



Submission for the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Focus: 'sex-based' rhetoric as part of 'gender ideology' agenda to undermine the rights of women and LGBTIQ people

We welcome the thematic report on “Gender, sexual orientation and gender identity” by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

We note our concern that this opportunity for input might be exploited by individuals and associations who misuse and appropriate the language of gender in the service of anti-rights agendas; agendas that undermine and threaten the human rights of women, trans, non-binary, and gender non-conforming people.

This submission focuses on the concept of 'sex-based rights' or 'sex-based discrimination' constructed and employed as part of the 'gender ideology' agenda to undermine the rights of women (trans and cis-gendered), and of all trans, non-binary, and gender-diverse people. The concept serves to establish an ideological foundation to justify discrimination in law and in public opinion. The submission corresponds directly to questions 7, 10 and 11 in the call for input.

The Association for Women's Rights in Development (AWID) is a global, feminist, membership, movement-support organization working to achieve gender justice and women's human rights worldwide, with over 6,000 members from over 180 countries. For over 35 years, AWID has served as a reliable source of information, research, and analysis on key themes and trends pertaining to women's rights, gender justice, and feminist movements, and the contexts in which they operate.

1. What is new about the concept of 'sex-based rights' or 'sex-based discrimination'?

As “*discrimination on the basis of sex*” has long become standard phrasing in national and international law, it may appear that 'sex-based discrimination' is a widely accepted and self-explanatory concept. However, this cannot be farther from the truth. Historically, the concepts of *sex* and *gender* have been used interchangeably; **yet, the recent use of 'sex-based discrimination' seeks to establish a new - and extremely regressive - meaning of womanhood**, with severe implications for national and international policy and practice.

As elaborated below, this new meaning **reduces women to outdated and non-scientific perceptions of binary biological sex, and thus constitutes an ideological foundation for discrimination in law and practice and for justification of rights violations.** This submission also helps locate this phenomenon in context of the documented trend of appropriation of progressive and human rights concepts, in the service of actors and agendas seeking to undermine progress on gender equality and the recognition of sexual and gender-based violence and discrimination.

2. A warning sign: ‘sex-based rights’ in the context of the UK Gender Recognition Act (GRA)

The developments around the UK GRA tell a cautionary tale about the genuine threat presented to gender equality - and particularly, though not exclusively, to the rights of trans people - by the new ‘sex-based’ rhetoric. As recently as February 2021, the European Women’s Lobby employed similar rhetoric in Spain, in an appeal to the Spanish government to exclude gender and the very recognition of gender identity from legal documents. We thus see a growing spread of this trend in the sphere of law and policy, as a de-facto threat to rights.¹

The reform of the GRA, announced by the UK government in 2017 and concluded in 2020, was clearly needed; the Act has been assessed by the European Commission as falling short of international human rights standards and in comparison with the situation in other European Union Member States.² The reform eventually fell short of its potential - particularly around de-medicalisation, self-determination, and legal recognition for trans people under 18, and for non-binary people.³ It is especially concerning that the final decision did not reflect results of the public consultation initiated by the government; the majority of the respondents supported a more meaningful reform aimed at advancing equality, rights, and quality of life for trans people.⁴

The advocacy against the GRA reform using ‘sex-based’ rhetoric undoubtedly influenced the formal process and the public debate around it, although it is impossible to conclude on the extent of the role it actually had in the unfortunate outcome. While the ‘sex-based’ rhetoric failed in winning over the consultation results, it has planted and cemented a number of dangerous tropes in the public discourse, creating a more hostile environment for progress on the rights of trans people. Examples include the false juxtaposition of the rights of trans and cis-gendered women; erasure of the diversity of women’s identities and bodies; a climate of moral panic that demonizes trans women; and, the manipulation of concepts of *sex* and *gender* to undermine this important initiative to advance rights and justice, as explained below.

