



Women's Declaration International

On Sex vs Gender Identity in International Human Rights Law

Women's Declaration International is a group of women volunteers from around the world who are dedicated to protecting women's sex-based rights. Our volunteers include academics, writers, organizers, journalists, activists and health professionals, and aim to represent the totality of women's human experience.

The Declaration on Sex-Based Women's Rights was created by WDI's founders to remind nations of the need to maintain language that protects women and girls on the basis of sex, not "gender" or "gender identity," and has been signed to date by more than 37,000 people, from 160 countries, in collaboration with 517 organizations. This declaration does nothing more than continue to use the language agreed to in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹, which most countries in the world have ratified.

We are particularly concerned with any proposal that includes terms that move away from the commitments previously acquired by State Parties with respect to international human rights law, such as gender identity and expression.

The terms gender identity and gender expression have been promoted by a document that has not been discussed internationally², has not been defined in international law, lacks support and specificity and has serious implications in the erasure of women's rights.

The definitions drawn from the Yogyakarta principles³ promote an interchangeable use of sex and gender as if they were the same thing, obviating the most important thing, which is the factor of subordination or unequal power between one group and another. Moreover, they propose more than one gender, multiplying the sexes - which they consider the same - into an indefinite and diverse range of them.

¹ <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

² Yogyakarta Principles of 2007 subsequently expanded in 2017, in what is referred to as YP+10.

³ Gender identity: Gender identity refers to the internal, individual experience of gender as each person deeply feels it, which may or may not correspond to the sex assigned at birth, including the personal experience of the body (which may involve modification of bodily appearance or function through medical, surgical, or other means, provided it is freely chosen) and other expressions of gender, including dress, speech, and mannerisms. Y Gender expression: gender expression as the presentation of one's gender through physical appearance - including clothing, hairstyles, accessories, cosmetics - and mannerisms, speech, behavior patterns, names and personal references, and further noting that gender expression may or may not conform to a person's gender identity.

The CEDAW Convention clearly defined discrimination based on sex in Art 1: The term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Furthermore, in Article 5: States Parties shall take all appropriate measures 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.

The CEDAW Committee then explained the difference between sex and gender in General Recommendation No. 28 of 2010: Paragraph 5: The term "sex" refers to the biological differences between men and women. The term "gender" refers to the socially constructed identities, roles and attributes of women and men and the social and cultural meaning that society attributes to these biological differences, resulting in hierarchical relations between men and women and the distribution of power and rights in favor of men and to the detriment of women.

A careful reading of the Yogyakarta principles shows that the word gender has no definition whatsoever, focusing on a non-verifiable and non-universal subjective criterion of "how each person feels deeply", considering that sex is "assigned" at birth, when sex is simply observed and verified (feminine or masculine).

Additionally, instead of ending the stereotypes and subordinate roles assigned to women, "gender identity" reinforces and promotes them (through stereotypical "expressions" such as dress, speech and manners), even with surgical interventions, something that in other contexts would be considered mutilation and therefore a violation of human rights.

The CEDAW Convention recommends the abolition of stereotypes in Article 5. It would be difficult for a State to recommend to a woman or girl to mutilate her breasts, use hormones or have her vagina removed to "conform" to the stereotype of men.

These definitions assign a character of human right to the stereotype of woman or man (constructed by the fashion, beauty and biomedical industry), so that every human being could have a unique "gender identity" or "gender expression". For example, a man who calls or self-defines himself as a "transgender woman", what he is saying is that he identifies with the macho stereotype of women and femininity, which in turn is the justification for violence against him. Having certain personality is not a social condition, it is just an individual characteristic.

The question is whether it is possible not to feel identified with something that is inescapable, such as anatomical sex. You may not feel identified with the stereotype of that sex in the culture, but you cannot, no matter how many dresses and surgeries you have, pretend to be a sex you are not.

Moreover, there are legitimate reasons to distinguish between the sexes with respect to sports, prisons or other detention facilities, domestic violence shelters, rape crisis centers, locker rooms, bathrooms, and other areas where biology, safety, and/or privacy are involved. For

example, in terms of parity measures, it would be a disadvantage to women, if men identified with the macho stereotype of women, end up occupying positions, or obtaining the result of measures that seek to accelerate equality and redress previous disadvantage or inequality because they are women. Many others are the impacts of the use of "gender identity" on women's rights⁴.

In conclusion, when there is a lack of clear, universal, verifiable definitions, it is recommended to simplify language. In law, general and precise rights are guaranteed, not discretionary rights. A new specificity should not exclude others, and this is what is happening with the movement that seeks to institute the concept of gender identity and expression by excluding women because they are born women.

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⁴ See The Erasure of Sex: The Global Capture of Policies on Sex by Gender Identity Activists and the Effects on the Rights of Women and Girls <https://digitalcommons.uri.edu/dignity/vol7/iss4/1/>