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**SUBMISSION TO THE ICC'S OFFICE OF THE PROSECUTOR  
ON THE PROPOSED  
PRINCIPLES ON GENDER PERSECUTION  
by  
WOMEN'S DECLARATION INTERNATIONAL (WDI)**

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## SUMMARY

Women's Declaration International (WDI) is an international human rights organization that developed the Declaration on Women's Sex-Based Rights. The Declaration reaffirms women's and girls' sex-based rights, and challenges the discrimination we experience as a result of the replacement of the category of "sex" with that of "gender identity". It has signatories in 160 countries worldwide.

WDI calls on the ICC to ensure that the Principles clearly differentiate between "sex" and "gender". International law bases fundamental rights on sex, not gender. Eliminating "sex", "women" and "girls" from the Principles would violate, *inter alia*, the Charter of the UN, the Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action. Similarly, the CCPR and the Palermo Protocol on Trafficking use the term "sex", meaning biological sex, not gender. Article 1 of CEDAW refers to discrimination against women on the basis of sex. Article 16 of the Rome Statute makes clear that "gender" should be understood as no more than the social construction of "sex".

ICC's Policy on the Crime of Gender Persecution states: "*gender*" refers to social constructs and criteria about roles, expressions and behaviors used to define maleness and femaleness in a given context, "*sex*" refers to an individual's biological or physiological characteristics. (Article 9). Thus, there can be no "gender" without "sex". "Gender" has no legal definition and is changeable depending on the society and the time. Such vagueness cannot form the basis of a legal norm or the underpinning of prosecution principles. UN Women's Gender Equality Glossary states that *sex.... must not be confused with gender*. Replacing "sex" with "gender" reifies gender roles.

Women (and, where relevant, men) are protected by the prohibition of sex discrimination. The use of "gender persecution" is not necessary for justice. Indeed, it carries undesirable consequences in its wake. Only when you understand the underlying power structure can you intervene to break its hold. By relying on sex-stereotypes (gender) to define what is a crime, the principles support the underlying power structure rather than attack it. The erasure of "sex" as a category has profoundly negative effects on women and girls, undermining their protections and eliminating state obligations to achieve sex equality. It destroys the category of sexual orientation, which depends on the category of "sex", while putting lesbians at risk as heterosexual men are able to call themselves "lesbians".

Article 21 of the Rome Treaty refers to deprivation of fundamental rights *by reason of the identity of the group or collectivity*. Using the undefined "gender" makes it impossible to identify which group or collectivity is being referred to. Attacks on a woman for not wearing a hijab, or on a man wearing drag, are not carried out on the basis of the person's gender, but because of their sex. A man would not be attacked for going bare-headed, nor a woman for wearing a dress. A man is not denied his right to marry another man on the basis of his gender, but his sex. Lesbians subjected to so-called "corrective rape" are raped because of their sex. Their performance of gender roles is immaterial.

Para 27 of the ICC Policy states that human rights violations should not be culturally determined. Yet "gender" refers to a cultural understanding of sex roles. Basing the Principles on "gender" rests on that very cultural understanding. The use of such sex-role stereotypes is sexist and homophobic. The use of "gender" in place of "sex" leads to the collection of inaccurate and misleading data. This creates a significant impediment to the development of effective laws and policies aimed at eliminating violence or discrimination against women and girls. Instead, male violence and exploitation are hidden by the lack of statistics.

To rely only on cultural definitions of gender would make it impossible to protect women or to address harmful cultural practices or religious beliefs. It would set women's rights back a hundred years.

