucible of everyday practice rather than in the upper echelon of remote and rule-

bound bureaucracies.”<sup>9</sup> The allocation of sufficient financial and human resources is an underlying element for sustainable actions.

### *Bringing media on board*

Mass media must come on board in order to ensure a wider impact of the strategies that give meaning to CEDAW ideas, values and norms. Popular audio and visual communication channels, such as the radio or the television, must be used to transform the vernacularisation techniques of street theatre and dramatization into vignettes<sup>10</sup> for spreading knowledge and building consciousness of women’s human rights and CEDAW, to the wider, national audience.<sup>11</sup>

### *Using the strategy of vernacularisation*

Strategies that draw on appealing social expressions and popular practices among Jamaicans, such as documentary forms that simplify CEDAW norms, i.e. the booklet “*Rights a di plan wid CEDAW in wi han’*. *CEDAW for Jamaicans*”, and performing arts, i.e. street plays, drama or popular theatre, videos, posters and popular music, are significant to communicate the message of international women’s human rights to individuals. By presenting CEDAW ideas, values, and norms in simplified and culturally sensitive forms, the Convention is brought closer to the realities confronting common Jamaican women day by day, and made meaningful to their worldviews and perceptions of their conditions of life. When familiar local values and meanings are taken as the starting point for strategies of action, individuals become receptive and able to adapt and accommodate the international women’s human rights ideas, values and norms into their daily practices.<sup>12</sup> The vernacularisation strategy triggers the internalisation process, makes individuals cognisant of rights and norms, and has the potential to bring about change in understandings and attitudes.

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9 Kabeer, N., 1994, ‘Empowerment from Below: Learning from the Grassroots’, in *Reversed Realities, Gender Hierarchies in Development Thought*, London: Verso, p. 223.

10 The respondents used the term *vignettes* to refer to short and impacting sketches or scenarios in which vernacularisation techniques are used to transmit knowledge about women’s human rights. See Chapter 7, which explains the use of vignettes.

11 See also Merry, 2006, p. 158.

12 An – Na’im and Hammond, 2002, pp. 24-25.



### *Respect*

“*We, in the Caribbean, don't talk about rights, we talk about respect.*”<sup>13</sup> *Respect* is a word commonly used in everyday Jamaican vocabulary. Resting at the heart of Jamaican social values, respect is a signifier of dignity of personhood. In a language of rights, respect can thus be understood as the Jamaican vernacular for the value that is core to human rights: the inherent human dignity.<sup>14</sup> A sense of being disrespected and ignored by the governmental authorities leads to the alienation of rights holders living in the lower income communities and their mistrust in the Government of Jamaica. Showing respect to women and men in these communities in particular<sup>15</sup>, and taking into consideration opinions of grass-roots organisations, groups and individuals would facilitate greater collaboration between the Government and the people on the ground.

#### **9.2.2 Actors, strategies and interactions for social and cultural transformation**

The Government, on its own, cannot fight entrenched social and cultural mentalities that encourage and normalise gender-based violence against women. The findings of my field research reveal that other actors and strategies emerge as instrumental in this process. Women's human rights norms are articulated through actors in the legal and policy arenas as well as other actors, actions and strategies of the social milieu. This section focuses on the actors that findings point out as relevant for the implementation of Article 5(a). The discussion of actors inevitably calls attention to the strategies that they undertake and the interfaces and interactions that emerge between and among these actors.

#### *The duty bearers as actors from above*

In Chapter 3, where the legal paradigm of national implementation is explained, I indicate that the State, through its various executive, legislative and judicial branches, is the actor *from above* that has a central position in the process of implementing international women's human rights, and thus Article 5(a) CEDAW. Within the State, the national machinery for the advancement of women takes the lead.

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13 Field research diary, June 22, 2011, discussion with representative of the academia, UN WOMEN Colloquium on Gender, Culture and Law in the Caribbean on June 21-23, 2011, Kingston.

14 Field research diary, June 21-23, 2011. Observations throughout my field research in November-December 2009, and December 2010-August 2011. See also Chapter 2 where I present dignity as the core value on which human rights are founded, as reaffirmed in the 1945 UN Charter and 1948 UDHR.

15 Communities in this context must be understood as inner-city and garrison communities, and also rural communities.

The natural appearance of sex roles and gender stereotyping, and the normalisation of gender-based violence makes these phenomena difficult to grasp and resilient to change. CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Phillipines* is one example highlighting that they can be easily endorsed by the law, in the legal and judicial procedures or in policies and programmes.<sup>16</sup> Conversely, the law, judicial procedures, court decisions and policy texts and statements have the power to institute what is a positive societal conduct.<sup>17</sup> Through legal, judicial, policy and programmatic measures, governmental actors can lay an authoritative legal and policy ground for exposing the concealed negative function of sex roles and gender stereotyping and acknowledging it as a wrong that should be remedied.<sup>18</sup>

As explained in Chapters 2 and 3, States have *inter alia* an obligation to fulfil the norms laid down in human rights instruments. Studies indicate that States must undertake active measures in order to comply with this obligation and achieve results.<sup>19</sup> In the case of Article 5(a), the obligation to fulfil consists of *active* measures aimed at the accomplishment of provisions of social and cultural transformation. Notwithstanding its authoritative legal instruments, we need to be mindful though that, as de Gaay Fortman pointed out, “in many a politico-juridical setting the role of universalist state law is rather constrained.”<sup>20</sup> My field research in Jamaica reveals that, in taking such active measures, the State can and must go beyond the traditional roles of law and policymaking. It must assume a vernacularisation role to reach out to individuals and make the law, policy and programmes known to the population, and even involve the population in the drafting of laws and policies. Governmental officials who use the women’s human rights framework could also make the connection between the global sites of human rights law and the national and local sites of translation and practice of human rights ideas, values and norms.<sup>21</sup>

*“It has to go down to them. Even before these laws are made, I still insist that we need to take a bottom-up approach. Because if we don’t take a bottom-up approach, if we do not have consultations even before some of these laws are put together, we are going to do a lot of mistakes. Let’s go out there and talk to the common man ... because most of us, the*

16 See Chapter 2 for a discussion of CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Phillipines*.

17 See Barriteau, 1998; Mossink and Nederland, 1993; Holtmaat, 2004; See Chapter 3 for a detailed discussion.

18 See Cook and Cusack, 2010. This is also explained in Chapter 3.

19 Lazarus-Black, M., 2003, ‘The (Heterosexual) Regendering of a Modern State: Criminalizing and Implementing Domestic Violence Law in Trinidad’, *Law and Social Inquiry*, 28 (2), 978-1008, pp.1001-1003; Ljungman, C.M., 2004, *Applying a Rights-Based Approach to Development: Concepts and Principles. Conference Paper: The Winners and Losers from Rights-Based Approaches to Development*, November 2004, p. 6.

20 De Gaay Fortman, 2011, p. 11.

21 Merry, 2007, p. 41.

*lawmakers who have never experienced their lives, we don't have a clue. So, you can go and interface, having a participatory approach, take some of this information bottom-up. By the time we reach down there, it's going to trickle down as a reverse: the common man would have been part of it and is ready to accept. Let the common man feel part of the policy and the law making.*"<sup>22</sup>

This is the account of a representative from the Bureau of Women's Affairs in Jamaica. In talking about a successful process of implementing measures and realising women's rights, the representative stressed that it is necessary to look beyond the State and civil society actors, and to view the rights holders as legitimate, active actors in the process. Implementation cannot be pursued without attention to the end result, which attests its fulfilment - the individual rights holder.

Field research findings demonstrate that the State, through the Bureau of Women's Affairs, has the capacity to mend the disconnect between the measures in place and the realities of the rights-holders by taking a bottom-up approach and directly involving the rights holders in the implementation process. The Bureau undertakes the strategy of vernacularisation. It uses dramatization as a technique to get the message across, as do the civil society organisations. The use of popular artists and reggae music in the UNITE Campaign in order to convey the message of stopping violence against women illustrates how the Bureau builds on familiar and appealing channels in order to present this message in ways that are understood and attract attention. Printing slogans such as "*Be a man, Stop violence against women*" or "*Love dem, Tenda touch dem, No to Violence Against Women*"<sup>23</sup> on T-shirts is a clear illustration of the way the Bureau engages male community members in revising and adapting international women's rights values, ideas and norms to their social and cultural understandings. The negative connotation of gender-based violence against women and the incentive to join the efforts for the elimination of violence against women is built on local understandings of manhood: "*be a man*". Moreover, the Bureau shares civil society organisations' vernacularization strategies. The booklet "*Rights a di plan, wid CEDAW in wi han'. CEDAW for Jamaicans*" written by WROC in order to simplify CEDAW and the Committee's Concluding Observations on Jamaica is also used in the training and education initiatives undertaken by the Bureau with the private sector or in schools.<sup>24</sup> By adopting vernacularisation strategies, the Bureau takes the implementation of women's human rights beyond the legal and policy frameworks, and gender mainstreaming activities at the institutional level; it makes sure, by undertaking activities to translate the CEDAW language, that norms are given meaning in the concrete social and cultural context of everyday life. Similarly

22 Interview BWA, March 25, 2011, female senior Government official.

23 Translation from Jamaican Patois: "*Love them, touch them tenderly. No to violence against women*".

24 Interview WROC, June 6, 2011.

to civil society actors, the Bureau becomes a vernacularising actor that is crucial in putting Article 5(a) into practice.<sup>25</sup>

*Civil society organisations as actors from the middle*

Merry explains that civil society actors are the people *in the middle* who make the connection between international sites of human rights codification and national and local sites of norm translation.<sup>26</sup> A wide range of civil society actors, namely national non-governmental organisations (NGOs), local women's organisations, social movement activists who use the women's human rights framework, intellectuals and academics are instrumental in the process of putting Article 5(a) in practice. My study in Jamaica reveals that from their location *in the middle*, these actors contribute to the vernacularisation of international ideas by fostering them into practices of everyday life in a threefold fashion.

