

The Elimination of “Patriarchy” Under the Convention on the Elimination of All Forms of Discrimination Against Women

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ABSTRACT

The aim of this Paper is to determine whether the Committee on the Elimination of Discrimination against Women (CEDAW Committee) is using the concept of “patriarchy” when interpreting obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This Paper explores a textual analysis of CEDAW Committee concluding observations that use the terms “patriarchy” and “patriarchal.” Three key points came out of this analysis. Firstly, although the CEDAW Committee has seldom used the word “patriarchy” itself, it has consistently and purposefully used the term “patriarchal” in its concluding observations since 2006. Secondly, the CEDAW Committee uses the word “patriarchal” almost exclusively in connection with Article 5(a) of CEDAW. Further, the CEDAW Committee uses “patriarchal” alongside the phrase “harmful traditional practices”; the terms are jointly used disproportionately against non-Western/non-European states, replicating the problematic dichotomy of non-Western/non-European states versus Western/European states in the international legal system. Thirdly, as a result of conflating “patriarchal” with “harmful traditional practices,” the CEDAW Committee uses “patriarchy” as synonymous with specific examples of direct subordination of women. Because of this narrow implementation and interpretation, the CEDAW Committee appears to be limiting “patriarchy” to mean cultural norms and “harmful traditional practices”; this not only limits the transformative potential of Article 5 but also risks othering and exotifying the notion of “patriarchy” itself.

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INTRODUCTION

In 1981, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an international treaty wherein states parties have agreed to protect women’s human rights and endeavor to take reasonable steps towards gender equality, came into force.¹ Additionally, these states agreed to dismantle social, religious, and cultural structures that foster the subordination of women by men.² This suggests that CEDAW requires states to dismantle patriarchal structures and attitudes, from the government to the private sphere. However, the treaty itself does not mention the word “patriarchy.” It was only in 2006 that the word “patriarchy” was first used in relation to women’s rights in an official human rights document.³ This Paper seeks to determine whether the Committee on the Elimination of Discrimination against Women (CEDAW Committee) uses the concept of patriarchy when applying CEDAW to state practices and to explore the meaning of “patriarchy” as utilized by the CEDAW Committee.

1. Convention on the Elimination of All Forms of Discrimination against Women, arts. 1–3, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

2. *Id.* at art. 5.

3. U.N. Secretary-General, *In-Depth Study on All Forms of Violence against Women*, ¶¶ 69–77, U.N. Doc. A/61/122/Add.1. (July 6, 2006).

This Paper is a small piece of a larger project investigating the extent to which states are obligated to take positive steps to dismantle “patriarchy.” However, it is not possible to answer this question without first considering whether the concept of “patriarchy” exists in international human rights law or in relation to states’ obligations under international human rights law. If it does exist, research must also consider whether that concept of “patriarchy” is appropriate in light of the global women’s rights movement. In order to explore these questions, it is helpful to begin with the core United Nations (UN) treaty addressing women’s human rights: CEDAW.⁴

This study undertook a textual analysis of CEDAW Committee concluding observations, searching for the terms “patriarchy” and “patriarchal.” Concluding observations are a method through which the CEDAW Committee monitors and scrutinizes states’ progress in implementing treaty provisions across domestic legislation, policy, and practice.⁵ Every four years, each state party must submit a report to the CEDAW Committee regarding domestic implementation of CEDAW.⁶ These reports may also be accompanied by “shadow reports” written by non-governmental organizations (NGOs), which assess the state government’s progress.⁷ The state party and the CEDAW Committee hold meetings where committee members ask questions related to the government and shadow reports.⁸ At the end of the process, the CEDAW Committee publishes a concluding observation with recommendations to the state party. Although they are non-binding, these documents are important indicators of how the CEDAW Committee has interpreted state obligations under CEDAW and how states parties can appropriately discharge them. Therefore, notwithstanding the absence of the word “patriarchy” in CEDAW itself, the CEDAW Committee may still utilize the concept for purposes of interpreting obligations under CEDAW.

Three key points emerged from this research. First, the CEDAW Committee has seldom used the word “patriarchy” itself, but has, since 2006, consistently used

4. This Paper uses the term “women” consistent with the CEDAW Committee’s usage: thus, “women” includes cis-gendered women, trans women, and intersex people who identify as women. These groups have been explicitly identified by the CEDAW Committee as especially disadvantaged by discrimination against women. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2, ¶ 18, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Germany, ¶¶ 45–46, U.N. Doc. CEDAW/C/DEU/CO/7-8 (Mar. 9, 2017); Comm. on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of New Zealand, ¶ 23(a), 25(a), U.N. Doc. CEDAW/C/NZL/CO/8 (July 20, 2018). However, CEDAW Committee jurisprudence has not yet mentioned discrimination against non-binary or other gender diverse people. *See generally*, Rikki Holtmaat & Paul Post, *Enhancing LGBTI Rights by Changing the Interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women?*, 33 NORDIC J. HUM. RTS. 319 (2015).

5. CEDAW, *supra* note 1, arts. 20–22.

6. *Id.* at art. 18(b).

7. Comm. on the Elimination of Discrimination against Women on its Forty-Fifth Session, Statement by the Committee on the Elimination of Discrimination against Women on its relationship with non-governmental organizations, ¶ 7.

8. *Id.* at ¶ 10.

the term “patriarchal” in its concluding observations. Second, the CEDAW Committee has used the word “patriarchal” almost exclusively in connection with Article 5(a), which obligates states to eliminate gender stereotypes that foster discrimination against women. Additionally, “patriarchal” is used alongside “harmful traditional practices.” These two phrases are used in the concluding observations of some state parties. The distinction replicates the problematic dichotomy of non-Western and non-European states versus Western and European states. Third, as a result of conflating patriarchy with harmful traditional practices, “patriarchy” is seen as synonymous with specific examples of overt subordination of women including: female genital mutilation (FGM), so-called “honor killings,” sexual initiation practices, abduction of girls, child marriage, forced marriage, polygamy, widow inheritance, subordination of women to their husbands and other male relatives, son preference, and violence against women generally. Overall, this Paper argues that the CEDAW Committee appears to limit patriarchy to mean culture and “harmful traditional practices,” which not only limits the transformative potential of Article 5, but also risks “othering” and “exotifying” the notion of “patriarchy” itself.

This Paper is structured in the following way. Section I provides a cursory overview of the various concepts of “patriarchy” that exist within feminist literature in order to frame the discussion of “patriarchy” in CEDAW concluding observations. Similarly, Section II outlines the creation and promise of CEDAW. Section III explores the methodology of this study. This section also discusses the different representations of collected data, which are attached in the Appendix. Section IV explores the findings of this study. For the purposes of analysis, the findings are categorized into groups, which include (a) the location of the terms “patriarchy” or “patriarchal” within the concluding observations completed between 1985 and 2018; (b) the concluding observations of states parties with which the terms were used the most and those in which the term was never mentioned; and (c) the usage of “patriarchy” or “patriarchal” in concluding observations over time. The threads of these data are pulled together in the overarching analysis provided in Section V, which examines the implications of conflating “patriarchal attitudes” with “harmful traditional practices” under Article 5. Section VI illustrates that the concept of “patriarchy” the CEDAW Committee uses in its interpretation of CEDAW aligns with a traditional feminist understanding of “patriarchy.” The Conclusion provides a summary of the study’s findings and its implications for future interpretation of obligations under CEDAW.

I. WHAT IS “PATRIARCHY”?

It is not the purpose of this Paper to search for a particular meaning of “patriarchy” or hold up a singular understanding of patriarchy as the objective and true definition. The purpose of this Paper is to investigate how the term has been interpreted and used by the CEDAW Committee in its concluding observations. Only once this is understood can the question be asked: Is the concept of patriarchy

used by the CEDAW Committee appropriate for the implementation of CEDAW itself? As such, it is not necessary to provide an in-depth overview of the lengthy history of “patriarchy” as a feminist concept; this has been done elsewhere.⁹ Instead, this section will provide a summary of the interpretations of “patriarchy” only to the extent that is necessary to argue that “patriarchy” as a term does not have a set meaning in feminist theory. This will allow for a later discussion about the CEDAW Committee’s use of the word relative to its various meanings.

Patriarchy is an ancient word. Its origin is Greek, *patriarkhēs*, translating literally to “a man who rules a family.”¹⁰ Today, the concept of patriarchy is an analytical tool for feminist understandings of the world for women and, at the same time, a call to action within the global women’s rights movement. As an academic term, “patriarchy” has, over the past seventy years, been challenged, re-defined, re-examined, rejected, and rediscovered. The concept of patriarchy has proven to be elastic and has earned a central place within feminist scholarship.

The traditional use of “patriarchy” refers to the overt subordination of women by men.¹¹ This subordination is illustrated by legal and social structures that place men at head of the household and women under the control of male relatives for their entire lives. Even where legal frameworks are removed, “psychological patriarchy” may remain where male domination and power are fostered and reinforced within a strict family structure.¹² Male dominance is often enforced through violence, both physical and psychological.¹³

This traditional understanding of patriarchy was modified during the 1980s and 1990s, when feminist scholars argued that patriarchy was not confined to the family structure but in fact permeated every facet of society.¹⁴ Thus, patriarchy was redefined as a system of power where male interests dominated female interests and were reinforced through media, legal frameworks, education, employment, religion, family structure and institutions (such as marriage), and cultural practices.¹⁵ Male power is maintained through reproducing and institutionally reinforcing gender stereotypes of men and women’s roles in society and the home.¹⁶

Marxist-feminists, such as Zillah Eisenstein, opted for a “dual-system” approach with the understanding that patriarchy does not operate alone and is

9. See, e.g., Bonnie J. Fox, *Conceptualizing ‘Patriarchy’*, 25 CAN. REV. SOC. & ANTH. 163 (1988); Vrushali Patil, *From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far We’ve Really Come*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 847 (2013).