## INTRODUCTION

1. The International Criminal Court's (ICC) Office of the Prosecutor is developing a new set of Principles on Gender Persecution. Civil society groups have been asked to add their voice at the outset of the process to ensure that their communities and expertise are prioritized in the new Principles. Ultimately, the Principles will blend civil society expertise with that of global legal experts, ensuring a comprehensive approach that focuses on prevention, protection, survivor participation, and relief and recovery.
2. Women's Declaration International (WDI) is an international human rights organization that drafted the Declaration on Women's Sex-Based Rights (the Declaration).<sup>1</sup> The Declaration has been disseminated worldwide. At the time of writing, the Declaration has 38,665 individual signatories from 160 countries as well as 541 organisational collaborators. The Organisation is registered in the UK and Wales since 2021.
3. It is the understanding of WDI that the purpose of the Principles is to prevent violence against women and other vulnerable populations. Numerous studies and decades long practical experience the world over has shown that the best way to decrease violence is to increase equality and justice. To best prevent persecution, listen to the voices of the people on the ground. A survivor-centered approach to accountability and peacebuilding requires the meaningful participation of women and other vulnerable groups at all levels of decision-making.
4. Warning signs of violence are usually quite visible: when a society makes laws against women or other vulnerable people to minimize education, to ensure early marriage and prolific children, to prohibit the full range of health care, and to remove women and vulnerable populations from the public sphere, to prohibit voting, holding office, to limit participation in all realms of society and the ability to voice opinions, state positions, and the power to have agency over their own bodies and spaces.
5. Legal remedies such as injunctions prohibiting contact, laws mandating the removal of weapons, and declarations that certain laws violate international norms are important, but, by then, the violence has already started.
6. A bedrock fundamental belief must be that, under the law, all people are equal and deserve the same rights and responsibilities. It must be an equally fundamental belief that certain rights cannot be compromised. Basic rights remain the same no matter what sex that person is, no matter if that person has a disability, no matter if they are of a different ethnic group or belief system.
7. During times of conflict – whether by reason of an invasion, civil war, coup, or other political or military action – certain vulnerable populations are targeted for different reasons. Examples include, but are not limited to, that of the child soldiers in Congo, the rape of women as a tactic of genocide as in Rwanda, and the targeting of certain religious/ethnic groups such as Rohingya and Roma. Religion is often the purported reason to attack the lesbian and gay community, and often to attack women in general, but these rights infringements increase, too, in times of religious conflict or where groups seek to assert their power over society. Protections are

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<sup>1</sup> <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-full-text/>

established for migrant women and women in refugee camps because of the sexual violence directed toward them and the needs created by menses, pregnancy, and birth.

8. To listen to the voices of those most affected, humanitarian actors need to speak in a language those people understand and relate to. Women do not refer to themselves or others as body parts or biological processes. That demeaning language should never be used. In some societies, the arrival of menses is a day of celebration and welcoming the girl into womanhood; in other societies, it is a day of separation and isolation as a marking of difference from the more powerful males. The attempts to eliminate FGM are an example of how deep cultural norms cut. Because of the vast mosaic of cultures that make up the globe, the relief and recovery needed will vary, emphasizing the importance of listening to those most impacted.
9. Some societies vehemently reject the idea of anything other than two sexes. Some societies have long embraced the idea of several sexes. Some societies understand the international definition of sex as a biological definition and gender as a societal construct that differs from time to time and place to place. Equality doesn't mean sameness – it means that every person, no matter how unique, has a right to the same treatment and protections. All countries and all societies cannot be treated the same because they are not. When developing the principles, the ICC must incorporate these facts.

## SUBMISSIONS

### The rights of women are based upon the category of sex and eliminating “sex” in the principles violates international law

10. Sex is defined by the United Nations as *“the physical and biological characteristics that distinguish males and females.”* (Gender Equality Glossary, UN Women). It has long been understood in the arena of human rights that the stereotyped sex roles of men and women are a fundamental cause of women’s inequality and must be eliminated.
11. Gender, on the other hand, refers to *“the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. [...] These attributes, opportunities and relationships are socially constructed and are learned through socialization processes.”* (Gender Equality Glossary, UN Women)
12. Article 1 of CEDAW defines discrimination against women to 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.
13. If “sex” and “women” disappear, so does discrimination – a result that would violate every foundational human rights law.
14. The Committee on the Elimination of Discrimination Against Women, in General recommendation No. 33 (2015) on women’s access to justice (CEDAW/C/GC/33), states:

Discrimination may be directed against women on the basis of their sex and gender; “gender” refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences, which are consistently reflected within the justice system and its institutions. (para. 7)
15. It is clear that discrimination can be based on both sex and gender but that they are not the same thing.
16. To put only “gender” in the principles would mean leaving out half the human race. Women are punished for not playing the role they are relegated to by the prevailing patriarchy. To give those roles validity by reifying “gender” to define what a woman is results in solidifying the discrimination intended by the predominant caste – the opposite of human rights. Wearing a dress or lipstick or high heels does not define a woman: it is a caricature of a woman as defined by patriarchy to attempt to confine women in a role they did not choose. Stereotyped roles must be eliminated, not women.
17. A woman may be assaulted because she is wearing a short skirt thus invoking a violation of sexual mores. A woman may be assaulted because she is wearing pants thus invoking a violation

of patriarchal norms. Her clothing does not define her: it is simply a stereotype, a control mechanism. Article 10(c) of CEDAW says that the Committee will work for the elimination of any stereotyped concept of the roles of men and women at all levels. To act as if “gender” defines women is to accept the roles defined by men rather than women’s lived experience and to decimate women’s self-autonomy.

18. Making decisions based on “gender” is a form of control of women and children in the home or community, at school or in other educational settings and institutions, and in wider society, per Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices (8 May 2019) (CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev. 1). Making decisions based on characteristics such as sex, age, and ethnicity has often been justified by invoking sociocultural and religious customs and values, including misconceptions or deliberate myths about disadvantaged groups. (para. 7) Because of this historical and still relevant fact, Article 5 of CEDAW states:

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.

19. Human rights law specifically says states have an obligation to change the prescribed “roles” of women and men, not to reify them.

### **Eliminating “sex” erases the human rights that women and girls have long fought for**

20. As UN agencies have stated, gender is based on discriminatory sexual stereotypes against women. To mandate “gender” is precisely the opposite of human rights because that gives credence to sexual stereotypes as if they define women, which they do not. The definition of “gender” is based on regressive sex stereotypes and undermines women’s sex-based rights. This reliance on “gender” as the definition of women prevents women from organizing or working for women’s rights on the political level; violates freedom of belief and conscience; interferes with enforcement of anti-discrimination laws; violates women’s privacy, dignity, and safety; and prevents effective affirmative or positive action to remedy historical discrimination and violence against women.
21. A succinct summary of the harm to women from the erasure of sex is outlined in the 2022 article “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”.<sup>2</sup> The erasure of “sex” as a category has had and will continue to have profound negative effects on women and girls by undermining protections for them and eliminating state obligations to achieve sex equality, contrary to the central purpose of fundamental international human rights law.

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<sup>2</sup> Feminists from Europe, Asia, North America, Latin America, and Africa, published in *Dignity: A Journal of Analysis of Exploitation and Violence* (2022) Vol 7 Iss 4, <https://digitalcommons.uri.edu/dignity/vol7/iss4/1/>