In the first place, vernacularisers contribute to developing a human rights culture *on the ground*. By engaging rights holders through vernacularisation techniques in discussions about State obligations and about the possibilities of redress for rights violations, including legal aid<sup>27</sup>, and also by consulting them on their lived realities and opinions, civil society actors create *spaces of conversation* which accommodate a cultural negotiation process.<sup>28</sup> Well-established understandings about gender-based violence and the underlying gender constructs are debunked and new values, ideas and norms of women's human rights are translated into the Jamaican vernacular. By giving meaning to and making international women's human rights ideas popular in the local spaces, this international rhetoric is adapted to local perspectives and circumstances. This sustains the process by which women's human rights are internalized.<sup>29</sup>

In the second place, vernacularisers learn *from the ground* about people's realities, needs and resulting ideas of dignity and rights. They use this knowledge that they acquire through their work with rights holders to inform the *above* level of the State and to support their upstream advocacy strategies. Thus, they also lay the ground for raising consciousness among decision-makers of the concerns and interests on the ground, and of realistic ways to put women's human rights into practice. In the third place, actors *from the middle* take a horizontal action to spread knowledge about women's human rights to other civil society organisations in order to strengthen their

25 The Bureau's role as an actor in the implementation of Article 5(a) is discussed in detail in Chapter 6.

26 Merry, 2007, p. 41.

27 Brett, R., 2009, p. 621.

28 See Chapter 7 for a detailed explanation of the field research findings.

29 An – Na'im, A., 2002, pp. 12-13.

women's rights work with the support of their civil society peers. One respondent described this approach as building "*strategic alliances*".<sup>30</sup> Framing these actions within the provisions of rights and obligations under CEDAW and the Committee's concerns and recommendations legitimizes and buttresses the threefold action taken by civil society organisations.<sup>31</sup>

Civil society vernacularisers are therefore in dialogue with both international human rights monitoring bodies, and with national and local contexts. They communicate ideas from one context to the other by interpreting, adapting and reframing them so that they resonate with their receivers.<sup>32</sup> In this way, civil society organisations that are involved in advocacy emerge as actors that bridge the rights holders, the national decision-makers and the CEDAW forum. They channel information and build consciousness by means of vernacularisation at the local, the national and the international levels.

### *The rights holders as actors from below*

In Chapter 3, I proposed to regard the rights holders as a useful category of study for understanding the process of putting Article 5(a) in practice. Drawing from socio-legal studies, they are conceptualised as actors *from below* who produce meanings of rights that resonate with their social and cultural realities.<sup>33</sup> My findings from the Jamaica case study show that rights holders have the potential to further diffuse such meanings and drive action that is relevant for putting Article 5(a) into practice in their contexts. Based on these findings, this research argues that rights holders must be considered subjects of the implementation and realisation of (women's) human rights rather than mere objects receiving internationally codified norms, ideas and values; in other words, they are active actors operating *from below*.

Ortner points out that "[a]lthough constraints of material and political sorts, including force, are fully acknowledged, there seems to be general agreement that action is constrained most deeply and systematically by the ways in which culture controls the definitions of the world for actors, limits their conceptual tools, and restricts their emotional repertoires. Culture becomes part of the self."<sup>34</sup> In the light of Ortner's argument, social and cultural transformation can be understood as a process that deals primarily with the self, hence the individual. To challenge structures, such as unequal

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30 Interview WROC, June 13, 2011 in Chapter 7.

31 Lazarus-Black and Merry, 2003, p. 936.

32 Levitt and Merry, 2009, p. 449.

33 See Chapter 3, which presents a socio-legal paradigm of the national implementation of Article 5(a).

34 Ortner, S. B., 1984, 'Theory in Anthropology Since the Sixties', *Comparative Studies in Society and History*, 26, pp. 126-166, p. 153.

gender relations, involves scrutiny and a reformulation of the institutions that preserve and foster discriminatory gender roles and stereotypes. It also involves scrutiny and a reformulation of the entrenched ways of thinking at the level of the individual - the fundamental unit that is intimately involved in generating and perpetuating these biased structures. The production of political, economic and cultural forms rests with individuals who create locality, community and identity, which also determine further interactions between individuals.<sup>35</sup> While subjected to culture and social and cultural change, individuals are also agents of change<sup>36</sup> as they “constantly carry the capacity to transform society”.<sup>37</sup>

Within the process of implementation and realisation, individuals, as the ultimate target of this process, receive the vernacularised women’s human rights ideas, values, norms or programmes. As mentioned above, when familiar local values and meanings are taken as the starting point for strategies of action, individuals become receptive and able to adapt and accommodate the international women’s human rights ideas, values and norms into their daily practices.<sup>38</sup> In this process of local adoption, individuals actively reinterpret and redefine those ideas according to their life views and understandings.<sup>39</sup> Swidler’s explanation is worth mentioning in that regard:

*“People do not build lines of action from scratch, choosing actions one at a time as efficient means to given ends. Instead, they construct chains of action beginning with at least some pre-fabricated links ... people will come to value ends for which their cultural equipment is well suited.”*<sup>40</sup>

Rights holders thus become sites of human rights adoption.

35 Merry, S., 2003, ‘Human Rights Law and the Demonization of Culture’, *Polar*; Comaroff J., and Comaroff, J., 1999, *Civil Society and Political Imagination in Africa. Critical Perspectives*, Chicago: University of Chicago Press; Trompenaars, F., and Hampden-Turner, C., 1998, *Riding the Waves of Culture. Understanding Cultural Diversity in Global Business*, New York and etc.: McGraw-Hill.

36 An – Na’im and Hammond, 2002, p. 24. See also Lévi-Strauss, C. and Eribon, D., 1991, *Conversations with Claude Lévi-Strauss*, Chicago: University of Chicago Press.

37 Austin-Bross, D.J. (ed.), 1987, *Creating Culture: Profiles in the Study of Culture*, Boston, MA: Allen and Unwin, p. xix.

38 An – Na’im and Hammond, 2002, pp. 24-25.

39 See Chapter 3, which defines the concept of local adoption as an essential dimension of the vernacularisation or translation process. As mentioned in Chapter 3, section 3.3.2, *local adoption* implies an adaptation of the rhetoric of international human rights ideas, values and norms, and of the structure of human rights programmes and strategies to local perspectives and circumstances, thus making them more popular.

40 Swidler, A., 1986, ‘Culture in Action: Symbols and Strategies’, *American Sociological Review*, 51, 273-286, p. 277.

Levi-Strauss' work supports the understanding that besides mere (passive) observers, individuals are active actors of their own culture.<sup>41</sup> Along similar lines, An – Na'im and Hammond explain that individuals "are in varying degrees agents of change in the transformation of their own culture".<sup>42</sup> Thus, they carry the capacity to create and transform culture and society. Such understandings provide a basis for thinking about rights holders as active actors in putting Article 5(a) into practice. Rights holders foster women's human rights ideas, values and norms in daily social practices. An – Na'im and Hammond refer to individuals in such a position as a "non-elite societal layer" that can bring about cultural change through covert behaviour.<sup>43</sup> Through the reinforcement of daily, mostly unnoticed attitudes and behaviour, this "non-elite societal layer" contributes to social and cultural transformation, conferring "legitimate weight and greater support to change discriminatory perception, norms and practices."<sup>44</sup>

The Jamaica case study demonstrates that rights holders' realities stand as proof that the constant problem with human rights is that their incorporation in legal and policy instruments does not automatically lead to their successful practice. Equally, rights holders' realities provide for valuable knowledge on how to adequately make rights meaningful in those realities and to take realistic action that leads to putting women's human rights into practice. Being confronted with everyday needs, people know what is feasible in their own environment. Therefore they can inform the process of the implementation and realisation of women's rights not only by taking the roles of passive recipients of ideas, values and norms, but also by being active participants in the translation of those ideas within their locality. *From below*, rights holders produce and communicate meanings of rights that resonate with their social and cultural realities. Such social and cultural resonance through rights holders' active participation represents the "driving force" for overcoming institutional barriers.<sup>45</sup> Rights holders thus become *covert* vernacularisers themselves.

Weber's analysis of the effectuation of successful legislative impositions in the economic area supports the approach in this research that rights holders are active vernacularizing actors.<sup>46</sup> This implies the recognition that within their own social contexts rights holders can have rule-making powers. While being part of a larger societal entity, and consequently being impacted by external influences, such as the

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41 See Lévi-Strauss and Eribon, 1991.

42 An – Na'im and Hammond, 2002, pp. 13-14.

43 An – Na'im and Hammond, 2002, p. 13.

44 Holtmaat and Naber, 2009, p. 17.

45 De Gaay Fortman, 2011, p. 12.

46 Weber, M., 1954; See Chapter 3 which details Weber's theoretical insights;

State and civil society initiatives,<sup>47</sup> human beings have an inherent dignity and hence capacity to make assessments and take decisions of their own.<sup>48</sup> In the words of de Gaay Fortman, this approach provides “an uplifting of human self-reliance, in other words empowerment”, which is implicit to the realisation of human rights.<sup>49</sup>

My field research findings confirm that rights holders can exert rule-making powers through cultural negotiation.<sup>50</sup> Individuals receive, revise and translate ideas, values and norms that come *from above* and adapt them to their context so that they become socially and culturally relevant, and thus can be adopted and internalised. Through empowering mechanisms, in this case vernacularisation, rights holders, at the community level, induce attitudes and life outlooks in order to facilitate the transformation of negative social and cultural values into positive ones.<sup>51</sup> Communities or groups of rights holders use vernacularisation techniques such as popular theatre and drama, “pon di [on the] corner reasoning”, wearing T-shirts with slogans that they have designed, such as “*Be a man, stop violence against women*” to incite a change in those values, attitudes and behaviours that are violent or cause gender-based violence against women.

Consequently, rights holders negotiate global, national and local ideas, values, norms and implementation actions during the process of vernacularisation. This enables the reception, adaptation and appropriation of the implementation measures. The constant engagement of rights holders in vernacularisation activities facilitates the internalisation of ideas and the spreading of knowledge. Consciousness of their rights represents an empowering tool to make positive changes in their personal life, but also for conveying their knowledge to others. Qualitative data show that women themselves become vernacularisers in the immediate environment of their family, friends or neighbours, or through mobilized action in the larger context of the community, creating a *ripple effect* of CEDAW/women’s human rights knowledge. Moreover, through their involvement in the process of implementation and through the interaction with governmental and civil society actors, rights holders are connected to and vernacularise the *above* levels of civil society and the national duty bearers.

All in all, the Jamaica case study shows that for a successful implementation of Article 5(a), and the achievement of results in the form of the realisation of rights, it is essential that individuals become cognisant of the ideas, values and norms underlying

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47 Moore, 1973, pp. 720-721.