10. See *Patriarch*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 2016).

11. See, e.g., Sylvia Walby, *Theorising Patriarchy*, 23 SOC. 213 (1989); KATE MILLETT, *SEXUAL POLITICS* 25 (2000).

12. BELL HOOKS, *Understanding Patriarchy*, in *THE WILL TO CHANGE: MEN, MASCULINITY, AND LOVE* 23 (2004).

13. *Id.*

14. PAM MORRIS, *LITERATURE AND FEMINISM* 4 (1993).

15. See generally *id.*

16. CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 218 (1989).

mutually dependent on capitalism.¹⁷ Eisenstein described this dual-system as “capitalist patriarchy,” arguing that male power and the oppression of women is the basis of both sex and class:

If I were to state this as simply as possible I could say that patriarchy (as male supremacy) provides the sexual hierarchical ordering of society for political control, and as a political system cannot be reduced to its economic structure; while capitalism, as an economic class system driven by the pursuit of profit, feeds off the patriarchal ordering. Together they form the political economy of the society; not merely one or another, but a particular blend of the two.¹⁸

Similarly, Black feminist bell hooks used the term “imperialist white-supremacist capitalist patriarchy” to widen the understanding of patriarchy as operating as part of multiple systems of oppression which are political, social, cultural, and economic in nature.¹⁹ hooks explained that:

Patriarchy is a political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence.²⁰

The concept of “patriarchy” underwent reevaluation once more under the lens of anti-essentialist feminist critique. Commentators such as Chandra Mohanty, Audre Lorde, and Kimberlé Crenshaw challenged the dominant view of “patriarchy” (and gender inequality generally) as solely representing the experience of middle-class, White, Western women.²¹ In particular, Mohanty argued that patriarchy as a concept was being applied the same way across cultures, and that a particular “binary” was emerging in feminist scholarship between “third world” and “first world” women.²² First world women were treated as political agents while third world women were the homogenous victimized “other.” She further argued that liberal feminism failed to acknowledge that patriarchy looks and operates differently across the world.²³ According to an intersectional feminist lens, “patriarchy” varies widely between states and communities, and women within those same systems will experience patriarchy

17. Zillah Eisenstein, *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*, 25 CRITICAL SOC. 196 (1999).

18. *Id.* at 208.

19. HOOKS, *supra* note 12, at 17.

20. *Id.* at 17–18.

21. Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 30 FEMINIST REV. 61, 62 (1988); AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, in SISTER OUTSIDER 110, 110 (1984); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1242–43 (1991).

22. Mohanty, *supra* note 21, at 65.

23. *Id.* at 70.

differently depending on other distinctions such as wealth, class, race, gender identity, or sexual orientation. An anti-essentialist and intersectional understanding of patriarchy acknowledges that women experience male oppression differently depending on the shape of social and political hierarchy and where individual women operate within that structure.

The above signifies two general interpretations of “patriarchy.” The first interpretation is patriarchy as the overt subordination of women by men. This oppression is conceived as an obvious feature of society and culturally constructed.²⁴ The second interpretation is patriarchy as a system of power which is hierarchical and autonomous.²⁵ As a system of power, patriarchy is both visible and invisible, permeating all levels of society. Institutionally, patriarchy is politically and economically reinforced.²⁶ It is also important to note that some scholars have rejected the concept of “patriarchy” altogether as an oversimplification of complex social and economic systems that are interrelated and constantly changing.²⁷ Despite these strong criticisms of the concept, “patriarchy” remains an important theoretical tool with which feminists conceptualize male domination over women. However, there is no single concrete meaning.

II. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

This Paper is the product of a wider study investigating the use and conceptual understanding of “patriarchy” in international law. As the core international treaty specifically addressing women’s rights and interests, CEDAW was the natural place to begin such a project. Before exploring the findings of this study, it is necessary to scrutinize the creation and promise of CEDAW itself.

Although the Universal Declaration of Human Rights guaranteed non-discrimination on the basis of sex in 1945, a women-centered Convention was not on the table alongside the post-World War II International Covenants.²⁸ However, the UN established the Commission on the Status of Women (CSW) in 1946 as a companion to the Commission on Human Rights, recognizing that global women’s

24. MORRIS, *supra* note 14, at 4.

25. See Fox, *supra* note 9, at 163.

26. MACKINNON, *supra* note 16, at 99–100; Eisenstein, *supra* note 17, at 211; HOOKS, *supra* note 12, at 18, 23.

27. See generally Joan Acker, *The Problem with Patriarchy*, 23 SOC. 235 (1989) (discussing various issues with the history and construction of patriarchy as a concept); see also Charlotte Higgins, *The Age of Patriarchy: How an Unfashionable Idea Became a Rallying Cry for Feminism Today*, GUARDIAN (June 22, 2018), <https://www.theguardian.com/news/2018/jun/22/the-age-of-patriarchy-how-an-unfashionable-idea-became-a-rallying-cry-for-feminism-today> [https://perma.cc/Q2SE-25UD] (discussing the history of the popularity of the term “patriarchy”).

28. See MARSHA FREEMAN, CHRISTINE CHINKIN & BEATE RUDOLF, THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 4 (2012) (describing the early history of the 1945 Universal Declaration of Human Rights and subsequent, women-specific steps).

interests would be best served by a specific, dedicated body.²⁹ During the 1950s, the CSW worked towards putting women's issues on the international agenda: for example, by engaging in significant research on the status of women's rights and drafting a number of related international treaties.³⁰ Such treaties included the Convention on the Nationality of Married Women³¹ and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.³² By the 1960s, awareness of discrimination against women as a global concern highlighted the need for a general international treaty.³³ In 1967, the CSW drafted a non-binding document, the UN Declaration on the Elimination of Discrimination against Women, which preceded CEDAW. In 1975, the UN General Assembly authorized the first world Conference on Women in Mexico, which is where the CSW began drafting CEDAW.³⁴

CEDAW drew from a number of existing international treaties, including, inter alia, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights.³⁵ However, unlike these previous treaties, which focused primarily on domestic legal frameworks, CEDAW obligated states parties to go beyond merely changing laws.

CEDAW is divided into six parts. Part I comprises articles 1–6, which are general obligations on states parties. These are not limited just to realizing formal and substantive equality for women. For example, Article 3 stipulates that “States Parties shall take in all fields . . . to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights . . .”³⁶ Part II includes articles 7–9 and focuses on rights necessary for women to operate equally in public life, such as civil and political rights. Part III (articles 10–14) encompasses women's economic and social rights. Part IV (articles 15–16) contains rights related to legal and family status. Part V (articles 17–22) covers the membership and function of the CEDAW Committee. Finally, Part VI (articles 23–30) includes provisions relating to the administration of CEDAW and its effect on states parties.

Overall, CEDAW calls upon states to modify political, economic, and cultural patterns that discriminate against women in both their public and private

29. Ruth Halperin-Kaddari & Marsha A. Freeman, *Backlash Goes Global: Men's Groups, Patriarchal Family Policy, and the False Promise of Gender-Neutral Laws*, 28 CAN. J. WOMEN & L. 182, 187 (2016).

30. For more information on the work of the CSW, see generally UN WOMEN, A SHORT HISTORY OF THE COMMISSION ON THE STATUS OF WOMEN (2019).

31. Convention on the Nationality of Married Women, Aug. 11, 1958, 309 U.N.T.S. 65.

32. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 23, 1964, 521 U.N.T.S. 231.

33. UN WOMEN, *supra* note 30, at 7.

34. FREEMAN ET AL., *supra* note 28, at 6–7.

35. *Id.* at 7.

36. CEDAW, *supra* note 1, at art. 3.

lives.³⁷ Some scholars assert CEDAW’s “transformative” value in that by recognizing the systemic and structural nature of discrimination against women, CEDAW gives the global women’s rights movement the tools to fundamentally change women’s lives.³⁸ The fact that 189 states have ratified CEDAW certainly underlies the potential of global realization of women’s human rights.³⁹

However, states parties generally fail to protect and ensure women’s human rights under CEDAW. Multiple issues have led to lackluster implementation. These include extensive reservations by states parties, most notably from Islamic states seeking to modify their obligations as not to conflict with Sharia law, and recent threats of global backlash driven by extremism and economic austerity.⁴⁰ Moreover, CEDAW has been criticized for representing the experiences of only certain kinds of women (middle-class, White, Western women) and ignoring the experience of others.⁴¹

Despite the half-hearted global implementation of the Convention, CEDAW is now considered among the “core” international human rights treaties, alongside the ICCPR, ICESCR, and the Convention on the Rights of the Child. Additionally, women’s human rights have grown more prominent after several World Conferences on Women during the 1990s, leading other human rights bodies to comment on women’s rights when making concluding observations.⁴² However, CEDAW is still the only legally binding international document that specifically addresses women’s interests and gender equality. Therefore, CEDAW and the work of the CEDAW Committee remain crucial for the future of women’s human rights globally.

III. METHODOLOGY

This study used a textual analysis of the concluding observations of CEDAW. Although “patriarchy” is absent from CEDAW itself, the CEDAW Committee may still be utilizing the concept when interpreting state obligations. The primary documents in which the CEDAW Committee expresses their interpretation of CEDAW are General Recommendations and concluding

37. Rikki Holtmaat, *The CEDAW: A Holistic Approach to Women’s Equality and Freedom*, in WOMEN’S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL, AND NATIONAL LAW 95, 110 (Anne Hellum & Henriette Sinding Aasen eds., 2013).

38. See, e.g., Feride Acar, Why CEDAW Shows the Way Forward for the Women’s Movement (paper presented to Women’s Worlds 2005: 9th International Interdisciplinary Congress on Women Seoul, Korea) (June 19–24, 2005); Holtmaat, *supra* note 37, at 102–05.

39. For current states parties, see *Convention on the Elimination of All Forms of Discrimination against Women*, UN TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Jan. 1, 2021) [<https://perma.cc/B6CH-2Z4C>] (listing current states parties to the convention).

40. Christine Chinkin, *The Convention on the Elimination of All Forms of Discrimination against Women*, in HANDBOOK ON GENDER IN WORLD POLITICS 145, 147, 151 (Jill Steans & Daniela Tepe-Belfrage eds., 2016).

41. *Id.* at 148.

42. Hanna Beate Schöpp-Schilling, *Treaty Body Reform: The Case of the Committee on the Elimination of Discrimination against Women*, 7 HUM. RTS. L. REV. 201, 215–16 (2007).

observations. The latter documents were chosen for this research because they are more numerous and are frequently published. Therefore, concluding observations are more likely to illustrate trends over time. As the purpose of this study is to capture and examine the CEDAW Committee's use of patriarchy as a term, the primary method of data collection was searching documents for selected terms.⁴³ A total of 673 documents containing CEDAW concluding observations dating from 1985 to 2018 were searched.⁴⁴ This date-range was chosen because it includes all concluding observations from the conception of CEDAW until the end of 2018, thus making it the most comprehensive dataset available.