22. Worldwide, women remain the most discriminated against and the most violently attacked group of people. In the United Kingdom, two to three women are murdered by men per week. In Afghanistan, the persons prohibited from societal participation are women. In Iran, the persons beaten for not wearing “proper” headgear are women. In El Salvador, the femicide capital of the world, the persons murdered are women. It harms women to minimize and disguise the violence against them by refusing to name the group to whom the violence is occurring.
23. Gender-identity ideology has resulted in the dehumanizing of women by referring to women only by their body parts and processes. In some places of the world, one is not allowed to say words such as “women”, “vagina”, “menstruation” or “breasts” because men are made “uncomfortable” by them as they exclude men from the category. That is the same discrimination in a different wrapping that says women cannot be let out of the house, must wear a full cover, or must not speak because men are made uncomfortable. The result is that women are not able to participate in society and are forced to be silent, thus violating many of the tenets of basic human rights.
24. When women speak out against this denigration, discrimination and violence result as outlined in the *Dignity* article. Women are accused of hate speech for disagreeing with men, while men claim they are the victims simply because they don’t get their way. Women’s books are burned, women are attacked on the Internet, and women are sued because they made factual and scientific statements that disagreed with men. One case highlighted in the *Dignity* article was in the United Kingdom, where a woman was fired for her “gender-critical beliefs.” In other words, men should be able to express their gender beliefs, but if women voice any criticism of those beliefs, women are punished and silenced. That is a violation of the most fundamental right of speech and opinion that is promised in many international documents.
25. Focusing on the social category of gender rather than the scientific category of sex would mean restructuring the antidiscrimination and equality laws, health care, hate speech, prisons and shelters, education, sports, free speech, and special measures to remedy discrimination against women. These concerns are not hypothetical, but outlined in the *Dignity* article with examples of men taking women’s places in women-only lists for public office, corporate boards, NGOs, and international agencies, thus harming women’s political policies and equality. Males have also taken positions in academia, government, and health institutions where they are dealing with women’s issues, a topic in which they have had no life experience. The result is that men are making decisions for women without women being at the table. The *Dignity* article outlines at least 30 cases since 2018 in the United Kingdom alone, showing the harm done to women and girls.
26. Male physical violence against women is an epidemic worldwide. The United Nations Declaration on the Elimination of Violence Against Women recognizes: *“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”*
27. Because of prevalent male violence, women need space safe from men to heal. Yet refusing to recognize sex means that men are allowed entrance into women’s spaces. Refusal to bow to



men's demands results in shelters being stripped of funding and women being expelled and assaulted in what should be safe spaces.

28. Women's freedom of speech must include the recognition of the right of women and girls to accurately describe the sex of those who have perpetrated violence against them. Public bodies such as the police, state prosecutors, and the courts should not impose an obligation on victims of violence to describe their assailants according to their "gender identity" rather than their sex. By doing so, the state is denying women's right to their own lived experience, and is punishing women for disagreeing with men.
29. In criminal trials where women have been attacked by a man, they have been instructed to refer to the defendant as a "she" even though it was clear to them that the defendant was male. This is coerced speech and a requirement that women accept the subjective belief of another. By mandating that the woman refer to the abuser as female, the victim's realities about male violence and her life experiences are denied. It is "gaslighting" of women worldwide to force women to accept that the objective reality she sees in front of her and has experienced her entire life is wrong.
30. As CEDAW/C/GC/35 points out, lesbians are targeted for discrimination, but they also suffer because men with obvious male characteristics claim to be lesbians and then attack lesbians who refuse to associate with them. Lesbians have also been prohibited from marching in Pride Parades unless they accept men in their ranks, and in September 2024 the matter of the *Lesbian Action Group Inc (LAG) v Australian Human Rights Commission (AHRC)* was heard by the federal Australian Administrative Appeals Tribunal because the AHRC denied an applicant lesbian organisation an exemption from the *Sex Discrimination Act 1984* (Cth) to meet in a woman-only space to discuss lesbian concerns: the Commission gave reasons that assembly could only be permitted if males who identified as lesbians were included in the category. Thus, lesbians are prohibited from free assembly to voice their political demands in violation of international norms. They have been effectively barred from collectively organizing or being recognized as distinct populations under the law; they have been prevented from forming civil organizations that exclusively promote their interests. This violates their right to freedom of assembly and their right to organize politically.
31. Reliance on gender-identity ideology has reduced women to body parts and functions. Rather than female humans, women are "pregnant persons", "breast-feeding persons", "menstruating persons", "persons with a vagina" or "persons with ovaries". This refusal to say the word obliterates women and destroys women's human rights. Body parts don't have rights – people do. We know that attacks on populations are predicated by name-calling of that group to dehumanize them. Again, this is not hyperbole – a woman in the United States was fired for breastfeeding, and a woman in Australia is defending a vilification lawsuit for stating publicly that a man who stimulated nipple discharge to feed his newborn baby cannot breastfeed. Reportedly, the former is not sex discrimination anymore, while the latter *is*, because allegedly a man could also "chestfeed".
32. Along with the Universal Declaration of Human Rights Article 25, CEDAW also emphasizes maternal rights and the social significance of maternity. (Article 11(2)) Maternal rights and services are based on women's unique capacity to gestate and give birth to children. Gender ideology erodes the social significance of maternity and undermines the maternal rights CEDAW

supports. It threatens to remove all meaning from these categories, as it constitutes a denial of the biological realities on which the status of being a woman, being a lesbian, and being a mother are based.