48 De Gaay Fortman, 2011, p. 9.

49 Ibid.

50 CHR, 2003, UN Doc. E/CN.4/2004/66, para. 55(b). See Chapter 3, which introduces the concept of “*cultural negotiation*” as explained by UN Special Rapporteur Yakin Ertürk.

51 See Moore, 1973, pp. 720-721; see also Chapter 3, section 3.3.4.



Article 5(a) and actively practice them in their daily lives. This may be realised by using a women's rights language, by translating, advocating, enacting and claiming women's human rights in their various forms.<sup>52</sup> Once rights holders' views and understandings are taken into consideration in the make-up of the implementation measures and actions, those measures taken *from above* will resonate with their realities, and will have the potential to trickle down and impact on rights holders. Thus engaging rights holders in the process opens them up to the acceptance and appropriation of the measures coming *from above*. In other words, information and involvement *from below* ensures effective action *from above*.

### 9.2.3 Consciousness of Article 5(a) ideas, rights and obligations

Putting women's human rights into practice is interlaced with having a consciousness of rights and of the circumstances that may lead to their violations. Such consciousness emerged frequently during my field research and is accentuated throughout the book as relevant to social and cultural transformation. Drawing from findings and theoretical insights, this section brings to the fore the concept of consciousness as a key dimension for the process of putting Article 5(a) into practice.

As discussed in Chapter 2, gender and gender constructions operate on the individual (consciousness), symbolic and institutional planes. Consciousness is understood in this book, as Comaroff explained it, as "embedded in the practical constitution of everyday life, part and parcel of the process whereby the subject is constituted by external sociocultural forms";<sup>53</sup> or, as Merry referred to it, as "embodied in the practical knowledge by which people do things".<sup>54</sup> Sensitization about entrenched mentalities is necessary in order to address this very personal level where consciousness of individuals resides. As Holtmaat observes, civil servants, policy-makers, legislators, public officials are human beings who design or decide on the application of policies or legislation from their own mental framework. Their understandings, opinions and biases come into play when dealing with the drafting of policy or programmatic documents or with the application of the law. These actors create a certain image of the problem at hand and connect this to possible solutions based on their own understandings.<sup>55</sup> Individual consciousness thus informs the other two planes on which gender operates, namely the symbolic and the structural levels. My field research findings revealed that individual gender consciousness and legal consciousness must be raised at all three levels of Government officials, civil society

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52 Goodale, 2007; Merry, 2007; Ignatieff, M., 2001.

53 Comaroff, J., 1985, p. 5.

54 Merry, S.E., 1990, *Getting Justice and Getting Even, Legal Consciousness among Working-Class Americans*, Chicago and London: The University of Chicago Press, p. 9; Bourdieu, 1997.

55 Holtmaat, 2004, pp. 99-100.

organisations and rights holders in order to permeate the structures and institutions, and the symbolic levels where gender and gender constructions operate. Thus, taking into consideration the (individual) consciousness is a key dimension underlying the process of social and cultural transformation.

The argument in this section rests on the understanding that knowledge of rights and enforcement of rights are intertwined, operating in a mutually reinforcing way conducive to the realisation of rights. For women's human rights to have an impact, Merry states that they need to become an integral part of "the consciousness of ordinary people around the world".<sup>56</sup> Furthermore, Merry suggests that rights-defined selves are created through the encounters of individuals with the legal system. Experiences with the police, judges, probation officers, the court system and procedures, shape a consciousness of rights.<sup>57</sup> In that regard, Merry argues that human rights implementation is essential for establishing a consciousness of human rights.<sup>58</sup> This cannot be contested. However, a further step is taken in this book to argue that not only such encounters with the law, as Merry suggests, create rights-defined selves; a consciousness of rights that is prior to any *encounters with the legal system* can be acquired and is essential in order to access, in the first place, the law and the law enforcement institutions, especially in relation to gender-based violence against women. That such consciousness is further and continuously shaped through various experiences with the law and with the law enforcing actors is inevitable. In unveiling the methods behind the work she conducted together with Ewick, Silbey recalls, "[t]he law is what people do about the law. We said that people's engagement with the law in their lives was an ongoing constructions of relations."<sup>59</sup>

The study in Jamaica teaches us that the ratification of CEDAW does not automatically lead to a consciousness and understanding of the Convention and the implementation of its provisions. Generally, there is a disconnect between the international human rights obligations under CEDAW and the understandings thereof across the Government level. During the field research in Jamaica I found that engrained social norms sanctioning violent gender relations (i.e. "*if he doesn't beat me he doesn't love me*" or the common perception among police officers that inter-spousal violence is "*a man-woman thing*") can obstruct the application of the law. Women are discouraged from reporting. Their experiences of violence are not even acknowledged, let alone investigated and prosecuted. Having a *consciousness of the gravity of the harm*

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56 Merry, 2006, p. 3.

57 See Merry, S.E., 2003, 'Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence', *Human Rights Quarterly*, 25 (2), 343-381.

58 Ibid., pp. 346, 354, 381.

59 Silbey and Ewick, 2009, 'The Common Place of Law: Stories from Everyday Life' in Halliday and Schmidt, 2009, p. 217.

*caused by gender-based violence against women* is imperative in order to break the silence around this pervasive societal problem and discourage its normalization. Raising a broader consciousness of the adverse repercussions that behaviour based on sex roles and gender stereotyping can have on the relations between women and men is necessary to debunk the social norms that cause and perpetuate the normalization of gender-based violence against women in Jamaica. Unless individuals at all societal levels have a gender awareness, they remain controlled by and oblivious to hegemonic structures and situations of entrenched gender discrimination. The woman thinking “*if he doesn't beat me, he doesn't love me*”, hence not reporting her experience of violence to the police; the man thinking that he is not manly enough to report abuse to the police; the police officer thinking that intimate partner violence is “*a man and woman thing*”, hence not serious enough for proper investigation, all continue to pose a barrier to the unbiased application of the law. A broader gender consciousness is therefore key for initiating and sustaining a process of social and cultural transformation and the elimination of violence against women. I argue, therefore, that making women cognisant of the issues of discriminatory sex roles and gender stereotyping, and of the rights and obligations under this Article, is an essential preventive strategy for the elimination of gender-based violence against women. Moreover, making those who make and enforce the law cognisant of the discriminatory impact of gender constructions on their work and of women's human rights ensures proactive attitudes from the law enforcement personnel, which may result in protective strategies for the elimination of gender-based violence against women. In other words, consciousness of the content of international norms by Government officials is a crucial ingredient for proceeding with the implementation process.

Furthermore, a constructive encounter with the law enforcement institutions can be ensured if rights holders have a *consciousness* of the existing legal measures, of rights and obligations under the law, of the legal mechanisms and remedies in place, and of the ways to make use of them. Such legal consciousness enhances the effective use of the legal and judicial measures that are already in place to address gender-based violence against women. A lack of such consciousness, a sense of fear, fatigue and weak confidence in the justice system affect the application of the law. For example, women respondents recommended the strengthening of the procedure for reporting battering to the police by allowing other individuals who are not a relative to make the report on behalf of the victim.<sup>60</sup> It is noteworthy, however, that the amendment of the Domestic Violence (Amendment) Act, 2004, includes the possibility for a third party, relative or a person close to the victim of abuse, to make a report to the police on behalf of the victim. This is evidence that a consciousness of women's human rights

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60 FGDs, WROC women group.

that is prior to designing and deciding on the application of legal and policy texts, or to encounters with the legal system is a necessary springboard for the implementation and realisation of women's human rights under Article 5(a). For that reason women's human rights education is fundamental.

Having said that, I argue that none of the actions, strategies and interactions mentioned in the sections above can be effectively pursued unless they are embedded in a consciousness of: 1) the severe effects of discriminatory sex roles and gender stereotyping on relations between women and men, such as gender-based violence; 2) the gravity of gender-based violence against women; 3) the legal, policy and programmatic measures and remedies that are put in place; 4) the way to make use of such measures and remedies; and 5) the rights and obligations under Article 5(a).

### **9.3 THE SYNERGISTIC MODEL FOR PUTTING ARTICLE 5(A) INTO PRACTICE: ACTORS, ACTIONS AND INTERACTIONS FROM ABOVE, FROM THE MIDDLE AND FROM BELOW**

The interactions between and among the three levels of actors, i.e. the State as the duty bearer, the civil society organisations and the rights holders, point to a *synergistic model* to put Article 5(a) into practice. This model incorporates multifaceted actions, the strategies to support these actions, and the multiple actors to take them in an integrated fashion, and shows the interfaces between them. This section explains the model and its elements by corroborating the case study findings with theoretical insights.

The actors *from above*, through the national machinery for women, take threefold action to ensure the implementation of women's human rights, and ultimately Article 5(a): 1) a top-down or downstream approach through formal legal and programmatic action, 2) a downstream approach through vernacularisation, and 3) a horizontal approach within the State apparatus through gender mainstreaming. The top-down approach ensures *de jure* and aims for *de facto* equality through the development and implementation of legislation, policy and programmes, which press forward the empowerment of Jamaican women and the promotion of their rights. Such top-down action can 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 aims at compliance with the State obligation to fulfil, and encompasses the *transformative* equality approach. Furthermore, the strategy of gender mainstreaming,

and the development and establishment of gender focal points in the key Government ministries ensure horizontal action by which ideas, values, norms and obligations of women's human rights are translated and disseminated within peer Governmental institutions, creating in this way an environment conducive to the implementation and realisation of women's human rights in a broad and systematic manner.