Two words were searched within the observations: "patriarchy" and "patriarchal." These words were selected to maximize the coverage of how the concept of patriarchy is utilized by the CEDAW Committee. Each instance of either "patriarchy" or "patriarchal" was recorded, alongside (i) the year of the concluding observation, (ii) the number of times the term(s) were mentioned within the observation, (iii) the article(s) under CEDAW being discussed when the term was mentioned, and (iv) the state party being observed.

Out of the 673 documents containing concluding observations searched, the words "patriarchy" and "patriarchal" were collectively located in 301 of them.⁴⁵ Within these documents, the word "patriarchy" was found only three times whereas the word "patriarchal" was found 330 times. It should be noted that "patriarchy" is a noun and "patriarchal" is an adjective. As such, the concept of patriarchy is overwhelmingly being used by the CEDAW Committee as a descriptor. This may have implications for an analysis of what "patriarchy" means to the CEDAW Committee within the interpretation of CEDAW itself (discussed further below). Furthermore, by only searching for key terms, there may be instances where the CEDAW Committee has drawn on the concept of patriarchy without explicit reference (in ways other than using "patriarchal"), which these searches would have missed.

The Appendix includes representations of this collected data. Table 1 represents the number of mentions of "patriarchy" and "patriarchal" in observations alongside the state party being observed; the list is in descending order from most mentions to least (averaged across the total number of completed observations of each state party from 1985 to 2018). Table 2 isolates the top ten states parties that have the most mentions (averaged) in their concluding observations. Table 3 isolates the states parties that have never had the term "patriarchy" or "patriarchal" mentioned in their concluding observations; the list is in descending order according to the total number of completed observations between 1985 and 2018. Figure 1 represents the context of mentions within the concluding observations. Figure 2 is a line graph detailing the number of

43. No specific software was used to perform these searches. The author and research assistant used the search functions available in PDF or Word documents.

44. These were all of the concluding observations available to search at the time of writing this Paper.

45. No additional software was used by the author to calculate the mentions other than Excel.

“patriarchy” and “patriarchal” mentions according to the year of each concluding observation.

IV. FINDINGS: “PATRIARCHY” AND “PATRIARCHAL” IN CONCLUDING OBSERVATIONS

The following discussion explores this study’s findings according to the breakdown of data as represented in the tables and figures in the Appendix.

A. Context of “Patriarchy” or “Patriarchal”: Article 5(a)

The CEDAW Committee’s concluding observations are organized thematically and in order of the provisions in the Convention they address. The CEDAW Committee’s use of the words “patriarchy” or “patriarchal” in observations can offer insight into how the CEDAW Committee defines the words. Figure 1 in the Appendix illustrates this. The chart shows the categories in which the CEDAW Committee uses these terms, from most to least common. According to Figure 1, the context in which the CEDAW Committee mentions “patriarchy” or “patriarchal” the most is in reference to “stereotypes and harmful practices.” This context concerns Article 5 of the Convention (75.2%).

The terms are also used to a much lesser extent in the following categories: Article 7 “participation in political and public life” (9.2%); General Recommendations 19 and 35⁴⁶ “Violence against Women” (4.9%); Article 10 “education” (3.9%); Article 16 “marriage and family relations” (1.3%); Article 14 “rural women” (2%); Article 12 “health” (1.6%); Article 13 “economic and social benefits” (0.7%); “indigenous women” (0.7%); Article 1 “definition of discrimination against women” (0.3%); and Article 15 “legislative framework” (0.3%). In many of these categories where “patriarchal” was used, so too was the term “stereotypes” and the phrase “harmful traditional practices,” again signaling back to Article 5 of the Convention.

Article 5 is one of the thematic pillars of CEDAW and, along with Article 2, permeates the remainder of CEDAW’s provisions. Article 5 states that:

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common

46. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women, U.N. Doc. A/47/38 (1992); Comm. on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017).

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.⁴⁷

Article 5 has two parts; subparagraph (a) is about eliminating harmful gender stereotypes generally. It concerns the modification of social and cultural practices that reinforce negative gender stereotypes about the roles of women in public and private spaces.⁴⁸ The CEDAW Committee considers “social and cultural patterns of conduct” to include religious, traditional and customary beliefs, ideas, rules, and practices.⁴⁹ Subparagraph (b) targets gender roles in the family, particularly parental roles. Article 5(b) is concerned with challenging the idea that women are the primary caregivers of children and have the sole responsibility of housework. States parties are obligated to educate and encourage men and women to equally take on these roles.⁵⁰

Within the overall scheme of CEDAW, Article 5 is an important provision. The elimination of gender-based stereotypes is one of three underlying obligations and permeates the specific provisions.⁵¹ It is in Article 5 where CEDAW steps beyond general obligations to change laws and demands modifications to social and cultural norms that foster discrimination against women.⁵² As an example, the CEDAW Committee, through General Recommendation 19, utilized Article 5 as an interpretative tool to incorporate gendered violence against women into the text of the Convention.⁵³ Read in conjunction with Article 2(f) of the convention, Article 5 is essential in challenging the systematic and structural oppression of women.⁵⁴ As Rikki Holtmaat, professor of international law, argued, Article 5 is a “vehicle for cultural change.”⁵⁵

Despite a few instances, mentions of “patriarchy” or “patriarchal” are primarily associated with Article 5(a).⁵⁶ The CEDAW Committee has used the

47. CEDAW, *supra* note 1, art. 5.

48. *Id.* at art. 5(a).

49. *See, e.g.*, General Recommendation No. 28, *supra* note 4, at ¶ 5; Comm. on the Elimination of Discrimination against Women, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, U.N. Doc. CEDAW/C/GC/31 (Nov. 14, 2014).

50. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: The Former Yugoslav Republic of Macedonia, ¶ 20, U.N. Doc. CEDAW/C/MKD/CO/3 (Feb. 3, 2006).

51. *See* Comm. on the Elimination of Discrimination against Women, General Recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 282–290, U.N. Doc. HRI/GEN/1/Rev.7 (2004) (detailing the other two obligations: to improve the current status of women and ensure full equality of women before the law).

52. *See* Holtmaat *supra* note 37, at 106–07; Elizabeth Sepper, *Confronting the Sacred and Unchangeable: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty*, 30 U. PA. J. INT’L L. 585, 595 (2008).

53. *See* General Recommendation No. 19, *supra* note 46, at ¶ 11–12.

54. *See* Holtmaat, *supra* note 37, at 107.

55. *See id.* at 111.

56. As Figure 1 illustrates, the few rare instances of “patriarchal” outside of the context of article

word “patriarchal” in some of the following ways:

The Committee is concerned about the persistence of *patriarchal attitudes* and deeply-rooted stereotypes concerning women’s roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society . . .⁵⁷

Additionally:

The Committee is concerned about the entrenched *patriarchal attitudes* and the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society.⁵⁸

In response to the persistence of such negative stereotypes, the CEDAW Committee has used the term “patriarchal” when making recommendations to states parties under Article 5:

[States parties should] [a]dopt, without delay, a comprehensive strategy to modify or eliminate *patriarchal attitudes* and stereotypes that discriminate against women . . .⁵⁹

In two of the three occurrences where the word “patriarchy” was mentioned in concluding observations, the CEDAW Committee has similarly used the word within the context of Article 5(a). For example, the CEDAW Committee

5(a) (or without reference to gender stereotypes or harmful traditional practices) include one mention in reference to Article 1 “definition of discrimination against women” and one mention in reference to Article 15 “legislative framework.”

57. See Comm. on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Pakistan, ¶ 21 U.N. Doc CEDAW/C/PAK/CO/4 (Mar. 27, 2013) (emphasis added). See also Committee on the Elimination of Discrimination against Women, Concluding observations on the second periodic report of Syria, ¶ 21, U.N. Doc CEDAW/C/SYR/CO/2 (July 24, 2014); Comm. on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Kyrgyzstan, ¶ 15, U.N. Doc CEDAW/C/KGZ/CO/4 (Mar. 11, 2015); Comm. on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention: Uganda, ¶ 19, U.N. Doc CEDAW/C/UGA/CO/7 (Nov. 5, 2010); Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Cameroon, ¶ 24, U.N. Doc CEDAW/C/CMR/CO/3 (Feb. 10, 2009).
58. Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined initial to third periodic reports of the Marshall Islands, ¶ 22, U.N. Doc. CEDAW/C/MHL/CO/1-3 (Mar. 14, 2018) (emphasis added).
59. Comm. on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Greece adopted by the Committee at its fifty fourth session, ¶ 19(a), U.N. Doc. CEDAW/C/GRC/CO/7 (Mar 26, 2013)(emphasis added); see also Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women Nepal, ¶ 18(a), U.N. Doc. CEDAW/C/NPL/CO/4-5 (Aug. 11, 2011); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina, ¶ 20(c), U.N. Doc CEDAW/C/BIH/CO/4-5 (July 30, 2013); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of France, ¶ 19(a), U.N. Doc. CEDAW/C/FRA/CO/7-8 (July 25, 2016).

expressed:

concern that the prevalence of *patriarchy* and the subordination of women in society are root causes of violence against women.⁶⁰

The third mention of “patriarchy” was found in the context of state party submissions to the CEDAW Committee and therefore represents the views of the state party and not the views of the CEDAW Committee itself.⁶¹

Where the CEDAW Committee has used the phrase “patriarchal attitudes,” it refers to specific examples of certain practices that are manifestations of persistent negative gender stereotypes. These examples are commonly referred to as “harmful traditional practices,” rooted in tradition, religion, or culture. Although examples of such practices differ depending on the state under observation, they have included: FGM,⁶² so-called “honor killings,”⁶³ sexual initiation practices,⁶⁴ abduction of girls,⁶⁵ early and forced marriage,⁶⁶

60. Comm. on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Belarus, ¶ 20, U.N. Doc. CEDAW/C/BLR/8 (Oct. 28, 2016) (emphasis added); *see also* Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women United Arab Emirates, ¶ 24, U.N. Doc. CEDAW/C/ARE/CO/1 (Feb. 5, 2010).