### **Using undefined “gender” as the protected group in the principles is a harmful cultural practice resulting in danger and damage to women and girls**

33. If women are erased by a failure to use the word “sex”, women will not be able to obtain accountability for biologically-driven sex crimes such as rape, forced childbearing, forced marriage, and sexual slavery. A survivor-centered approach must include “sex” for those millions of women who know they are raped and beaten and murdered not because of “gender” but because of their sex. A woman was held in contempt of court because she insisted on referring to the person who raped her with his penis as a man. She is the survivor. She experienced the rape by use of a penis. She knows the person who raped her was a man. Yet, she was not allowed to say so in a court of law.
34. There is no international norm regarding gender. States vary widely on what it means and definitions are changing with new scientific evidence on the harms and the failure of rigor in previous research. The lack of definition is not acceptable to many states. The definition of sex has not become obsolete: women still exist. Gender has no set definition and is changeable depending on the society and the time. Such vagueness cannot form the basis of a legal norm or the underpinning of prosecution principles.
35. The reference to “forced pregnancy” in the Principles means female sex by definition. In the discussion of gender apartheid, reproductive violence and forced sterilization are mentioned. Thus is a differentiation in the document made between “sexual” and “gender-based” violence. Neither term is defined. The principles must define “sex”. Failure of definition leaves a lacuna in the law which means that the perpetrators will escape accountability.
36. As requested by the submission, we agree that victims’ voices need to be heard – all victims’ voices. Those victims who are targeted for looking or acting outside the boundaries established by their society (stereotypes) must be heard. This includes both women and men, straight and lesbian/gay. Those victims who are targeted for looking or acting within the boundaries (roles) established by their society must also be heard. This includes women who are silenced, who are prohibited from attending school or working in certain jobs, or who are relegated only to the home. Men also who are forced into stereotyped roles, e.g. the military, should also be protected. Using “gender”, which is a stereotype itself, harms rather than helps both women and men. A victim-centered set of principles require that women are listened to. Erasing women from international law is not viewed as “progress” by women.

### **The definitions of sex and gender are not unknown or difficult concepts and could easily be each included and clearly differentiated from one another**

37. Lawyers deal with this kind of definitional issue all the time. Is it first degree or second? Is it knowingly or mistaken? Is it negligent or unintentional? The draft Principles do not use “sex” but only “gender” and do not define it. But “sex” and “gender” are very different things: they

cannot be used interchangeably, but must be defined. UN bodies have been very clear on this as illustrated by the following statements:

- a. Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on women and girls with disabilities (CRPD/C/GC/3): *“Sex’ refers to biological differences and ‘gender’ refers to the characteristics that a society or culture views as masculine or feminine.”*
  - b. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 (2010) on the core obligations of States parties under Article 2 (CEDAW/C/GC/28): *“Sex’ refers to biological differences between men and women, ‘gender’ refers to socially-constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.”* (para.5)
  - c. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 (2015) on women’s access to justice (CEDAW/C/GC/33): *“Discrimination may be directed against women on the basis of their sex and gender. Gender refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences, which are consistently reflected within the justice system and its institutions.”* (para. 7)
  - d. Committee on Migrant Workers, General comment No. 5 (2021) on migrants’ rights to liberty and freedom from arbitrary detention and their connection with other human rights (CMW/C/GC/5): There exists a State duty to ensure that men and women remain separated in order to guarantee that immigration detention takes place in non-punitive facilities. (para. 83(b)). This resolution from 2021 recognizes the obvious need for women to have a safe place separate from men due to the historical and worldwide violence toward women by men.
38. By conflating sex and gender, women, including lesbians, are left open to forced association with men and are thus vulnerable to violence. If you do not include “sex” as its own discrete category, women, including lesbians and girls, are insufficiently protected because the biological basis of their oppression is left to individual state parties to either include or not include in “gender” as they see fit. If, for instance, a lesbian is classified by a state party as a different “gender” from a heterosexual woman because that state party determines sexual orientation to be a key aspect of gender, different protections may apply to women based on their sexual orientation and, indeed, some women may not be classed as the “gender” of woman due to that sexual orientation. However, sexual orientation is based on sex, not on “identity”. Classification of lesbians by any State party as a different “gender” from heterosexual women would be unacceptable, and would divide the sex class of women.
39. A conflation of sex and gender also puts sex into competition with a self-identified “gender identity” that would sit within the same protected ground – a result that violates numerous international human rights laws. It dilutes and obfuscates the category with the *inclusion* of biological males who claim to identify as females, and the *exclusion* of biological females who claim to identify as males.