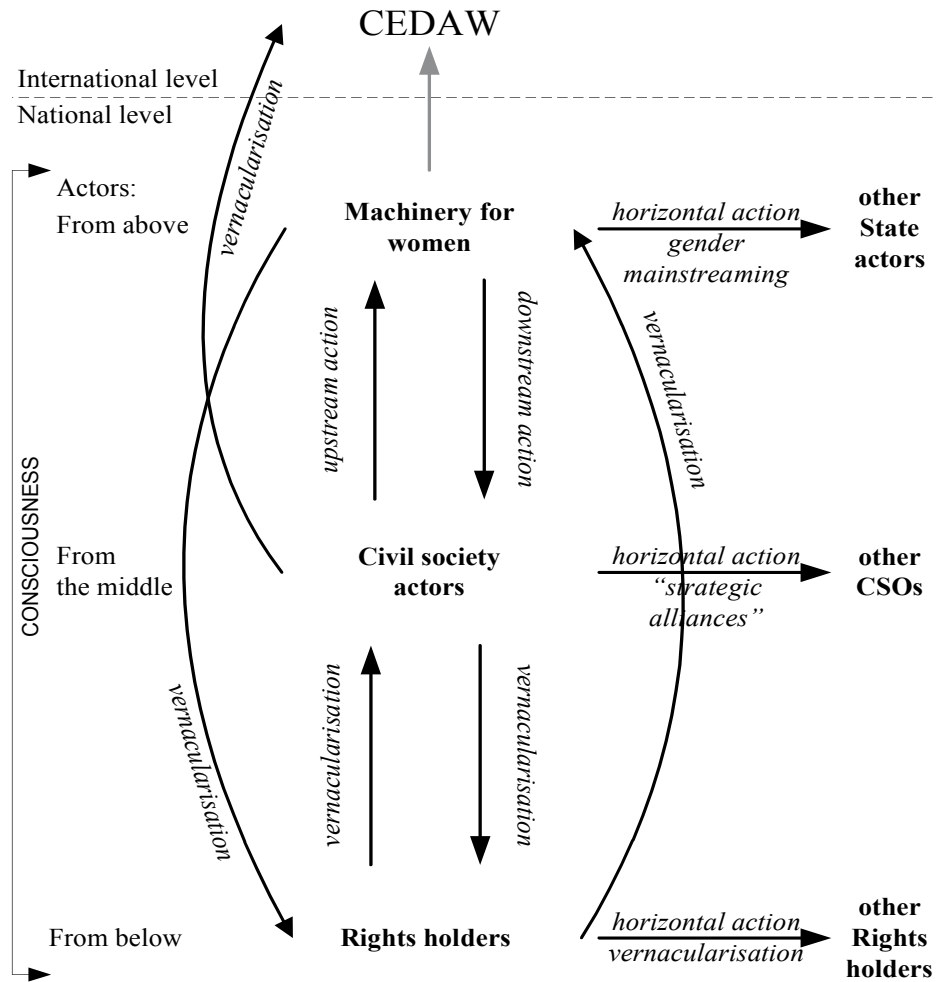
As actors *from the middle*, civil society actors operate in a three-fold manner to connect the *below* and *above* spaces. 1) They facilitate a conscious realisation of norms and rights governing the lives of women and men at the rights holders' level, through downstream action. 2) Through an upstream approach, they raise consciousness of rights holders' reality, namely concerns, interests and community-appropriate solutions, at the Government level, and also at the CEDAW level. 3) Through a horizontal approach, civil society actors create "*strategic alliances*" by which they raise consciousness about women's human rights and their relevance among their civil society peers.

As actors *from below*, rights holders operate as 1) recipients and negotiators of CEDAW ideas, values and norms that are vernacularised to them by State and civil society actors. At the same time, they also are 2) vernacularisers who further transmit such meanings and drive action on a *horizontal* level through a *ripple effect*. This action has the potential to inform a process of local implementation and realisation of women's human rights that is socially and culturally relevant. Moreover, as vernacularising actors *from below*, 3) rights holders operate *upstream* by translating their own ideas, values, social and cultural norms and understandings to the national legislators and policy-makers. Located far away from local contexts where human rights violations occur, both the international forum of the CEDAW Committee or the macro-level national legislator and policy-maker might fail to gain insights and appreciation of the intricacies of micro-level local dynamics that are instrumental in the process of implementation and realisation of rights. The process of cultural negotiation facilitates an adaptation and ultimately adoption of ideas, values and norms between these seemingly remote and diametrically opposed levels and thus complements the human rights discourse "in order to understand the root causes of violence present in everyday life".<sup>61</sup>

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61 CHR, 2003, UN Doc. E/CN.4/2004/66, para. 55(b).

**Figure 1. The interaction between and among the three levels of actors for implementation and realisation of women’s human rights**



My analysis of the case study findings demonstrates that the approaches taken by the Jamaican actors at and from their level are complex interactions to connect with and among each other and communicate ideas, values and norms of women’s human rights. The dynamics of these synergies indicate that the levels of actors and strategies should be integrated in an organic whole. The vernacularisation strategy becomes the red thread that bridges these actors and their various actions to ensure the process of implementation and realisation of these rights.

This model interconnects the top-down or *from above* approach, which places the focus on the State and its obligations to implement human rights standards, with *from the middle* strategies of civil society organisations and *from below* or bottom-up realisation of the rights initiatives of the rights holders. The findings of my research demonstrate that for a provision like Article 5(a), which requires the transformation of social and cultural behaviour and of the deeply-seated individuals' mentalities, implementation must be a dynamic and integrated social engagement of all sectors of society, by which the endeavours of the State are complemented not only by initiatives and strategies undertaken by civil society organisations, but also by the active participation of rights holders. Actions and strategies *from above* need to reflect people's realities and provide adequate solutions to their problems. It requires a continuous interaction already at the time that legislation, policies and programmes are developed and drafted so that the measures in the legal instruments or the policy and programmatic texts are intimately connected to and resonate with life realities. In this way, rights will acquire concrete meaning for people and will further be "embedded in everyday social practices, shaping the rules people carry in their heads".<sup>62</sup> This resonance between (women's) human rights and subjects of human rights is core to the synergistic model for putting Article 5(a) into practice, in which organically interlinked top-down and bottom-up approaches support each other.

### 9.3.1 Consciousness – a key dimension underlying the synergistic model

In order to be operational, the model needs to be embedded in a consciousness of the discriminatory sex roles and gender stereotyping, of the harm they can cause, such as gender-based violence against women, and of the provision of Article 5(a) that addresses this harm. Such a broad gender and legal consciousness embeds all these interactions as an underlying prerequisite.

The depth of such knowledge should be nuanced depending on the level of decision-making. On the one hand, governmental actors must have a thorough understanding of the meaning of Article 5(a) and of the rights and obligations it entails. These actors, such as policy and lawmakers who design or decide on the application of policies or legislation, operate within the parameters of their own perceptions and understandings, which may influence the course of action they take.<sup>63</sup> In order to meet the prerequisites of and set the stage for the implementation process, it is imperative that Governmental actors have an in-depth knowledge of the content and meaning of Article 5(a) and CEDAW in general. Similarly, civil society actors who design and impart women human rights training curricula must have a clear understanding of

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62 Merry, 2006, p. 3.

63 See supra note 1007, Holtmaat, 2004, pp. 99-100.

this provision and the Convention in order to further translate their underlying norms, ideas and values. On the other hand, rights holders must be aware of the values and ideas underlying Article 5(a) in particular, and of women's human rights in general. They must know about the rights that they can enjoy and the norms they should abide to under this Article and the Convention. Taking into consideration this (individual) consciousness level is a key dimension underlying the synergistic model proposed in this study.

This model of putting Article 5(a) into practice is founded on the understanding that "human rights become more meaningful to people when they are linked to the contents of their world-views, beliefs and religious practices and related to specific contexts, including serious constraints to their realization."<sup>64</sup> Full appreciation of the articulation of international human rights norms in local social and cultural terms<sup>65</sup> ensures that "the necessary local variations in the implementation of human rights are consistent with the universal validity of these rights."<sup>66</sup> All actors, from above, the middle and below, are thus equipped with the instruments to examine from their locality the practices and values that cause and perpetuate gender-based violence against women. By involving all concerned actors, the articulation of international norms in local terms encourages internally-driven guidance for measures of social and cultural transformation, which ensures the sustainability of change.<sup>67</sup>

### 9.3.2 The application of the synergistic model to other contexts

Notwithstanding its contextually-driven groundwork, in that it emerged from an in-depth exploration of the realities of putting Article 5(a) into practice in Jamaica, the synergistic model can be replicated in other contexts, provided that the idiosyncrasies of those particular contexts are taken into account. Drawing from the identified patterns of action, strategies and actors that can lead to social and cultural transformation, and ultimately putting Article 5(a) into practice, and also the factors that can impede the patterns of action, this study enables "the understanding of a larger class of similar units."<sup>68</sup> Moreover, the Jamaica case study reveals how social and cultural patterns of conduct manifest themselves in gender-based violence against women in this context; it identifies the ways in which the process of social and cultural transformation can be brought about. Essentially, the case study illustrates how the process of implementation and realisation of women's human rights takes place in Jamaica. Given this method of study, the idiosyncrasies of the Jamaican

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64 de Gaay Fortman, p. 2.

65 Merry, 2006, p. 28.

66 An – Na'im and Hammond, 2002, p. 15.

67 Ibid; UN Secretary General, 2006, UN Doc. A/61/122/Add.1, para. 41.

68 Gerring, 2007, p. 37.



context “support predictive ideas about how [such processes] might vary in different contexts”<sup>69</sup> while the resultant synergistic model can be applied to other contexts.<sup>70</sup> The model, thus, is of interest to actors in other contexts.

### **9.3.3 The application of the synergistic model to other articles in CEDAW**

Notwithstanding its focus on Article 5(a) and on social and cultural transformation for the elimination of gender-based violence against women, this synergistic model can be applied to other articles in CEDAW that speak to the various other forms of discrimination against women. Sex roles and gender stereotyping are both forms and root causes of discrimination against women in all the areas that are covered under the Convention. Gender-based violence against women has been chosen as an example in this research because it is an insidious type of violence that “causes injuries that impact the everyday lives of people yet remains invisible and normalized”<sup>71</sup> and it is particularly relevant for the Jamaican context.<sup>72</sup> Moreover, Article 5(a) is an overarching interpretative Article of CEDAW, which may be read in conjunction with all other articles in the Convention, and thus support actions in other areas where discrimination against women occurs. This broad scope renders the synergistic model applicable to other provisions in CEDAW and other problems impeding women’s full enjoyment of their human rights. In other words, the model can be conceptually used for the implementation of other aspects of the Convention.

The thorough consideration that the model gives to the actors, their actions and strategies, and the interactions between and among them, in an effort to eliminate gender-based violence against women, shows what is needed in order to bring about social and cultural transformation. It sheds light in this way on the essential elements and the manner in which not only Article 5(a) can be put into practice, but also the Convention.