61. Comm. on the Elimination of Discrimination against Women, Third periodic report of States parties: Ecuador, ¶ 97, U.N. Doc. CEDAW/C/ECU/3 (Jan. 10, 1991).

62. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana, ¶ 21, U.N. Doc. CEDAW/C/GHA/CO/5 (Aug. 25, 2006); Comm. on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Malawi, ¶ 20, U.N. Doc. CEDAW/C/MWI/CO/7 (Nov. 24, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the fourth and fifth periodic reports of Eritrea, ¶ 18, U.N. Doc. CEDAW/C/ERI/CO/5 (Mar. 12, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, ¶ 20 U.N. Doc. CEDAW/C/BRN/CO/1-2 (Nov. 14, 2014).

63. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of India, ¶ 20, U.N. Doc. CEDAW/C/IND/CO/4-5 (July 24, 2014); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth to sixth periodic reports of Iraq, ¶ 25(a), U.N. Doc. CEDAW/C/QAT/CO/1 (Mar. 10, 2014).

64. *See, e.g.*, Joint General Recommendation No. 31, *supra* note 49, at ¶ 8. Comm. on the Elimination of Discrimination against Women, Concluding Observations on the fourth and fifth periodic reports of Namibia, 18, U.N. Doc. CEDAW/C/NAM/4-5 (July 16, 2015); Comm. on the Elimination of Discrimination against Women, Concluding Observations on the seventh periodic report of Malawi, 20, U.N. Doc. CEDAW/C/MWI/7 (November 6, 2015).

65. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Swaziland, ¶ 18 U.N. Doc. CEDAW/C/SWZ/CO/1-2 (July 24, 2014); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Liberia, ¶ 21, U.N. Doc. CEDAW/C/LBR/CO/7-8 (Nov. 24, 2015).

66. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Mali, ¶ 17, U.N. Doc. CEDAW/C/MLI/CO/5 (Feb. 3, 2006); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined initial to third periodic reports of Solomon Islands, ¶ 22, U.N. Doc. CEDAW/C/SLB/CO/1-3 (Nov. 14, 2014); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Georgia, ¶ 18, U.N. Doc. CEDAW/C/GEO/CO/4-5 (July 24, 2014).

polygamy,⁶⁷ widow inheritance,⁶⁸ son preference,⁶⁹ and violence against women generally.⁷⁰

The use of the phrase “patriarchal attitudes” as connected to Article 5(a) is further supported by cross-referencing those uses with other uses of the phrase elsewhere in concluding observations. Where mentioned within the context of “participation in political and public life” (Article 7), the CEDAW Committee has used the phrase in the following way:

[the state party is urged to] [c]onduct awareness-raising activities for politicians and community leaders, in particular men, as well as the general public, on the importance of the full and equal participation of women in leadership and decision-making *with a view to eliminating social and patriarchal attitudes*.⁷¹

When the CEDAW Committee mentioned the term “patriarchal” in the context of “gendered-violence against women,” (General Recommendations 19 and 35) it stated:

The Committee is concerned, however, that violence against women is highly prevalent in the State party and that domestic violence is perceived as normal *owing to deep-rooted patriarchal attitudes*.⁷²

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67. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of the Gambia, ¶ 18, U.N. Doc. CEDAW/C/GMB/CO/4-5 (July 28, 2015); Concluding observations on the combined initial and second periodic reports of Swaziland, *supra* note 65, at ¶ 18.
68. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Mali, ¶¶ 17–18, U.N. Doc. CEDAW/C/MLI/CO/5 (Feb. 3, 2006); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Namibia, ¶ 20, U.N. Doc. CEDAW/C/NAM/CO/4-5 (July 28, 2015).
69. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Azerbaijan, ¶ 20, U.N. Doc. CEDAW/C/AZE/CO/5 (Mar. 12, 2015); Concluding observations on the combined fourth and fifth periodic reports of India, *supra* note 63, at ¶ 20.
70. *See, e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Cuba, ¶ 17 U.N. Doc. CEDAW/C/CUB/CO/6 (Aug. 25, 2006); Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana, *supra* note 62, at ¶ 22.
71. Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Maldives, ¶ 29(a), U.N. Doc. CEDAW/C/MDV/CO/4-5 (Mar. 11, 2015) (emphasis added). *See also* Comm. on the Elimination of Discrimination against Women, Concluding observations on the initial report of Qatar ¶ 27, U.N. Doc. CEDAW/C/QAT/CO/1 (Mar. 10, 2014) (calling upon the State party to eliminate patriarchal attitudes that deter women’s participation in politics by raising awareness of the importance of their participation).
72. Concluding observations on the combined fourth to sixth periodic reports of Iraq, *supra* note 63, at ¶ 28 (emphasis added). *See also* Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico, ¶ 11, U.N. Doc. CEDAW/C/MEX/CO/7-8 (Aug. 7, 2012) (rooting widespread discrimination and violence against women in patriarchal attitudes in the State party); Comm. on the Elimination of Discrimination against Women, Concluding comments

Similarly, where mentioned in the context of “education” (Article 10):

the committee is concerned at the persistence of negative *and patriarchal stereotypes* in school curricula and textbooks.⁷³

The Committee further urges states parties to:

modify or introduce, educational curricula and teaching methods that promote women’s human rights and *address the structural and cultural causes of discrimination against women*.⁷⁴

In sum, this Paper argues that the CEDAW Committee uses the terms “patriarchy” and “patriarchal” almost exclusively in connection with Article 5 of the Convention, particularly Article 5(a). Because the terms are being used with such consistency in both phrasing and context, this suggests that the CEDAW Committee is using these words intentionally. Moreover, the phrase “patriarchal attitudes” is usually used alongside “harmful traditional practices” or, generally, “cultural practices.” The implications of this usage will be discussed further below in Section V.

B. States with the Most Mentions of “Patriarchy” and “Patriarchal”

Having determined that the CEDAW Committee is intentionally and consistently using the terms “patriarchy” and “patriarchal,” it is appropriate to now turn to the second category of data collected by this study: the frequency of mentions of each term in the concluding observations state party in question. Just as the context of the use of “patriarchy” or “patriarchal” in concluding observations may offer insight into whether the CEDAW Committee has ascribed a particular meaning to “patriarchy,” so too might the identities of the state parties in whose observations those mentions occur. Tables 1, 2, and 3 record the states parties that have had either of these terms mentioned in their concluding observations (and those that have not). In analyzing such data, this study asks: Are

of the Committee on the Elimination of Discrimination against Women: Jamaica, ¶ 15, U.N. Doc. CEDAW/C/JAM/CO/5 (Aug. 25, 2006) (noting the Committee’s concern that patriarchal culture in the State party may contribute to the high levels of violence against women).

73. Comm. on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Ukraine, ¶ 34, U.N. Doc. CEDAW/C/UKR/CO/8 (Mar. 9, 2017) (emphasis added); *see also* Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Croatia, ¶ 26(a), U.N. Doc. CEDAW/C/HRV/CO/4-5 (July 28, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Portugal, ¶ 32, U.N. Doc. CEDAW/C/PRT/CO/8-9 (Nov. 24, 2015).

74. Comm. on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention: Cook Islands, ¶ 46, U.N. Doc. A/62/38 (2007) (emphasis added). *See also* Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Lebanon, ¶ 34, U.N. Doc. CEDAW/C/LBN/CO/4-5 (Nov. 24, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the second periodic report of Montenegro, ¶ 31(b), U.N. Doc. CEDAW/C/MNE/CO/2 (July 24, 2017).

there states or groups of states that the CEDAW Committee finds more “patriarchal” than others? If so, to what extent does this difference clarify any particular meaning of “patriarchy” the CEDAW Committee is using?

Table 1 illustrates that, of those states parties that have completed concluding observations, “patriarchy” or “patriarchal” are mentioned in approximately 84% of them, meaning that the majority of states parties have had the term used in their observations. This leaves only a minority of states parties who have never had the term mentioned in their observations (16%), which are discussed below. As the majority of states parties have had the terms mentioned in their concluding observations, it is difficult to suggest comparative trends between states which may indicate a particular meaning of “patriarchy” (at least not when considered in isolation from the other data in this study). For example, taken as a whole, the list does not represent any particular regional grouping of states, nor does it represent states that are more developed or less developed. The states listed are represented all across the UN Human Development Index ranging from “very high human development” to “low human development.”⁷⁵ However, Table 2 may illustrate a different picture.

Table 2 separates the data in Table 1 and only represents the top ten states parties with the most mentions of “patriarchy” and “patriarchal” in their concluding observations. These are Montenegro, Qatar, Syria, Afghanistan, Uzbekistan, Brunei, Kyrgyzstan, Iraq, Nepal, and Algeria. There are some comparative links to be made between these states: 30% are Middle Eastern countries, 20% are Central Asian countries, 40% are Arab states; and 60% are Islamic countries. However, as these numbers indicate, the comparative links are tenuous at best and only suggestive of some slight trends. As such, these data, considered in isolation, are not indicative of any particular meaning that might be ascribed to “patriarchy” by the CEDAW Committee. Rather, Table 2 must be considered alongside the context of usage, discussed further below in Section V.

C. States with Zero Mentions of “Patriarchy” or “Patriarchal”

Although it is difficult to draw any concrete comparative links between those states which have had “patriarchy” or “patriarchal” mentioned in their concluding observations, there are stronger comparisons to be made when considering those states parties which have never had either term mentioned in any of their observations. Table 3 lists thirty states parties that have zero mentions in their observations. Of those states listed, 50% are Western or European states (i.e. states that are in Europe and states whose current population is predominately derived from Europe during the era of European colonialism). Western and European states are overrepresented in this list and especially in light of the total number of completed observations made on those states between 1985 and 2018. Of those

75. See generally U.N. Development Programme, Human Development Index, <http://hdr.undp.org/en/content/human-development-index-hdi> (last visited Feb. 3, 2020) [<https://perma.cc/SAA6-9Q3K>].

states that have had six or more⁷⁶ completed concluding observations and yet have never had the term “patriarchy” or “patriarchal” used, 71% are Western or European countries (these include Norway, Australia, Austria, Bulgaria, Denmark, Germany, Iceland, New Zealand, Poland, United Kingdom, Finland, Ireland, Luxembourg, Slovakia, and Slovenia). Of those states that have had eight or more completed observations, 82% are Western or European countries.