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<https://amecopress.net/El-Lobby-Europeo-de-Mujeres-alerta-al-Gobierno-sobre-el-peligro-de-incluir-terminos-como-genero-en-lugar-de-sexo-en-las-leyes>

² https://ec.europa.eu/info/files/lgbti-study-transgender-people_en

³ <https://www.stonewall.org.uk/what-does-uk-government-announcement-gender-recognition-act-mean>

⁴ <http://gna.files.parliament.uk/ws-attachments/1236318/original/GRA%20Consultation%20Analysis%20Report.pdf>

3. Manipulation of concepts of sex and *gender* to undermine progress on gender equality and reproduce patriarchal ‘common sense’ that reduces women to their bodies

As with ‘gender ideology’ agenda overall, ‘sex-based’ rhetoric builds on and spreads misrepresentation and misuse of *sex* and *gender* as concepts. **This rhetoric presents sex as a fixed and binary biological given (defined by genitalia, reproductive organs, chromosomes etc.) while gender is a subjective experience of identity.**⁵ This presentation exploits public ignorance on sex and gender, and stands in contradiction to the wealth of feminist, biological and sociological knowledge about human bodies and the human experience, and about the diverse cultures and societies that attribute them their meaning. It also stands in contradiction to decades of feminist theory and research by Black, Indigenous, decolonial, lesbian, trans and other researchers and movements. These scholars have critiqued any supposedly-universal definition of womanhood as failing to account for the lived realities of all women, that change radically along the lines of race, class, sexual orientation, disability, and other social factors.⁶

Social research and gender studies in the 20th century largely approached gender as a socially constructed category, but assumed biological sex as a given, and largely binary. However, leading scholars of gender in the late 20th century, such as Judith Butler, have studied sex - not only gender - as a concept that is in itself socially constructed. **Forcing human bodies and identities into narrow binary categories, be their sex or gender, is not a reflection of reality but rather an act of power, control over and erasure of all the people and communities who don’t fit these categories.** In reality, multiplicity of sexes and genders exist, and the relationships among body and identity are historically and culturally-specific. **Women have different and diverse genitalia, reproductive organs, chromosomal make-up, and different trajectories of attributing their bodies social and cultural meaning.** The new ‘sex-based’ rhetoric seeks to erase and misrepresent this reality.

Arguments about biology and “nature” have been used to create and justify discriminatory laws and policies throughout modern history. As women fought for and gained the right throughout the 20th century to enter higher education and research institutions, they have challenged the patriarchal bias across all disciplines of knowledge, from biology to social sciences, and have established designated programs for research and knowledge on sex, gender and sexuality. The “common sense” that justified women’s oppression as a natural outcome of their biology and reproductive abilities, has been shattered. Feminist scholars have analyzed and exposed the ways **patriarchy reduces women to their sex, their bodies, and then ensures their bodies belong to their fathers, husbands, families, or even the nation, but never themselves.**

⁵ Hines, Sally. "Sex wars and (trans) gender panics: Identity and body politics in contemporary UK feminism." *The Sociological Review* 68.4 (2020): 699-717.

⁶ Green, Kai M., and Marquis Bey. "Where Black feminist thought and trans* feminism meet: A conversation." *Souls* 19.4 (2017): 438-454.

Women are not the only victims of manipulation of biology and medical sciences for the purposes of social, cultural, and political exclusion and violence. White supremacy, racism, and ableism have long employed “biology” to oppress, colonize, and exploit Black and Indigenous peoples, ethnic or religious minorities such as Jews and the Roma and Sinti, people with disabilities, and many others. In all these cases, socially constructed categories formed the basis for supposedly scientific claims about the inferiority of groups of people - put simple, eugenics. Persons with sexualities diverging from the social norm have also been pathologized, criminalized, deemed as ‘unnatural’ - and in many contexts, still are.