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69 Mason, 2009, p. 175.

70 See Chapter 5 that discusses the methodology of this research, for an explanation of the application of the case study method.

71 Ibid.

72 See Chapter 4, which details the contextual backdrop of violence in Jamaica, and also the findings in Chapters 6 to 8.

#### 9.4 CONCLUDING REMARKS

In conducting this research, I was guided by the main question:

**In what manner can Article 5(a) CEDAW be put into practice at the country level in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women?**

In answering this question, I argue that in specific contexts, there are multiple actors, actions and strategies interacting in a complex manner in an effort to implement and realise women's human rights. For putting Article 5(a) into practice, it is therefore important to bear in mind the multiple discursive frameworks of these rights coming into play.<sup>73</sup> The Jamaica case study reminds us that it is essential to recognise the complexity of local contexts, and allow a local tailoring of ideas, values and norms of international women's human rights, in other words vernacularisation, in order to directly relate to, and thus resonate with rights holders' work and lives. The case study also reveals that rights holders, as active vernacularising actors, contribute as much as the other Governmental and civil society actors to the meaningful connection between international and national ideas, values and norms of women's human rights and local understandings. My research confirms that international women's human rights, which are resonant to the individuals' life outlooks and everyday activities facilitate the implementation and realisation of these rights.<sup>74</sup> The articulation of these rights through the cultural negotiation and appropriation occurring at the rights holders' level is critical. It ensures that contextual variations in the implementation and realisation of human rights norms and the universal validity of these rights are consistent.<sup>75</sup>

From the concrete context of Jamaica and from existing theoretical paradigms I derived a model of putting Article 5(a) into practice, which offers directions that have a general application for the implementation of this provision with a view to realising women's right to be free from gender-based violence. The model may thus be of interest for actors from different contexts. It provides both academics and practitioners, from Governmental officials, and national and local civil society representatives, to the experts sitting on the CEDAW Committee, with a clear picture of the elements that should be considered for putting Article 5(a) into practice, and ultimately for the process of the implementation of CEDAW and the realisation of women's human rights:

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73 See Chapter 3, which introduces the concept of multiple discursive frameworks of rights.

74 Merry, 2006, pp. 158 and 221; An – Na'im and Hammond, 2002, pp. 13-14.

75 An – Na'im and Hammond, 2002, p. 15; Merry, 2006, p. 28; CHR, 2003, UN Doc. E/CN.4/2004/66, para. 55.

- 1) The model pins down the integrated participation of multiple actors, actions and interactions that should come into play for an effective implementation and realisation of this Article, and shows what should be addressed in order to bring about social and cultural transformation. It advances, in particular, the involvement of rights holders as active actors in this process.
- 2) Social and cultural sensitivity to the context and realities of individuals lies at the heart of this model. It focuses for that reason on the vernacularisation as a strategy that enables women's human rights to *hit the ground* and benefit individuals. It also indicates the manner in which the vernacularisation strategy connects the various relevant actors.
- 3) The model makes the individual consciousness, where gender and gender constructions operate, a prerequisite element that should be addressed for effectively putting Article 5(a) into practice in particular, and women's human rights norms in general.
- 4) The model expands the understanding of the application of Article 5(a), in particular, and of CEDAW in general. Given that this Article is a general, interpretative provision of the Convention,<sup>76</sup> the synergistic model can be applied to other provisions of CEDAW and address other issues that form an obstacle for the full enjoyment of women's human rights.

The model is thus not only a conceptual tool for analysis, but also a prescriptive tool for action. It contributes in this manner to the work of the national implementers in their respective countries, by indicating the actions that must be put in place, the actors that must be engaged and the strategies to undertake for putting women's human rights into practice.

The synergistic model proposed in this book is concerned with the national implementation and realisation of women's human rights, and targets the relevant national actors. However, given that the model is applicable to other women's rights issues addressed in the Convention and to other contexts, it is also relevant to the work of the CEDAW Committee. The Committee can use the model to recommend the manner in which other CEDAW articles should be implemented by States parties. It cannot be overlooked that the Committee already takes a holistic approach to the implementation of the Convention and of Article 5(a) in its Concluding Observations. It urges collaboration between the State and civil society organisations, and places emphasis on raising awareness and human rights education measures. Yet, in the light of the synergistic model, the Committee can make stronger recommendations, particularly with regard to Article 5(a). The Committee should include in its recommendation to States parties the necessary three-tiered

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76 See Chapter 2 for the explanation of the content, meaning and scope of Article 5(a) CEDAW.

approach to implementation. It should place emphasis also on the involvement of and collaboration with rights holders as active actors in the implementation process. In placing emphasis on the vernacularisation strategy in its recommendations to raise consciousness of women's rights, it would endorse an underlying strategy that has the potential to bridge the gap between human rights *in the books* and *the life realities of women*.

By proposing a model that zooms in on the synergy of actors, actions and strategies for putting Article 5(a) into practice in a specific context, this book endorses the proposition that social and cultural practices in specific contexts are fundamental for the implementation and realisation of women's human rights. Women's human rights must be part and parcel of local social and cultural practices, so that rights that women have under international human rights law often do *hit the ground* and benefit their lives.<sup>77</sup>

It is also posited in this book that developing a consciousness of the meaning and content of Article 5(a) and of the gravity of gender-based violence against women is a key dimension to the process of putting Article 5(a) into practice. This should permeate at the levels of *individuals ranging from government officials and civil society organisations to ordinary people in their everyday life*. Such consciousness is an underlying component of the synergistic model in that it lays the stage for tackling entrenched mentalities that imbue institutions and structures, ranging from the family, the school, the church, the media, to the community and the State (the legal and judicial system, the police), and facilitates the *transformative* equality approach.<sup>78</sup> Accordingly, a consciousness of women's human rights is essential for the implementation of Article 5(a) and the realisation of women's right to be free from gender-based violence.

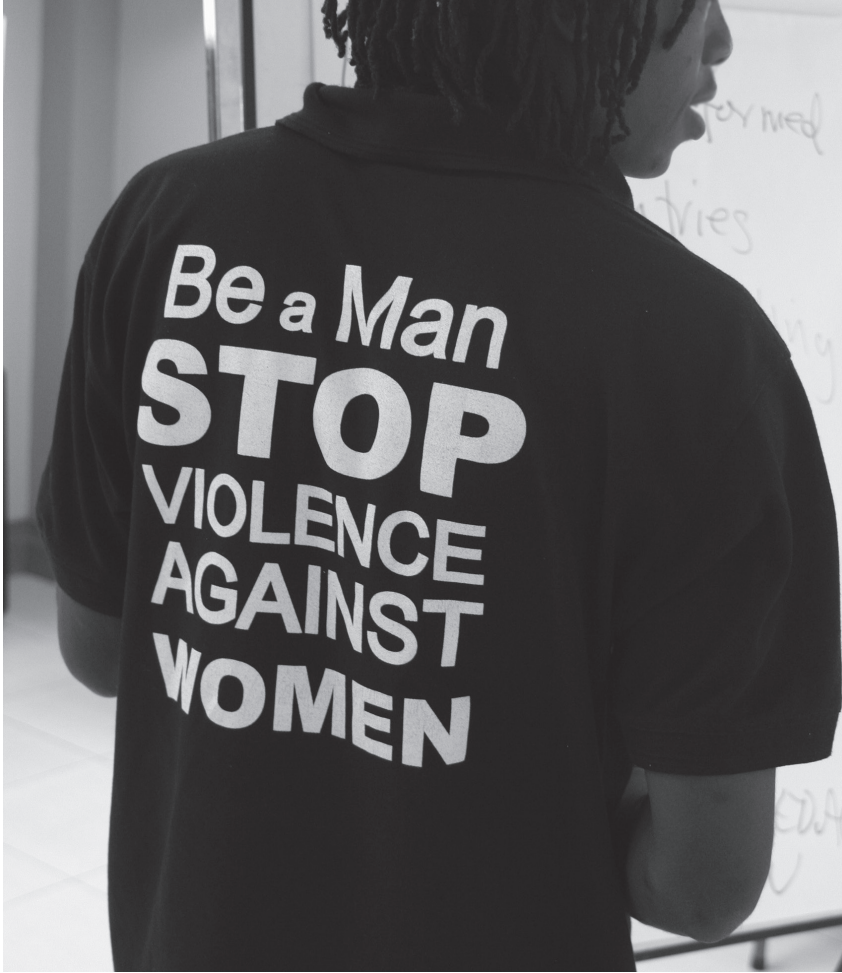
From Jamaica to the Netherlands or China, from Romania to South Africa or the United States, in every corner of the world, the common thread to the implementation and realisation of women's human rights is that a conscious practice of women's human rights by individuals in their roles *above*, as Government officials, *in the middle*, as civil society representatives, and *below*, as ordinary people in their everyday life enables a process of social and cultural transformation that is conducive to the elimination of gender-based violence against women. Ultimately, the transformation of discriminatory sex roles and gender stereotyping must entail a culture of women's human rights by which people understand and relate to the ideas, values and norms underlying these rights, and thereby put them into practice.

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77 Goodale, 2007, p. 8.

78 See Chapter 2 for a discussion on the concept of transformative equality.

**Photo 4. Vernacularisation technique developed by BWA together with men rights-holders, worn by a rights holder during a civil society workshop<sup>79</sup>**



<sup>79</sup> Photograph taken by the author with the permission of the right holder for the purpose of this research; Permission for photographing the slogan-printed T-shirt has also been received from the Bureau of Women's Affairs.



## SAMENVATTING

### DE OMVORMING VAN DISCRIMINERENDE SEXE-ROLVERDELING EN GENDER STEREOTYPERING

*De toepassing van Artikel 5(a) van het VN-Vrouwenverdrag voor de verwerkelijking van het recht van vrouwen om vrij te zijn van gender-gebaseerd geweld in Jamaica*

Gender-gebaseerd geweld tegen vrouwen is wereldwijd een hardnekkig probleem. Van Jamaica tot Nederland of China, van Roemenië tot Zuid-Afrika of de Verenigde Staten, in elke uithoek van de wereld beïnvloedt gender-gebaseerd geweld het dagelijks leven van vele vrouwen. Deze misstand heeft diepe sociale en culturele wortels, die zorgen voor een vicieuze cirkel van gender geweld. Verankerde constructies van vaste ideeën over vrouwelijkheid en mannelijkheid gebaseerd op toegeschreven sekse rollen en verwante gender stereotypering verhinderen de uitbanning van gender-gebaseerd geweld, en de tenuitvoerlegging en volledige bewerkstelling van mensenrechten voor vrouwen. Daarom is een sociale en culturele omvorming nodig om de inspanningen om gender-gebaseerd geweld tegen vrouwen te beperken, doeltreffend te maken en om het recht van vrouwen op een leven vrij van geweld te bewerkstelligen.