There are further comparative links regarding the states parties in Table 3. On the UN Human Development Index, 95% of the states with zero mentions rank as “very high development” or “high development.” Of those states that have had six or more completed concluding observations and yet have never had the term “patriarchy” or “patriarchal” used, 76% are ranked as “very high development.” Of those states that have had eight or more completed observations with no mentions of “patriarchy” or “patriarchal,” 81% are ranked as “very high development.” Of those same states, 90% have been members of the United Nations since 1945 and have consistently been active members in international lawmaking (although, so have many of those states that have had mentions of “patriarchy” and “patriarchal,” as in Table 1).⁷⁷

These data on their own may indicate a number of different understandings of how the CEDAW Committee is using the concept of patriarchy with regards to implementation of CEDAW. It is possible that the lack of mentions in the observations of these states is a mere oversight on behalf of the CEDAW Committee. Equally, it is possible that the CEDAW Committee does not consider the states listed in Table 3 as “patriarchal” at all. Moreover, it could be argued that the CEDAW Committee is equating “high level development” (high life expediency and high levels of education) with post-patriarchy (or lesser patriarchy). Alternatively, the CEDAW Committee could be reserving the terms “patriarchy” and “patriarchal” for particular *indicators* of patriarchy, which 84% of states parties present and 16% of states parties do not. Such indicators may exclude high-level development, or at least the impacts of such development. For example, higher levels of education may be indicative of greater gender equality. However, it is impossible to make such arguments drawing from Tables 1, 2, and 3 alone. This set of data must be considered alongside the context of such mentions (described above in A) in order to gain a clearer understanding of how the CEDAW Committee is using these terms (discussed further in Section V).

D. An Increase of Usage Over Time

The CEDAW Committee has used the terms “patriarchy” and “patriarchal” since it began completing concluding observations in 1985. There were a few instances of usage during the 1990s and early 2000s, a dramatic increase in usage in 2006, and a continued upward trend in usage since 2006. This increase over

76. As the average number of concluding observations completed by all states parties.

77. See generally U.N., Member States, <https://www.un.org/en/member-states/> (last visited June 28, 2019) [<https://perma.cc/E3JY-R73C>].

time indicates that the terms are being used intentionally. The spike in the use of “patriarchal” in 2006 suggests that the particular composition of the CEDAW Committee at that time encouraged the use of the word in concluding observations.

CEDAW Committee members during 2006 included one man and twenty women—Cornelis Flinterman (the Netherlands), Magalys Arocha Domínguez (Cuba), Meriem Belmihoub-Zerdani (Vice-Chairperson, Algeria), Dorcas Coker-Appiah (Ghana), Mary Shanthi Dairiam (Malaysia), Françoise Gaspard (France), Salma Khan (Bangladesh), Huguette Bokpe Gnacadja (Benin), Tiziana Maiolo (Italy), Rosario Manalo (Chairperson, Philippines), Krisztina Morvai (Hungary), Pramila Patten (Mauritius), Silvia Pimentel (Vice-Chairperson, Brazil), Victoria Popescu Sandru (Romania), Hanna Beate Schöpp-Schilling (Vice-Chairperson, Germany), Glenda P. Simms (Jamaica), Heisoo Shin (Republic of Korea), Dubravka Šimonović (Rapporteur, Croatia), Anamah Tan (Singapore), Maria Regina Tavares da Silva (Portugal), and Xiaoqiao Zou (China).⁷⁸

CEDAW Committee members are chosen to represent equitable geographical distribution, but they act independently to state interests.⁷⁹ Members come from different backgrounds and bring different experiences to their roles. For example, in 2006, six members were lawyers, eight were academics, five were involved with politics, and six were involved with NGOs. Out of the CEDAW Committee’s twenty-one members in 2006, 62% had studied in Western or European universities.⁸⁰ These different professional and educational backgrounds

78. The Committee on the Elimination of Discrimination against Women, Members of the Committee 1982 – present (2007), <https://www.un.org/womenwatch/daw/cedaw/members.PDF> [<https://perma.cc/M3WB-C6VB>].

79. *Contra* Elizabeth Evatt, *Finding a Voice for Women’s Rights: the Early Days of CEDAW*, 34 GEO. WASH. INT’L L. REV. 515 (2002) (critiquing CEDAW during the Cold War years and the issue of Committee members allegedly advancing state interests).

80. Members of the Committee 1982 – present, *supra* note 78. Cornelis Flinterman studied at universities in the Netherlands and the United States. CEDAW Members Curriculum Vitae: Cornelis Flinterman (Netherlands), OHCHR, <https://www2.ohchr.org/english/bodies/cedaw/docs/memberscv/Flinterman.pdf> (last visited May 13, 2020) [<https://perma.cc/L6TY-KV8L>]. Meriem Belmihoub-Zerdani studied at universities in Paris and Geneva. CEDAW Elections 2010: Meriem Belmihoub-Zerdani (Algeria), OHCHR, <https://www.ohchr.org/Documents/HRBodies/CEDAW/Elections2010/Elected/BelmihoubZerdani.pdf> (last visited May 13, 2020) [<https://perma.cc/XM5F-7SNY>]. Françoise Gaspard studied at universities in France. CEDAW Members Curriculum Vitae: Françoise Gaspard, OHCHR, <https://www2.ohchr.org/english/bodies/cedaw/docs/memberscv/Gaspard.pdf> (last visited May 13, 2020) [<https://perma.cc/F7WA-37NA>]. Mary Shanthi Dairiam studied at a university in the United Kingdom. CEDAW Members Curriculum Vitae: Mary Shanthi Dairiam, OHCHR, <https://www2.ohchr.org/english/bodies/cedaw/docs/memberscv/MaryShanthiDairiam.pdf> (last visited May 13, 2020) [<https://perma.cc/P8SS-9QGX>]. Salma Khan studied at universities in the United States and England. Profile: Salma Khan, COMMONWEALTH FOUND. (Apr. 26, 2013), <https://commonwealthfoundation.com/profile-salma-khan/> [<https://perma.cc/XS7Y-FDZ6>]. Pramila Patten studied at universities in the United Kingdom. CEDAW Elections 2010: Pramila Patten, OHCHR, <https://www.ohchr.org/Documents/HRBodies/CEDAW/Elections2010/PATTEN.pdf> (last visited May 13, 2020) [<https://perma.cc/E5K4-WLUH>]. Rosario Manalo partially studied in

may impact the way in which CEDAW Committee members analyze and apply the provisions of CEDAW or interpret the concept of patriarchy.⁸¹

Language used in human rights documents is often the product of compromises between states and other interest groups.⁸² Any changes or preferences for certain kinds of language over others are rarely justified in official (or unofficial) documents.⁸³ Without further research, such as interviews with some or all of these CEDAW Committee members, it is impossible to conclude whether “patriarchal” was introduced by one member or if its inclusion was a product of wider discussion.

V. IMPLICATIONS OF CONFLATING “PATRIARCHAL ATTITUDES” AND “HARMFUL TRADITIONAL PRACTICES”

Pulling together these threads of data, there are arguments to be made about the meaning the CEDAW Committee has ascribed to “patriarchy” through its use of “patriarchal” in concluding observations. These assumptions are both insightful and concerning.

Since 2006, CEDAW Committee members have consistently used “patriarchal” in their observations. This indicates purposeful use of the word. Considering both the context of mentions and the states parties that have—and have not—mentioned “patriarchy” in their observations, there is an upward trend in the CEDAW Committee’s use of the concept of “patriarchy.” “Patriarchal,”

the United States. CEDAW Elections 2010: Rosario Manalo, OHCHR, https://www.ohchr.org/Documents/HRBodies/CEDAW/Elections2016/CV_RosarioManalo.pdf (last visited May 13, 2020) [<https://perma.cc/QCV7-HAEG>]. Dubravka Šimonović studied at a university in Croatia. Dubravka Šimonović, Special Rapporteur on Violence against Women, its causes and consequences – Biographical Note, OHCHR, <https://www.ohchr.org/en/issues/women/srwomen/pages/dubravkasimonovic.aspx> (last visited May 13, 2020) [<https://perma.cc/D4DW-83KG>]. Hanna Beate Schöpp-Schilling studied at universities in Germany and the United States. CEDAW Members Curriculum Vitae: Dr. Hanna Beate Schöpp-Schilling (Germany), OHCHR, <https://www2.ohchr.org/english/bodies/cedaw/docs/memberscv/Sch%C3%B6ppSchilling.pdf> (last visited May 13, 2020) [<https://perma.cc/E5Z9-4CJV>]. Glenda Simms studied at a university in Canada. Glenda Simms, UNIVERSITY OF MANITOBA, <https://umanitoba.ca/governance/honours/honorary-degrees> (last visited May 13, 2020) [<https://perma.cc/ME7H-676G>]. Heisoo Shin studied at university in the United States. CEDAW Elections 2010: Curriculum Vitae of Heisoo Shin, OHCHR, https://www.ohchr.org/Documents/HRBodies/CESCR/Elections2010/CV-REPUBLICOFKOREA_HeisooSHIN-ENG.pdf (last visited May 13, 2020) [<https://perma.cc/XM5U-BAYB>]. Anamah Tan studied at a university in the United States. Biography, DR. ANAMAH TAN, http://www.anamahtan.com/bio_edu.html (last visited May 13, 2020) [<https://perma.cc/QN4N-BUXQ>]. Xiaoqiao Zou studied at a university in Australia and in the United States. CEDAW Members Curriculum Vitae: Xiaoqiao Zou, OHCHR, <https://www2.ohchr.org/english/bodies/cedaw/docs/memberscv/Xiaoqiao.pdf> (last visited May 13, 2020) [<https://perma.cc/M3LB-VJZZ>].

81. ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? 127–128, 267ff (2017) (discussing how different regions of the world interpret “international law” very differently and that this is reflective (or caused) by regional tertiary education).
82. Sally Engle Merry, *Human Rights Law and the Demonization of Culture (and Anthropology Along the Way)*, 26 POL. & LEGAL ANTHROPOLOGY REV. 55, 59 (2003).
83. *Id.*

used in connection with Article 5(a), almost exclusively refers to particular “harmful traditional practices” which are singled out in some states’ parties but not others. These practices may be seen by the CEDAW Committee as clear indicators of “patriarchy” (hence why some states’ parties do not have the term mentioned while others have multiple mentions in their concluding observations). If this interpretation is correct, however, the CEDAW Committee’s use of the term may be open to serious criticism. Such criticism is not new; it is related to how the CEDAW Committee has historically interpreted and used the concepts of culture and “harmful traditional practices” under Article 5(a) (discussed further below).⁸⁴ The implication of conflating certain “harmful traditional practices” with “patriarchy” renders patriarchy synonymous with those practices, which replicates the problematic dichotomy between non-Western/non-European states and Western/European states.

A. Critiques of the CEDAW Committee’s Understanding of Culture and “Harmful Traditional Practices” in Article 5(a)

The CEDAW Committee’s understanding of “culture” under Article 5(a) has been the subject of ongoing criticism by feminist scholars, particularly anthropologists.⁸⁵ Sally Engle Merry asserted that CEDAW Committee instruments, including both observations and general recommendations, position “culture as a barrier to progress.”⁸⁶ In 2003, Merry argued that a conflict between culture and the human rights of women was increasingly a feature of many human rights treaty documents, including those of the CEDAW Committee.⁸⁷ “Culture” is often portrayed as a fixed set of beliefs and practices, as opposed to fluid and ever-changing.⁸⁸ It is often confined to customs, traditions, or religious practices which are based on beliefs and values of the “past.”⁸⁹ Thus, according to the concluding observations, the underlying message of Article 5 is that by suppressing or eliminating old practices and beliefs (“culture”), gender discrimination will be solved.⁹⁰ These old (“traditional”) practices and beliefs would be replaced by “modern” practices and beliefs. This, according to Merry, is based on an incorrect interpretation of what “culture” actually is.⁹¹ The distinction between “tradition” on the one hand and “modernity” on the other risks “othering” or “exotifying” culture as something some parts of the world experience and others

84. See e.g., *id.*; Lauren Bock Mullins, *CEDAW: The Challenges of Enshrining Women’s Equality in International Law*, 20 PUB. INTEGRITY 257 (2018); Bronwyn Winter, Denise Thompson & Sheila Jeffreys, *The UN Approach to Harmful Traditional Practices*, 4 INT’L FEMINIST J. POL. 72 (2002); RIKKI HOLTMAAT & JONNEKE NABER, WOMEN’S HUMAN RIGHTS AND CULTURE: FROM DEADLOCK TO DIALOGUE (2010).

85. See HOLTMAAT & NABER, *supra* note 84.

86. Merry, *supra* note 82, at 60.

87. *Id.* at 60–61; see also Winter *et al.*, *supra* note 84.

88. See Mullins, *supra* note 84, at 262; Merry, *supra* note 82.

89. See Merry, *supra* note 82, at 62.

90. *Id.*

91. *Id.* at 67.

do not.⁹² This distinction is further emphasized by the CEDAW Committee expressly commenting on cultural practices that create negative gender stereotypes with respect to non-European and non-Western states in Article 5(a), while commenting mostly on stereotypes regarding parental roles with respect to Western and European countries in Article 5(b).⁹³

Some contemporary scholarly understandings of culture contradict that of the CEDAW Committee. The CEDAW Committee has interpreted culture as fixed and based on old beliefs, rules, and practices which can simply be eliminated to promote gender equality for women. However, Merry argues that culture is instead “unbounded,” and it is often contested internally and externally by the relevant society.⁹⁴ “Culture” can be understood as connected to power relations, and its meaning is influenced by the society’s institutional arrangements and political economy.⁹⁵ As a consequence, culture cannot be isolated from its social, legal, economic, and political contexts. As each of these structures changes, so too does culture.⁹⁶ Some concluding observations that mention “patriarchal attitudes” root responsibility for widespread violence against women within traditional cultural practices, and not, for example, in the state’s lack of adequate housing, healthcare, or pay equity for women.⁹⁷ Therefore, there is a disconnect between the purpose of Article 5(a), which is about structural change, and its interpretative application by the CEDAW Committee.

The use of “harmful traditional practices” has similarly been the subject of critique by feminist scholars.⁹⁸ The phrase has its origins within a global (predominately Western ex-colonial powers) condemnation of the practice of FGM occurring in the Global South.⁹⁹ In 1995, the UN Office of the High Commissioner of Human Rights published *Fact Sheet 23: Harmful Traditional Practices Affecting the Health of Women and Children*, which outlined the various traditional practices of concern.¹⁰⁰ These “harmful traditional practices” are the same as those the CEDAW Committee refers to in its concluding observations that also appear alongside mentions of “patriarchal attitudes.” Although the Fact Sheet acknowledges that some of the traditional practices are present all across the

92. See generally Maleiha Malik, *Feminism and its “Other”: Female Autonomy in an Age of “Difference”*, 30 CARDOZO L. REV. 2613 (2009).

93. Rikki Holtmaat, THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 141, 156 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012); see also HOLTMAAT & NABER, *supra* note 84; *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, ¶¶ 16–72 U.N. Doc A/HRC/4/34 (Jan. 17, 2007).

94. Merry, *supra* note 82, at 67.

95. *Id.*

96. *Id.* at 69.

97. See Sally Engle Merry, *Constructing a Global Law-Violence against Women and the Human Rights System*, 28 L. & SOC. INQUIRY 941, 961 (2003).

98. See CHIA LONGMAN & TAMSIN BRADLEY, INTERROGATING THE CONCEPT OF HARMFUL CULTURAL PRACTICES: GENDER, CULTURE AND COERCION (2015).

99. Winter et al., *supra* note 84, at 73.

100. U.N. Office of the High Commissioner of Human Rights, *Fact Sheet 23: Harmful Traditional Practices Affecting the Health of Women and Children* (Aug. 1995).

world, many of the examples relate to specific parts of the world, namely the Global South.¹⁰¹ Moreover, the Fact Sheet ends with the assertion that “most women in developing countries are unaware of their basic human rights.”¹⁰² This not only positions “culture” as a barrier to human rights, but it also positions “third world” women as inherent victims of their own culture.¹⁰³

“Harmful traditional practices” has since been used by the CEDAW Committee (and the Committee on the Rights of the Child) as a catchall phrase to refer to very specific practices and, more often than not, in relation to countries in the Global South.¹⁰⁴ Again, emphasizing “harmful traditional practices” in relation to some states and not others further risks “exotifying” culture. Defining culture in terms of harmful traditional practices can reinforce racist stereotypes against certain populations. For example, consistently singling out African states for polygamy or widow inheritance can reinforce colonial stereotyping of African women as sexually primitive and promiscuous (and thus, dangerous to the realization of their own human rights).¹⁰⁵

According to the data collected in this study, the term “patriarchal” seems to be closely aligned with the CEDAW Committee’s narrowly interpreted notion of culture under Article 5(a). Mentions of “patriarchal” appearing alongside “harmful traditional practices” support this alignment. Therefore, many of the same criticisms may be applicable to CEDAW’s conception of “patriarchy” itself. The CEDAW Committee connects specific harmful traditional practices to deeply rooted “patriarchal attitudes.” These are overwhelmingly referenced in concluding observations of non-Western and non-European countries and almost entirely absent from observations of Western and European countries. Even where practices commonly referred to as “harmful traditional practices,” such as FGM, are mentioned in Western or European states’ observations, they are not referred to as “harmful traditional practices” (or as arising out of “patriarchal attitudes”) at all.¹⁰⁶ If mentioned, they are merely referred to as “practices,” or, at most, “harmful practices.”¹⁰⁷ If culture is “othered” or “exotified” in this way, so too is “patriarchy.” Placing some regional groupings beyond the label of “patriarchal” creates the implication that European and Western states are somehow non-patriarchal or post-patriarchal, or they do not have harmful traditional practices based upon patriarchal attitudes of their own. This disparity also supports the

101. *Id.* (including examples of certain countries in the Asian region, South Asia, the Middle East, and parts of Africa.)

102. *Id.*

103. See Mohanty, *supra* note 21, at 66–67.

104. Joint General Recommendation No. 31, *supra* note 49.

105. Sylvia Tamale, *The Right to Culture and the Culture of Rights: A Critical Perspective on Women’s Sexual Rights in Africa*, 16 FEMINIST LEGAL STUD. 47, 52–53 (2008).

106. See, e.g., Comm. on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, ¶¶ 31–32, U.N. Doc. CEDAW/C/GBR/CO/8 (Mar. 14, 2019).

107. See, e.g., Comm. on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Australia, ¶ 25, U.N. Doc. CEDAW/C/AUS/CO/8 (July 25, 2018).

implication that the CEDAW Committee believes that highly developed states (overrepresented in Table 3 as having “zero mentions” of “patriarchal”) do not experience culture or patriarchy.

B. Comparing “Harmful Traditional Practices” Where “Patriarchal” Is Mentioned and Not Mentioned

In those concluding observations where “patriarchal” is mentioned, particular harmful traditional practices are specifically called out as stemming from deeply rooted patriarchal attitudes. However, in concluding observations where “patriarchal” is not mentioned, those same practices are not named as “harmful traditional practices.” This section will use violence against women to illustrate the seemingly differential treatment.

Violence against women is a significant problem across all states; for example, one-third of women in the world will be a victim of sexual violence during their lifetime.¹⁰⁸ In New Zealand, Australia, and the United Kingdom (UK), the percentage of women who are likely to be victims of sexual violence is comparable to the world average.¹⁰⁹ When commenting on the persistence of such violence in regards to these states, the CEDAW Committee uses generic phrases such as “behaviors and attitudes” that lead to violence against women.¹¹⁰ Alternatively, some concluding observations state that the CEDAW Committee “notes with concern” the high levels of violence in such states.¹¹¹ For example, in regards to Norway:

[The CEDAW Committee] *expresses its concern* at the high prevalence of violence against women in the State party ... It is also *concerned* at the apparent lack of awareness among women that marital rape is criminalized in the State party. The Committee reiterates its previous *concerns* at the lack of a

108. World Health Organization, Violence against Women (Nov. 17, 2017), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [<https://perma.cc/2H66-XJDM>].