4. The nexus of certain women’s rights groups and fundamentalist actors in advancing ‘sex-based’ rhetoric and ‘gender ideology’ discourse

The UK example demonstrates the leverage that groups speaking in the name of women’s rights can have in undermining progress on gender equality and the rights of trans women and all trans, non-binary, and gender non-conforming people - certainly in public discourse, but also in lobby and advocacy. UK-based examples include Fair Play for Women and A Woman’s Place UK; yet, we are also witnessing the emergence of groups active in the global arena and multiple countries such as the Women’s Human Rights Campaign and the LGB Alliance. Though relatively small in size, these groups enjoy a disproportionate amount of media coverage and attention, generating moral panic and a hostile environment for progressive policy.⁷

There is growing evidence of political and financial alliances between trans-exclusionary women’s rights groups and fundamentalist and far-right forces, particularly the Christian Right.⁸ These connections are especially evident in the United States, for example in the links between the Women’s Liberation Front (WoLF) and the conservative Heritage Foundation that advocates against LGBT rights, and Focus on the Family, a fundamentalist Christian organisation.⁹

The capacity of these groups to misleadingly present anti-trans rights agendas in rights-based terms presents a serious challenge for **policymakers and civil servants, requiring them to increase their own competence on gender and sexual rights, in order to make informed decisions. Critically, when the rights of trans women and trans people are in question - the voices of those people must be in the center of the discussion.**

⁷ Vic Parsons, *There were more responses to the Gender Recognition Act consultation from an anti-trans pressure group than actual trans people*, Pink News, 22 September 2020
<https://www.pinknews.co.uk/2020/09/22/gender-recognition-act-reform-announcement-fair-play-for-women-liz-truss-trans/>

⁸ Forthcoming, Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights 2nd Trends Report*, 2021.

⁹ *ibid.*

5. Recommendations

Recommendations for States

1. **Respect, protect and fulfill the rights of people of all genders without discrimination, and act to cease all forms of discrimination against trans, non-binary and gender non-conforming people.** Yogyakarta+10 Principles¹⁰ outline the right to bodily and mental integrity, autonomy and self-determination; the right to be free from torture and cruel, inhuman and degrading treatment on the basis of sexual orientation, gender identity, gender expression and sex characteristics; and the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sexual characteristics. This includes taking appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy that constitutes incitement to discrimination, hostility against trans, non-binary and gender non-conforming people whether by state or non-state actors.
2. **Uphold and strengthen human rights norms on gender and sexuality,** and ensure legal recognition of preferred gender on the basis of self-identification, without medical requirements and financial obstacles. The OHCHR report on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 2015 A/HRC/29/23 para.17 already stipulates to *“legally recognize transgender persons’ preferred gender, without abusive requirements, including sterilization, forced medical treatment or divorce.”*
3. **Uphold and create an enabling environment for civil society organising and advocating by and for the rights of trans, non-binary and gender non-conforming people,** and respecting and protecting their right to freedom of assembly and association.¹¹
4. **Uphold rights related to gender and sexuality as universal and inalienable; indivisible; interdependent and interrelated to all other rights.** This means engaging with human rights agreements and framework in good faith, not with the aim of coopting and pitting rights against each other to roll back on rights of trans, non-binary and gender non-conforming people.

Recommendations for States and Multilateral Institutions

5. **Adopt anti-discrimination and anti-harassment policies that explicitly recognize gender self-identification** and protect the rights of individuals in the face of transphobia, discrimination and oppression.
6. **Train staff in relevant public offices and institutions on rights related to gender and sexuality,** in a manner that affirms the right to bodily autonomy and integrity, and self

¹⁰ http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

¹¹ Yogyakarta+10 Principles, Relating to the Right to the Freedom of Peaceful Assembly and Association (principle 20)

determination, and is centered around protecting rights and eliminating discrimination faced by trans, non-binary and gender non-conforming people.

7. **Train policy-makers, civil servants and staff in relevant public offices and institutions on anti-rights trends and actors that operate in policy spaces.** Platforms like the Observatory on the Universality of Rights offer key resources such as the [Rights at Risk: Observatory on the Universality of Rights Trends Report](#).
8. **Allocate adequate financial and other resources for trans-led civil society organizations and groups in their diversity** (local, national, regional and global) to fully participate in public life, including generation of knowledge and advocacy for their rights.