Op internationaal niveau roept het VN Vrouwenverdrag inzake de uitbanning van alle vormen van discriminatie tegen Vrouwen (CEDAW) op tot aandacht voor de sociale en culturele barrières die het vrouwen verhinderen om hun mensenrechten ten volle te genieten.

*[“De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om: (a) het sociale en culturele gedragspatroon van de man en de vrouw te veranderen ten einde te komen tot de uitbanning van vooroordelen, van gewoonten en van alle andere gebruiken, die zijn gebaseerd op de gedachte van de minderwaardigheid of meerderwaardigheid van één van beide geslachten of op de stereotiepe rollen van mannen en vrouwen”]*<sup>1</sup>

Artikel 5(a) behandelt dus met name de toegekende geslacht-gerelateerde rollen en (sekse) stereotyperingen en eist sociale en culturele veranderingen van de Staten die partij zijn bij dit Verdrag. Als zodanig is Artikel 5(a) van hoofdzakelijk belang voor

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1 CEDAW, 1979, Artikel 5(a).

de verwezenlijking van mensenrechten voor vrouwen. Hoe kunnen we nu Artikel 5(a) in de praktijk tot uitvoer brengen en zodoende een dergelijke verandering tot stand brengen in de concrete werkelijkheid van de Staten die partij zijn?

Om een diepgaand begrip te krijgen en om deze dilemma's in de theorie en praktijk van Artikel 5(a) aan te pakken, onderzocht ik de geleefde werkelijkheid van het tot uitvoering brengen van dit Artikel in de concrete situatie van Jamaica. Gebaseerd op empirisch onderzoek, biedt dit boek een praktisch model voor de uitvoering van Artikel 5(a) in een concreet kader van een land. Geconcentreerd op Jamaica als case-study, is de hoofdvraag die richting geeft aan dit onderzoek de volgende:

**Op welke manier kan Artikel 5(a) van het VN-Vrouwenverdrag in praktijk worden gebracht op landelijk/nationaal niveau om te komen tot een verandering van sociaal-culturele gedragspatronen gebaseerd op seksespecifieke rollen en gender stereotypen, die gender-gebaseerd geweld tegen vrouwen in stand houden?**

Om deze vraag te beantwoorden gaat het onderzoek in dit boek verder dan de wettelijke analyse en begint een sociaal- juridisch, empirisch onderzoek naar het proces van het in de praktijk brengen van Artikel 5(a). Het vult de top-down perspectieven aan, die de focus plaatsen op de Staat en haar verplichtingen onder CEDAW, met een studie van andere actoren en strategieën die het potentieel in zich dragen om sociale en culturele gedragspatronen te veranderen. Het maakt gebruik van een drie-lagen analyse van het toepassingsproces dat overheidsactoren aangaan als plichtdragers of deelnemers van *bovenaf*, met sociaal maatschappelijke organisaties als vertalers of actoren *in het midden*, en individuen als rechthebbende actoren *aan de onderkant*. Dit analytische raamwerk werpt een licht op de actoren, hun acties en strategieën, en de complexe interactie tussen hen onderling en tussen hen die de potentie hebben om de sociale en culturele verandering tot stand te brengen.

Aldus beargumenteer ik dat er in een specifieke context verschillende actoren, acties en strategieën onderling interactief zijn, op een complexe wijze zich inspannend om tot de toepassing en verwezenlijking van het mensenrecht voor vrouwen te komen. Om Artikel 5(a) in de praktijk te brengen is het belangrijk voor ogen te houden, welke verschillende theoretische raamwerken van deze rechten mee gaan spelen.<sup>2</sup> De case study van Jamaica herinnert ons eraan dat het essentieel is om de gecompliceerde lokale context te erkennen, en laten een lokale maatwerk aanpak van ideeën, waarden en normen van internationale mensenrechten voor vrouwen toe, met andere woorden

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2 Hoofdstuk 3 van het boek introduceert het concept van verschillende discursieve framewerken van rechten.



vernacularisatie, zodat zij [de mensenrechten] direct te relateren zijn aan, en daarmee weerklinken in het leven en werk van de rechthebbenden. De case study laat ook zien dat rechthebbenden als actieve vernaculariserende actoren, evenveel bijdragen als de andere regerings- en maatschappelijke actoren, aan een betekenisvol verband tussen internationale en nationale ideeën, waarden en normen van mensenrechten voor vrouwen en lokaal begrip. Mijn onderzoek bevestigt dat internationale mensenrechten van vrouwen, die weerklinken in toekomstdromen en dagelijkse activiteiten van de levens van individuen, de toepassing en verwerkelijking van deze rechten bevorderen.<sup>3</sup> De verwoording van deze rechten in culturele onderhandelingen en vertaling, die plaatsvindt op het niveau van de rechthebbenden, is doorslaggevend. Zij garandeert dat de contextuele variaties in de toepassing van mensenrechtelijke normen en de universele waarden van deze rechten consistent zijn.<sup>4</sup>

Gebaseerd op deze analyse in de context van Jamaica, biedt dit onderzoek een *synergistisch model*, dat betrekking heeft op de nationale toepassing en ten uitvoerlegging van mensenrechten voor vrouwen, gericht op de relevante nationale actoren.

- 1) Het model geeft duidelijk de geïntegreerde deelname van verschillende actoren, acties en interacties aan, die in werking zouden moeten treden voor een effectieve toepassing en realisatie van dit Artikel, en laat zien wat er aangepakt zou moeten worden om de sociale en culturele omvorming tot stand te brengen. Het bevordert vooral de inmenging van rechthebbenden als actieve actoren in dit proces.
- 2) Sociale en culturele gevoeligheid met betrekking tot de context en werkelijkheid van individuen, vormt de kern van dit model. Het spitst zich om die reden toe op vernacularisatie als een strategie die mensenrechten voor vrouwen doet slagen ten gunste van individuen. Het geeft ook aan op welke wijze de vernacularisatie strategie zich verhoudt tot de verschillende relevante actoren.
- 3) Het model maakt de individuen bewust, daar waar geslacht en gender constructies aan het werk zijn, een voorwaardelijk element dat zou moeten worden aangepakt om met name Artikel 5(a) van het Vrouwenverdrag, en mensenrechten voor vrouwen in het algemeen, effectief in werking te kunnen zetten.
- 4) Het model ontwikkelt de voorwaarden van de toepassing van met name Artikel 5(a) en van het VN-Vrouwenverdrag in het algemeen. Aangezien dit Artikel een algemene en verklarende voorziening is van het Verdrag, kan het synergistische model worden toegepast in andere voorzieningen van het VN-Vrouwenverdrag en ook andere problemen aanpakken die een obstakel vormen voor de volledige beleving van mensenrechten voor vrouwen.

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3 Merry, 2006, pp. 158 en 221; An-Na'im en Hammond, 2002, pp. 13-14.

4 An-Na'im en Hammond, 2002, p. 15; Merry, 2006, p. 28; CHR, 2004, UN Doc.E/CN.4/2004/66, para. 55.

Het model is daarom niet alleen een conceptueel instrument voor analyse, maar ook een voorschrijvend middel om tot actie te komen. Het draagt op deze wijze bij aan het werk van de uitvoerders in hun respectievelijke landen, door het toekennen van acties die uitgevoerd moeten worden, de actoren die betrokken moeten worden en de strategieën, werkwijzen die toegepast moeten worden om mensenrechten voor vrouwen in de praktijk te brengen.

Door een model voor te stellen dat zich richt op de synergie van actoren, acties en strategieën om Artikel 5(a) toe te passen in een bepaalde context, onderschrijft dit boek de bewering dat sociale en culturele praktijken in specifieke context de basis zijn voor de uitvoering en realisatie van mensenrechten voor vrouwen. Mensenrechten voor vrouwen moeten onderdeel zijn van het lokale sociale en culturele totaalpakket in de praktijk, zodat de rechten die vrouwen hebben onder internationaal mensenrecht veelvuldig wel aanslaan ten gunste van de kwaliteit van hun leven.<sup>5</sup>

Ook wordt in dit boek voorgesteld dat het ontwikkelen van bewustzijn van de betekenis en inhoud van Artikel 5(a), en van de zwaarte van gender gebaseerd geweld tegen vrouwen, de sleutel is in het process van de toepassing van Artikel 5(a) in de praktijk. Dit zou doordringen tot in de lagen van *individuen varieërend van ambtenaren en maatschappelijke organisaties tot gewone mensen in hun dagelijks leven*. Zo'n bewustzijn is een onderliggend deel van het synergetische model omdat het de weg bereidt tot het aanpakken van de starre ideeën waarvan instituten en structuren doordrongen zijn, varieërend van de familie, de school, de kerk, de media, tot de gemeenschap en de Staat, maatschappij, (het rechtssysteem en de politie), en daarmee een *hervormende* benadering van gelijkwaardigheid mogelijk maakt.<sup>6</sup> Dienovereenkomstig is een bewustzijn van mensenrechten voor vrouwen, noodzakelijk voor de ten uitvoerlegging van Artikel 5(a) en de verwerkelijking van het recht van vrouwen om vrij te zijn van gender-gebaseerd geweld.

Hoewel voortkomend uit de specifieke context van Jamaica, kan het synergetisch model dat in dit boek wordt voorgesteld, worden gebruikt als stramien en als voorlichting voor de toepassing en realisatie in andere contexten.<sup>7</sup> Bovendien, al komt het voort uit onderzoek naar Artikel 5(a) en gender-gebaseerd geweld tegen vrouwen, toch kan het synergetisch model als concept worden gebruikt voor de uitvoering van andere aspecten van VN-Vrouwenverdrag. Het model kan op deze manier interessant zijn voor actoren uit diverse contexten. Het levert voor zowel academici als praktijkbeoefenaars, van ambtenaren en nationaal en lokaal maatschappelijke vertegenwoordigers tot de experts in het Committee van het VN-Vrouwenverdrag,

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5 Goodale, 2007, p. 8.