109. *See e.g.*, one in four women in Australia experience sexual violence, *see* Comm. on the Elimination of Discrimination against Women, Concluding Observations on the eighth periodic report of Australia, ¶ 27(a), U.N. Doc. CEDAW/C/AUS/CO/8 (July 25, 2018); one in three women in New Zealand, *see* Concluding Observations on the eighth periodic report of New Zealand, *supra* note 4, at ¶ 25(a); one in four women in the UK, *see* Rape Crisis England and Wales, About sexual violence (Mar. 2017), <https://rapecrisis.org.uk/get-informed/about-sexual-violence/statistics-sexual-violence/> [<https://perma.cc/HZF6-UCBU>].

110. *See* Comm. on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, ¶ 34, U.N. Doc. CEDAW/C/GBR/CO/7 (July 30, 2013).

111. *See e.g.*, Concluding observations on the eighth periodic report of New Zealand, *supra* note 4, at ¶ 25; Concluding observations on the eighth periodic report of Australia, *supra* note 109, at ¶ 27; Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia, ¶ 28, U.N. Doc. CEDAW/C/AUL/CO/7 (July 30, 2010).

comprehensive law on prevention of violence against women.¹¹²

This can be contrasted to how the CEDAW Committee comments on such violence in observations of other states including, inter alia, Cuba, Egypt, Ghana, Kyrgyzstan, Montenegro, Pakistan, and Uzbekistan.¹¹³ In those observations, the CEDAW Committee not only uses the phrases “harmful traditional practices” and “patriarchal attitudes,” but also generally employs stronger language.¹¹⁴ For example, in Ghana’s case:

The Committee is *deeply concerned*, however, about the persistence of *adverse cultural norms, practices and traditions*, in addition to *patriarchal attitudes and deep-rooted stereotypes* regarding the roles and responsibilities of women and men in the family and in society, *which contribute to the persistence of violence against women and harmful practices*.¹¹⁵

Similar language is used in the case of Kyrgyzstan:

The Committee remains concerned about the persistence of *deep-rooted patriarchal attitudes and stereotypes* concerning the roles and responsibilities of women and men in the family and society, which discriminate against women and perpetuate their subordination within the family and society . . . *such stereotypes are root causes of violence against women . . .*¹¹⁶

To insinuate that violence against women in the UK, Australia, or New Zealand is

112. Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Norway, ¶ 23, U.N. Doc. CEDAW/C/NOR/CO/8 (Mar. 23, 2012) (emphasis added).

113. *See e.g.*, Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Ghana, U.N. Doc. CEDAW/C/GHA/CO/6-7 (Nov. 7, 2014); Comm. on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Egypt, U.N. Doc. CEDAW/C/EGY/CO/7 (Feb. 5, 2010); Concluding comments of the Committee on the Elimination of Discrimination against Women: Cuba, *supra* note 70; Comm. on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Pakistan, U.N. Doc. CEDAW/C/PAK/CO/3 (June 11, 2004); Comm. on the Elimination of Discrimination against Women, Concluding observations on the second periodic report of Montenegro, U.N. Doc. CEDAW/C/MNE/CO/2 (July 24, 2017); Comm. on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Uzbekistan, U.N. Doc. CEDAW/C/UZB/CO/5 (Nov. 24, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Kyrgyzstan, U.N. Doc. CEDAW/C/KGZ/CO/4 (Mar. 11, 2015).

114. *See id.*

115. Concluding observations on the combined sixth and seventh periodic reports of Ghana, *supra* note 113, at ¶ 22 (emphasis added); *see also* Concluding observations of the Committee on the Elimination of Discrimination against Women: Egypt, *supra* note 113, at ¶ 21; Concluding observations on the second periodic report of Montenegro, *supra* note 113, at ¶ 18; Concluding observations on the fifth periodic report of Uzbekistan, *supra* note 113, at ¶ 15.

116. Concluding observations on the fourth periodic report of Kyrgyzstan, *supra* note 113, at ¶ 15.

not based on patriarchal attitudes is more than disingenuous—it is incorrect.¹¹⁷ However, the CEDAW Committee appears to imply this by refraining from using “patriarchal attitudes” in regard to these states while consistently using those terms when commenting on the same practices in other (mostly non-Western or non-European) states.

C. Summary: The CEDAW Committee’s Concept of “Patriarchy” Through its Use in Concluding Observations

The CEDAW Committee uses “patriarchal” as an adjective to describe prevailing cultural practices and attitudes that foster ongoing discrimination against women. There is no doubt that the CEDAW Committee believes the elimination of these “patriarchal attitudes” forms part of the obligations on states under Article 5 of the Convention. It is consistently mentioned in the concluding observations of 84% of states parties that completed the reporting process at least once. How the CEDAW Committee uses the term “patriarchal” also illuminates their conceptualization of “patriarchy,” which seemingly influences their use of the adjective itself.

Conflating “patriarchal attitudes” with “harmful traditional practices” means that patriarchy is interpreted in a specific way. According to the CEDAW Committee, patriarchy is associated with traditional beliefs or practices including, inter alia, FGM, sexual initiation practices, early and forced marriage, polygamy, son preference, and violence against women. Perhaps the CEDAW Committee is using these practices as direct indicators of patriarchy. After all, these practices are incredibly harmful to women and are overt examples of oppression. Those states that harbor such practices have been referred to by one scholar as the “world’s most repressive nations.”¹¹⁸ However, just because there is a general absence of these more direct or coercive manifestations of oppression in a particular state does not render “patriarchal attitudes” absent.¹¹⁹ In fact, by avoiding the phrase “patriarchal attitudes” in some concluding observations but not in others, the CEDAW Committee paints a limiting picture of what a

117. See, e.g., Sarah Marsh, *Domestic Abuse Offences in London Rise 63% in Seven Years*, GUARDIAN (Feb. 27, 2019), <https://www.theguardian.com/society/2019/feb/27/domestic-violence-london-rise> [<https://perma.cc/BEF4-BDGK>]; Siobhan Fenton, *You Can’t Fix Domestic Violence if You Refuse to Believe It’s the Product of a Male-Dominated Society*, INDEPENDENT (Dec. 15, 2015), <https://www.theguardian.com/society/2019/feb/27/domestic-violence-london-rise> [<https://perma.cc/G6X9-5MJA>]; Katie Kenny & Blair Ensor, *Warped Masculinity Is Fueling NZ’s Fatal Family Violence Problem*, STUFF (May 15, 2019), <https://www.stuff.co.nz/national/crime/112594136/the-homicide-report-lays-bare-new-zealands-problem-with-family-violence> [<https://perma.cc/CE5E-LWXU>]; Serafin Dillon, *Violence Against Women: Men Aren’t the Problem or the Solution*, STUFF (Jan. 9, 2019), <https://www.stuff.co.nz/stuff-nation/109792758/violence-against-women-men-arent-the-problem-or-the-solution> [<https://perma.cc/BKA5-YGE9>]; Kristin Diemer, *To Change Attitudes to Family Violence, We Need a Shift in Gender Views*, CONVERSATION (July 22, 2015), <https://theconversation.com/to-change-attitudes-to-family-violence-we-need-a-shift-in-gender-views-44718> [<https://perma.cc/8PWG-P4XX>].

118. Christina Hoff Sommers, *Feminism by Treaty*, POL’Y REV. 37, 48 (2011).

119. See Winter et al., *supra* note 84, at 77.

“patriarchal” state looks like. Thus, according to the CEDAW Committee’s use of the term in concluding observations, “patriarchal” states are Middle Eastern, Asian, and South American states. Their cultural “traditions,” or religious practices, stand as a barrier to women’s human rights. A “patriarchal” state is not a modern (or “civilized”) state that has moved beyond historic, and thus archaic, cultural values. Once again, limiting patriarchy to mean culture and “harmful traditional practices” in this way risks “othering” and “exotifying” patriarchy itself.

The limited use of “patriarchal” in concluding observations also highlights the wasted potential of Article 5. As previously explained, Article 5 is an important provision and underlies the Conventions’ specific obligations. It is potentially transformative. Article 5 requires states parties to make structural changes, to modify their legal, economic, social, and cultural frameworks to help eliminate discrimination against women. However, consistently framing culture as “harmful traditional practices” rooted in “patriarchal attitudes” limits the ongoing dialogue between the CEDAW Committee and states parties to individual practices that, if removed, would satisfy a state party’s obligations under Article 5(a). Alternatively, it could be argued that because of the generally poor implementation of CEDAW among states parties, the CEDAW Committee is calling for the elimination of specific practices as small steps towards greater implementation across states in later years. Notwithstanding this possibility, reserving any reference to patriarchy for only a small number of practices sends a regressive message to states parties regarding their obligations under Article 5(a).

VI. RECONCILING FEMINIST UNDERSTANDINGS OF “PATRIARCHY” WITH THE JURISPRUDENCE OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

That “patriarchy” was left out of CEDAW itself is noteworthy because the 1980s was a period of time where the concept enjoyed much discussion in feminist literature.¹²⁰ Nevertheless, this study has shown that the CEDAW Committee draws upon the concept of patriarchy to interpret the Convention for purposes of concluding observations. However, the CEDAW Committee has utilized “patriarchy” in a specific way. According to the CEDAW Committee, the concept of patriarchy is limited to certain indicators. These are represented by “harmful traditional practices” and almost exclusively concern state obligations under Article 5(a). Therefore, the CEDAW Committee’s conception of patriarchy aligns itself with the traditional understanding of patriarchy as the overt subordination of women by men.¹²¹

To interpret obligations under the Convention, the CEDAW Committee does not appear to consider “patriarchy” as a system of power. Additionally, the CEDAW Committee is not using the dual-system understanding of patriarchy,

120. See Higgins, *supra* note 27, at 7–8.

121. See Walby, *supra* note 11, at 214; MILLET, *supra* note 11, at 25.

where patriarchy is understood as a social and political structure that operates alongside (or intertwined with) capitalism.¹²² It does not appear that the CEDAW Committee employs an intersectional and anti-essentialist approach either, as “patriarchal” is used in a specific context, not as an elastic term encompassing different experiences of “patriarchy.”¹²³ Once again, it appears that the meaning ascribed to “patriarchy” in concluding observations does not align with the potentially transformative provision of Article 5, which requires sweeping structural change beyond specific cultural practices.