6 Hoofdstuk 2, uiteenzetting van het concept van transformatieve gelijkheid.

7 De toepasbaarheid van deze case-study wordt uitgelegd in Hoofdstukken 5 en 9.

een duidelijk beeld op van de elementen die overwogen zouden moeten worden om Artikel 5(a) in werking te stellen, en uiteindelijk voor het proces van de uitvoering van VN-Vrouwenverdrag en de verwerkelijking van mensenrechten voor vrouwen.

Van Jamaica tot Nederland of China, van Roemenië tot Zuid-Afrika of de Verenigde Staten, in elke uithoek van de wereld, is de algemene rode draad bij het implementeren en verwerkelijken van mensenrechten voor vrouwen, dat een bewust uitvoeren van mensenrechten voor vrouwen door individuen in hun rol *boven*, als regeringsambtenaren, *in het midden*, als maatschappelijke vertegenwoordigers, en *beneden*, als gewone mensen in hun dagelijks leven, het sociale en culturele veranderingsproces mogelijk maakt dat bijdraagt aan de eliminatie van gender-gebaseerd geweld tegen vrouwen. Uiteindelijk moet de omvorming van discriminerende rolverdeling naar geslacht en gender stereotypering een cultuur worden die mensen in staat stelt de ideeën van mensenrechten voor vrouwen te begrijpen en zich te kunnen verhouden tot de ideeën, waarden en normen, die aan deze rechten ten grondslag liggen en ze daarmee in praktijk brengen.



## SUMMARY

Gender-based violence against women is a stubborn problem worldwide. From Jamaica to the Netherlands or China, from Romania to South Africa or the United States, in every corner of the world, gender-based violence still affects the everyday lives of many women. This scourge has deep social and cultural roots, which foster a vicious cycle of gender violence. Embedded constructions of femininity and masculinity based on ascribed sex roles and consequent gender stereotyping hinder the elimination of gender-based violence and the implementation and full realisation of women's human rights. Therefore a social and cultural transformation is necessary in order to render efforts to reduce gender-based violence against women effective and to realise women's right to a life free from violence.

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 the social and cultural barriers to women's full enjoyment of their human rights.

*“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>1</sup>*

Article 5(a) thus specifically addresses ascribed sex roles and gender stereotyping and makes demands of social and cultural transformation on the States parties to the Convention. As such, the Article is of principal importance for the realisation of women's human rights. How could we then put it into practice and bring about such transformation in the concrete realities of States parties?

In order to gain an in-depth understanding and to address these dilemmas in the theory and practice of Article 5(a), I explored the lived realities of putting this Article into practice in the concrete country setting of Jamaica. Based on this empirical research, this book presents a practical model for the implementation of Article 5(a) in a concrete country setting. Concentrating on Jamaica as a case study, the main question guiding the research is the following:

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1 CEDAW, 1979, Article 5(a).

**In what manner can Article 5(a) CEDAW be put into practice at the country level in order to transform socio-cultural patterns of conduct based on sex roles and gender stereotyping which perpetuate gender-based violence against women?**

To answer this question, the research in this book goes beyond legal analysis and embarks on a socio-legal, empirical inquiry into the process of putting Article 5(a) into practice. It complements the top-down perspectives, which place the focus on the State and its obligations under CEDAW, with the study of other actors and strategies that may have the potential to transform social and cultural patterns of conduct. It employs a three-tiered analysis of the implementation process, which engages with State actors as duty-bearers or actors *from above*, with civil society actors as vernacularisers or actors *in the middle*, and individuals as rights holders actors *from below*. This analytical framework sheds light on the actors, their actions and strategies, and the complex interactions between and among them that have the potential to bring about social and cultural transformation.

Consequently, I argue that in specific contexts, there are multiple actors, actions and strategies interacting in a complex manner in an effort to implement and realise women's human rights. For putting Article 5(a) into practice, it is therefore important to bear in mind the multiple discursive frameworks of these rights coming into play.<sup>2</sup> The Jamaica case study reminds us that it is essential to recognise the complexity of local contexts, and allow a local tailoring of ideas, values and norms of international women's human rights, in other words vernacularisation, in order to directly relate to, and thus resonate with rights holders' work and lives. The case study also reveals that rights holders, as active vernacularising actors, contribute as much as the other Governmental and civil society actors to the meaningful connection between international and national ideas, values and norms of women's human rights and local understandings. My research confirms that international women's human rights that are resonant to the individuals' life outlooks and everyday activities facilitate the implementation and realisation of these rights.<sup>3</sup> The articulation of these rights through the cultural negotiation and appropriation occurring at the rights holders' level is critical. It ensures that contextual variations in the implementation and realisation of human rights norms and the universal validity of these rights are consistent.<sup>4</sup>

Based on this analysis contextualised in Jamaica, this research advances a *synergistic model*, which is concerned with the national implementation and realisation of women's human rights, and targets the relevant national actors. The model illuminates

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2 Chapter 3 of the book introduces the concept of multiple discursive frameworks of rights.

3 Merry, 2006, pp. 158 and 221; An-Na'im and Hammond, 2002, pp. 13-14.

4 An-Na'im and Hammond, 2002, p. 15; Merry, 2006, p. 28; CHR, 2003, UN Doc. E/CN.4/2004/66, para. 55.

the integrated, organic approach that is necessary for putting Article 5(a) into practice within national settings.

- 1) The model pins down the integrated participation of multiple actors, actions and interactions that should come into play for an effective implementation and realisation of this Article, and shows what should be addressed in order to bring about social and cultural transformation. It advances, in particular, the involvement of rights holders as active actors in this process.
- 2) Social and cultural sensitivity to the context and realities of individuals lies at the heart of this model. It focuses for that reason on the vernacularisation as a strategy that enables women's human rights to *hit the ground* and benefit individuals. It also indicates the manner in which the vernacularisation strategy connects the various relevant actors.
- 3) The model makes the individual consciousness, where gender and gender constructions operate, a prerequisite element that should be addressed for effectively putting Article 5(a) into practice in particular, and women's human rights norms in general.
- 4) The model expands the understanding of the application of Article 5(a), in particular, and of CEDAW in general. Given that this Article is a general, interpretative provision of the Convention, the synergistic model can be applied to other provisions of CEDAW and address other issues that form an obstacle for the full enjoyment of women's human rights.

The model is thus not only a conceptual tool for analysis, but also a prescriptive tool for action. It contributes in this manner to the work of the national implementers in their respective countries, by indicating the actions that must be put in place, the actors that must be engaged and the strategies to undertake for putting women's human rights into practice.

By proposing a model that zooms in on the synergy of actors, actions and strategies for putting Article 5(a) into practice in a specific context, this book endorses the proposition that social and cultural practices in specific contexts are fundamental for the implementation and realisation of women's human rights. Women's human rights must be part and parcel of local social and cultural practices, so that rights that women have under international human rights law often do *hit the ground* and benefit their lives.<sup>5</sup>

It is also posited in this book that developing a consciousness of the meaning and content of Article 5(a) and of the gravity of gender-based violence against women

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5 Goodale, 2007, p. 8.

is a key dimension to the process of putting Article 5(a) into practice. This should permeate at the levels of *individuals ranging from government officials and civil society organisations to ordinary people in their everyday life*. Such consciousness is an underlying component of the synergistic model in that it lays the stage for tackling entrenched mentalities that imbue institutions and structures, ranging from the family, the school, the church, the media, to the community and the State (the legal and judicial system, the police), and facilitates the *transformative* equality approach.<sup>6</sup> Accordingly, a consciousness of women's human rights is essential for the implementation of Article 5 (a) and the realisation of women's right to be free from gender-based violence.

Although emerging from the particular context of Jamaica, the synergistic model proposed in this book can be extrapolated to and inform the process of implementation and realisation in other contexts.<sup>7</sup> Furthermore, although emerging from the study of Article 5(a) and gender-based violence against women, the synergistic model can be conceptually used for the implementation of other dimensions of CEDAW. The model may thus be of interest for actors from different contexts. It provides both academics and practitioners, from Governmental officials, and national and local civil society representatives, to the experts sitting on the CEDAW Committee, with a clear picture of the elements that should be considered for putting Article 5(a) into practice, and ultimately for the process of the implementation of CEDAW and the realisation of women's human rights.

From Jamaica to the Netherlands or China, from Romania to South Africa or the United States, in every corner of the world, the common thread to the implementation and realisation of women's human rights is that a conscious practice of women's human rights by individuals in their roles *above*, as Government officials, *in the middle*, as civil society representatives, and *below*, as ordinary people in their everyday life enables a process of social and cultural transformation that is conducive to the elimination of gender-based violence against women. Ultimately, the transformation of discriminatory sex roles and gender stereotyping must entail a culture of women's human rights by which people understand and relate to the ideas, values and norms underlying these rights, and thereby put them into practice.

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6 Chapter 2 discusses the concept of transformative equality.

7 The applicability of this case study is explained in Chapters 5 and 9.



## APPENDIX 1

### SELECTED GOVERNMENT ACTORS - MINISTRIES, DEPARTMENTS AND AGENCIES

Bureau of Women's Affairs (BWA)

Ministry of Justice

Legal Reform Unit

Attorney's General Chambers

Policy Research, Evaluation and Strategic Planning

Victim Support Unit

Ministry of National Security

Office of the Permanent Secretary

Crime Prevention and Community Safety

Monitoring and Evaluation Unit

Jamaica Constabulary Force (JCF)

JCF Area 5 Headquarters, Kingston and St. Andrew metropolitan area

Community Police, rural area

JCF Statistics and Information Management Unit

Centre for Investigation of Sexual Offences and Child Abuse (C.I.S.O.C.A.)

Ministry of Foreign Affairs and Foreign Trade

Ministry of Education

Guidance and Counselling Unit

Curriculum Unit

Ministry of Labour and Social Security

Ministry of Youth, Sports and Culture

The Broadcasting Commission

The Office of the Cabinet

Cabinet Support and Policy Division, Policy Analysis and Review Unit

National Security Policy Coordination Unit

Planning Institute of Jamaica (PIOJ)

Social Security and Welfare

Community Development Section

Gender Mainstreaming Committee

Statistical Institute of Jamaica (STATIN)



## APPENDIX 2

### SELECTED CIVIL SOCIETY ACTORS

#### Women's Groups

- Association of Women's Organizations in Jamaica (AWOJA)
- Women's Media Watch (WMW)
- Women's Resource and Outreach Centre (WROC)
- Woman Inc.
- SISTREN Theatre Collective
- PNP Women's Movement
- Jamaica Women's Political Caucus
- Jamaica Network of Rural Women Producers
- CAFRA

#### Men's Groups

- Fathers Inc.

#### Church Groups

- United Theological College of the West Indies (U.T.C)
- Jamaica Council of Churches

#### Community of Practice

#### International Organisations

- United Nations Development Programme (UNDP), Jamaica Office
- United Nations Population Fund Caribbean (UNFPA), Sub-regional Office

#### Regional Organisations

- Friedrich Ebert Stiftung (FES), Jamaica and the Eastern Caribbean
- PANOS Caribbean
- VSO Jamaica

#### Academia, University of the West Indies, Mona Campus, Jamaica

- Norman Manley Law School/Legal Aid Clinique
- Faculty of Law
- Institute for Gender and Development Studies (IGDS)

#### Independent female and male gender advocates and consultants

- Office of the Public Defender



## APPENDIX 3

### CITED DATA COLLECTED

#### I. INTERVIEWS CONDUCTED AT GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

- Interview Bureau of Women's Affairs (BWA), February 25&28, 2011, female senior management Government official
- Interview Bureau of Women's Affairs (BWA), March 25, 2011, female senior Government official (1)
- Interview Bureau of Women's Affairs (BWA), March 25, 2011, female senior Government official (2)
- Interview Bureau of Women's Affairs (BWA), April 5, 2011, female senior Government official
- Interview Bureau of Women's Affairs (BWA), April 6, 2011, female middle management Government official
- Interview Bureau of Women's Affairs (BWA), April 12, 2011, male technical staff
- Interview Bureau of Women's Affairs (BWA), "Way Out" Project, April 27, 2011, female technical staff
- Interviews Broadcasting Commission, April 28 & May 6, 2011, male senior Government official
- Interview Planning Institute of Jamaica (PIOJ), April 4, 2011, female senior Government official
- Interview Planning Institute of Jamaica (PIOJ), April 15, 2011, female middle management Government official
- Interview Planning Institute of Jamaica (PIOJ), April 15, 2011, female Government technical staff
- Interview Ministry of National Security (MNS), April 19, 2011, female senior Government official
- Interview Office of the Cabinet, April 1, 2011, female senior Government official
- Interview Office of the Cabinet, May 11, 2011, female senior Government official
- Group Interview Victim Support Unit (VSU), April 19, 2011, counselling personnel
- Interview Victim Support Unit (VSU), May 4, 2011, male senior Government official
- Interview the Ministry of Justice (MOJ), May 3, 2011, male senior Government official
- Interview Ministry of Justice (MOJ), May 4, 2011, middle management Government official
- Interview Ministry of Justice (MOJ), Legal Reform Unit, July 13, 2011, female senior Government official
- Interview the Ministry of Foreign Affairs and Foreign Trade (MFA), May 20, 2011, female senior Government official
- Interviews Jamaica Constabulary Force (JCF) rural area, May 5, 2011, female and male police officers

- Interview Jamaica Constabulary Force (JCF) Kingston and St. Andrew, May 29, 2011, female police officer
- Interviews Jamaica Constabulary Force (JCF), Centre for Investigation of Sexual Offences and Child Abuse (CISOCA), May 9, 2011, female police officers
- Interview Jamaica Constabulary Force (JCF), Centre for Investigation of Sexual Offences and Child Abuse (CISOCA), May 17, 2011, female police officer
- Interview Jamaica Constabulary Force (JCF) Statistics and Information Management Unit, July 11, female police officer

## II. FOCUS GROUP DISCUSSIONS (FGDs) CONDUCTED AT GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

- Focus Group Discussion (FGD) Ministry of Education (MOE), April 13, 2011, female and male senior and middle management Government officials and technical staff
- Focus Group Discussion (FGD) Ministry of Education (MOE), April 21, 2011, female and male middle management Government officials

## III. INTERVIEWS CONDUCTED AT CIVIL SOCIETY ORGANISATIONS, INTERNATIONAL AND REGIONAL ORGANISATIONS, ADVOCATES AND ACADEMIA

- Interview Community of Practice, May 9, 2011, female gender advocate
- Interview FES, May 18, 2011, female senior management representative
- Interview Women's Media Watch, (WMW) May 25, 2011, senior management representative
- Interview SISTREN Theatre Collective (SISTREN), May 26, 2011, middle management representative
- Interview SISTREN, June 17, 2011, senior management representative
- Interview WROC, June 6, 2011, middle-management representative
- Interview WROC, June 13, 2011, female senior management representative
- Interview AWOJA, June 17, 2011, senior management representative
- Interview United Theological College of the West Indies (UTC), June 24, 2011, female pastor, senior management representative
- Interview Jamaica Council of Churches, June 27, 2011, male minister, senior management representative
- Interview PNP Women's Movement, July 1, 2011, female senior management representative
- Interview Jamaica Women's Political Caucus, July 4, 2011, female senior management representative
- Interview freelance female gender advocate, June 11, 2011
- Interview freelance male gender advocate, June 21, 2011
- Interview female gender advocate, former director of BWA, June 28, 2011
- Interview female academic and gender advocate, June 9, 2011
- Interview UNDP, June 14, 2011, female senior management representative
- Group interview UNFPA, June 28, 2011, female senior management representatives
- Interview PANOS, July 4, 2011, female middle management representative

Interview CAFRA, July 8, 2011, female senior management representative  
 Discussion female academic, post field research, October 23, 2011

#### IV. FOCUS GROUP DISCUSSIONS (FGDs) CONDUCTED WITH RIGHTS HOLDERS

FGDs, WROC women group, July 7, 2011  
 FGDs, WROC women group, July 12, 2011  
 FGDs, WROC men group, July 8, 2011  
 FGDs, BWA women group, July 14, 2011

#### V. OBSERVATIONS

Unobtrusive Observations, July 27-30, 2009, CEDAW 44<sup>th</sup> sessions, New York, United States of America  
 Unobtrusive Observations, November 25, 2009, BWA Celebration of the International Day for the Elimination of Violence Against Women, Kingston, Jamaica.  
 Unobtrusive Observations, October 14, 2010, CEDAW 47<sup>th</sup> sessions, Geneva, Switzerland  
 Participatory Observations, October 16, 2010, CEDAW Committee Seminar on Musawah Framework of Action and Islam and Women's Rights, Office of the High Commissioner for Human Rights, Geneva, Switzerland  
 Participatory Observations, February 17, 2011, Bureau of Women's Affairs Consultations on the National Strategic Action Plan pm Gender-Based Violence, Kingston, Jamaica  
 Unobtrusive Observations, March 8, 2011, the Bureau of Women's Affairs Launch of Jamaica National Policy for Gender Equality (NPGE) and of the 'Way Out' Policy Implementation Project, Kingston, Jamaica  
 Participatory Observations, March 10-11, 2011, CUSO-VSO Jamaica Gender Workshop 'Towards a Regional Gender Strategy for Latin America and the Caribbean', Kingston, Jamaica  
 Unobtrusive Observations, March 31, 2011, Bureau of Women's Affairs Press Launch of the UNITE Campaign to End Violence Against Women, Kingston, Jamaica  
 Unobtrusive Observations, May 31, 2011, WROC Planning meeting on AVON-WROC Project, 'Leadership Training and Community Capacity Building for Eliminating Gender-Based Violence', WROC, Kingston, Jamaica.  
 Unobtrusive Observations, May 31, 2011, Institute for Gender and Development Studies (IGDS) Seminar on 'Tivoli Gardens Incursions', Kingston, Jamaica  
 Unobtrusive Observations, June 21-23, 2011, the Commonwealth Caribbean Colloquium on Gender, Culture and the Law, Kingston, Jamaica  
 Unobtrusive Observations, July 15-August 9, 2011, AVON-WROC Community Facilitators Training Programme on Elimination of Gender-Based Violence, WROC, Kingston, Jamaica

## VI. QUESTIONNAIRE

Questionnaire distributed to participants in the WROC Community Facilitators Training Programme on Elimination of Gender-Based Violence, August 11, 2011

## VII. DOCUMENTARY SOURCES

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## CURRICULUM VITAE

Ramona Georgeta Biholar (1979) was born in Suceava, Romania. She obtained her first Law Degree from the Faculty of Law of the *Babeş-Bolyai* University in Cluj-Napoca, Romania. She spent her fourth year of law studies (2002-2003) at the Faculty of Law of the University of Zaragoza in Spain, where she additionally enrolled in and graduated the courses of the *Jean Monnet* Cathedra in European Law and Institutions, and in European Commercial Law. In 2005, Ramona Biholar received her LL.M Degree in International and European Law from the Faculty of Law of Utrecht University, the Netherlands. From 2008 to 2012 she joined the Netherlands Institute of Human Rights (SIM), Utrecht University, as an NWO-MAGW awarded PhD researcher. She undertook socio-legal research in the field of women's human rights, with several field research periods in Jamaica where she conducted extensive qualitative data collection.

Ramona engaged with women's human rights research and writing since 2005, when she started her collaboration with Prof. Dr. Cees Flinterman for the preparation of the manual "A Practical Guide to CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol" (2006) and the book "Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women" (2007). From 2005 to 2006, she also worked as a legal clerk at the International Criminal Court in The Hague. In 2006, she spent time in Jamaica where she became involved in the human rights and social justice work of different non-governmental organizations based in Kingston. In 2007, she worked with the Romanian Delegation at Eurojust in The Hague, in the field of cooperation and coordination of investigations and prosecutions of cross-border and organized crime. Currently, Ramona works as a researcher with the University of the West Indies, Institute for Gender and Development Studies (IGDS) in Trinidad on the project "Politics, Power and Gender Justice in the Anglophone Caribbean". In this role, she conducts ethnographic research in Dominica on the implementation of gender policies. Alongside this work, she undertakes part-time consultancy duties for the Leadership Institute on Women's Economic, Social and Cultural Rights 2013 held by the India-based human rights organisation Programme on Women's Economic, Social and Cultural Rights (PWESCR).



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