A transformative interpretation of Article 5(a) that applies the concept of patriarchy necessitates an understanding of patriarchy as a system of power. Article 5(a) requires states parties to eliminate negative gender stereotypes that foster discrimination against women in both private and public spaces.¹²⁴ Acknowledging patriarchy as a system of power (that is, hierarchical and autonomous, permeating every facet of society) would require states parties, per Article 5(a), to dismantle patriarchal structures and attitudes, from the government to the family home.¹²⁵ This is not limited to certain practices, traditions, or beliefs. As Merry explains, “culture” cannot be separated from its legal, social, economic, or political context.¹²⁶ In order to eliminate patriarchy (patriarchal attitudes and stereotypes), *all* states parties are required to engage in legal, social, economic, and political transformation.

CONCLUSION

There are three conclusions to be drawn from this study. First, despite the fact that the word “patriarchy” does not appear once in the Convention, the CEDAW Committee has, since 2006, used “patriarchal” consistently in their concluding observations. The context of those mentions, which are overwhelmingly made in relation to Article 5, indicates that members use the word purposefully. Second, “patriarchal” is used in connection with particular “harmful traditional practices” that are singled out in some state parties but not others. The distinction resembles the dichotomy of non-Western/non-European states versus Western/European states. Third, the use of the term implies that “patriarchy,” according to the CEDAW Committee, is synonymous with specific examples of the direct subordination of women.

Considering “patriarchy” in a way that limits the transformative potential of Article 5 is unfortunate because it is one of the most essential provisions in CEDAW and obliges states to undergo meaningful structural change to eliminate discrimination against women. Moreover, this very limited interpretation of “patriarchy” fails to recognize the less overt ways in which women are structurally

122. See Eisenstein, *supra* note 17, at 208; HOOKS, *supra* note 12, at 17.

123. See Mohanty, *supra* note 21, at 65; LORDE, *supra* note 21, at 110; Crenshaw, *supra* note 21, at 1241.

124. See CEDAW, *supra* note 1, art. 5(a).

125. See HOOKS, *supra* note 12, at 17.

126. Merry, *supra* note 82, at 69.

oppressed across the world. It portrays “patriarchy” as existing in most of the world but not existing in a select part of the world. This apparent “exotification” of patriarchy will only create further barriers to the implementation of CEDAW, as it risks representing the Convention as imperialistic and not a significant and transformative framework for global gender equality.

APPENDIX

Table 1. List of states in order of “patriarchy” or “patriarchal” mentions in CEDAW Committee concluding observations (averaged across total number of completed observations of each state party from 1985-2018, represented here in descending order from most to least).

State Party	Average mentions of “patriarchy” and “patriarchal” across total number of completed concluding observations
Montenegro	3.0
Qatar	3.0
Syria	3.0
Afghanistan	2.5
Uzbekistan	1.6
Brunei	1.5
Kyrgyzstan	1.5
Iraq	1.3
Nepal	1.2
Greece	1.1
Algeria	1.0
Andorra	1.0
Jordan	1.0
Pakistan	1.0
Burkina Faso	0.9
Azerbaijan	0.8
Lebanon	0.8
Moldova	0.8
Rwanda	0.8
Singapore	0.8
Tajikistan	0.8
Turkey	0.8
Tuvalu	0.8

Ukraine	0.8
Bolivia	0.7
Burundi	0.7
Mauritania	0.7
Monaco	0.7
Oman	0.7
Samoa	0.7
Serbia	0.7
United Arab Emirates	0.7
Zambia	0.7
Bosnia and Herzegovina	0.6
Fiji	0.6
Georgia	0.6
Ghana	0.6
Guyana	0.6
Italy	0.6
Malawi	0.6
Malaysia	0.6
Myanmar	0.6
Russian Federation (Russia)	0.6
Republic of Korea (South Korea)	0.6
Turkmenistan	0.6
Uruguay	0.6
Vanuatu	0.6
Venezuela	0.6
Viet Nam	0.6
Albania	0.5
Bahamas	0.5
Bangladesh	0.5
Barbados	0.5
Benin	0.5
Chad	0.5
Democratic People's Republic of Korea (North Korea)	0.5
Eswatini	0.5
Equatorial Guinea	0.5

Honduras	0.5
Kazakhstan	0.5
Lesotho	0.5
Mongolia	0.5
Mozambique	0.5
Nauru	0.5
Saudi Arabia	0.5
South Africa	0.5
Argentina	0.4
Brazil	0.4
Central African Republic	0.4
Colombia	0.4
Cuba	0.4
Cyprus	0.4
Egypt	0.4
Eritrea	0.4
France	0.4
Gambia	0.4
India	0.4
Japan	0.4
Kuwait	0.4
Liberia	0.4
Liechtenstein	0.4
Lithuania	0.4
Maldives	0.4
Mauritius	0.4
Namibia	0.4
Seychelles	0.4
Trinidad and Tobago	0.4
Uganda	0.4
Zimbabwe	0.4
Armenia	0.3
Botswana	0.3
Belarus	0.3
Cabo Verde	0.3
Canada	0.3

Comoros	0.3
Cook Islands	0.3
Cote d'Ivoire	0.3
Czech Republic	0.3
Democratic Republic of Congo	0.3
Djibouti	0.3
Ecuador	0.3
El Salvador	0.3
Guatemala	0.3
Guinea	0.3
Guinea-Bissau	0.3
Indonesia	0.3
Jamaica	0.3
Kenya	0.3
Latvia	0.3
Loa People's Democratic Republic (Laos)	0.3
Macedonia	0.3
Madagascar	0.3
Mali	0.3
Malta	0.3
Marshall Islands	0.3
Micronesia	0.3
Niger	0.3
Papua New Guinea	0.3
Saint Vincent and the Grenadines	0.3
Sierra Leone	0.3
Solomon Islands	0.3
Tanzania	0.3
Timor-Leste	0.3
Togo	0.3
Tunisia	0.3
Angola	0.2
Cambodia	0.2
Cameroon	0.2
Croatia	0.2
Estonia	0.2

Gabon	0.2
Libya	0.2
Mexico	0.2
Netherlands	0.2
Nicaragua	0.2
Nigeria	0.2
Philippines	0.2
Sri Lanka	0.2
Suriname	0.2
Switzerland	0.2
Yemen	0.2
Belgium	0.1
Bhutan	0.1
Chile	0.1
Congo	0.1
Dominican Republic	0.1
Ethiopia	0.1
Haiti	0.1
Hungary	0.1
Paraguay	0.1
Portugal	0.1
Romania	0.1
Senegal	0.1
Spain	0.1
Sweden	0.1
Thailand	0.1
Antigua and Barbuda	0
Australia	0
Austria	0
Bahrain	0
Belize	0
Bulgaria	0
China	0
Costa Rica	0
Denmark	0
Dominica	0

Finland	0
Germany	0
Grenada	0
Iceland	0
Ireland	0
Israel	0
Luxembourg	0
Morocco	0
New Zealand	0
Norway	0
Palestine	0
Panama	0
Peru	0
Poland	0
Saint Kitts and Nevis	0
Saint Lucia	0
Slovakia	0
Slovenia	0
United Kingdom	0

Table 2. States that have zero “patriarchy” or “patriarchal” mentions in CEDAW Committee concluding observations (descending order from highest total number of concluding observations completed to the least).

State Party	Total number of completed concluding observations
Norway	9
Australia	8
Austria	8
China	8
Denmark	8
Germany	8
Iceland	8
New Zealand	8
Peru	8
Poland	8
Bulgaria	7

United Kingdom	7
Costa Rica	7
Finland	7
Ireland	7
Luxembourg	7
Panama	7
Israel	6
Saint Lucia	6
Slovakia	6
Slovenia	6
Grenada	5
Belize	4
Morocco	4
Saint Kitts and Nevis	4
Antigua and Barbuda	3
Bahrain	3
Palestine	1

Table 3. The top ten states that have the most “patriarchy” or “patriarchal” mentions in CEDAW Committee Concluding observations (average across total number of concluding observations completed).

State Party	Average mentions of “patriarchy” and “patriarchal” across total number of completed concluding observations
Montenegro	3.0
Qatar	3.0
Syria	3.0
Afghanistan	2.5
Uzbekistan	1.6
Brunei	1.5
Kyrgyzstan	1.3
Iraq	1.3
Nepal	1.2
Algeria	1.0

Figure 1. Context of mentions of “patriarchy” or “patriarchal” within CEDAW Committee Concluding Observations.

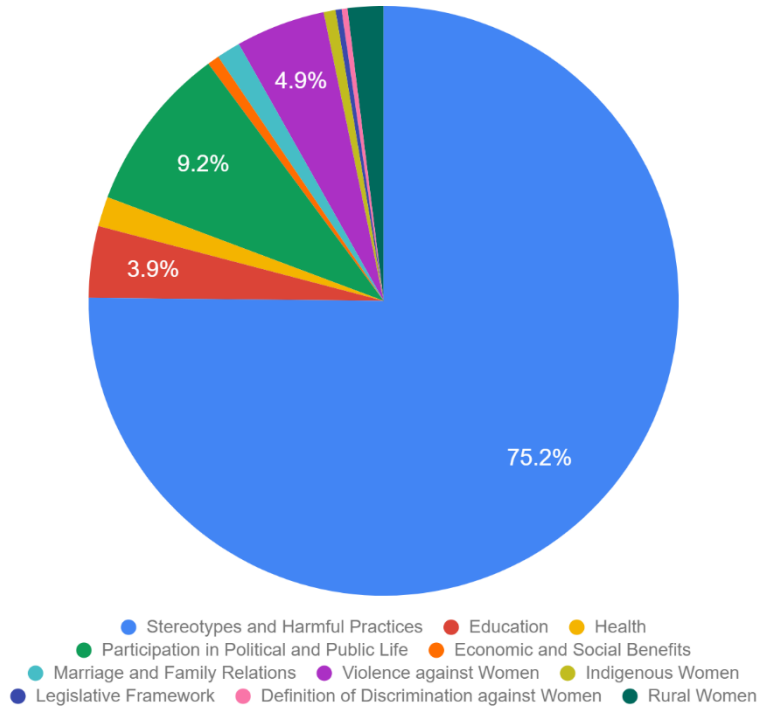


Figure 2. “patriarchy” or “patriarchal” mentions in CEDAW Committee Concluding observations over time.