## The Policy on the Crime of Gender Persecution requires the inclusion of sex-based rights

40. In December 2022, the Office of the Prosecutor of the ICC published a policy manual called “Policy on the Crime of Gender Persecution.” In Article 21, the Prosecutor outlines that Article 7(2)(g) of the Rome Treaty defines “persecution” as “*the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.*” By using the undefined “gender” in the draft Principles, it becomes impossible to define what “group” or “collectivity” is covered. Clarity and universality are extremely important especially when a principle is being interpreted in countries around the globe. By using the word “sex” it is immediately clear what group is covered: women as a sex group, or men as a sex group, inclusive of women or men who do not adhere to their societies’ stereotyped roles as a collectivity. By using only “gender”, which is defined differently in each culture and not accepted in some, it is unclear what group is covered.
41. In Article 21, the Policy outlines a nonexclusive list of what might be covered. It mentions attacks on schools or hospitals. If girls’ schools are attacked, as they have been in Afghanistan for example, is that because of the “gender” of first graders? No, it is because they are girls. The Taliban believe that girls are inferior and should not get education regardless of whether those girls act within or outside of the gender stereotypes. The attacks are not on the basis of gender: they are on the basis of sex, and are themselves constituting “gender” within that society, creating it not motivated by it.
42. The tautology of limiting coverage to gender is exemplified in para 25 that says, “*Gender persecution may be used by perpetrators to enforce social constructs and criteria through imposed discriminatory regulations that violate fundamental rights.*” That is precisely what “gender” is – social constructs and criteria. So, the sentence reads in reality: “Social constructs and criteria may be used by perpetrators to enforce social constructs and criteria through imposed discriminatory regulation that violate fundamental rights.” Gender persecution is defined by gender persecution. That same tautology is evident over and over as the nebulous concept of “gender” is used to define “gender”.
43. The policy gives an example of ISIS torturing and killing people not deemed to be in conformity with ISIS understanding of gender roles. If ISIS kills a woman for wearing men’s clothes, they killed her because she was woman wearing those clothes. If a man had been wearing those clothes, they would not have killed him. So, the reason for the murder was her sex: because she was a woman. The underlying problem is not that a person wore the clothes, but the sex of the person wearing the clothes. Sex discrimination principles will suffice for prosecution.
44. The violation of international law by relying on “gender” is exemplified in para 27. The ICC recognizes that human rights violations should not be culturally determined, nor can culture justify a breach. But “gender” is based on the cultural understanding of sex roles. Gender is what the “superior” sex believes the “subordinate” sex should be. To base the principles on gender is to adopt those very cultural standards that violate international rights.
45. In para 29, the Policy says the Office mentions an intersectional approach. Seventeen possible intersections are mentioned, but the most important factor for most people’s life is not mentioned – sex. Studies show that, in the womb, future children are treated differently if the

sex is known.<sup>3</sup> From birth, men and women are treated differently. Sex is the decisive factor in everyone's life. Yet it is not mentioned in the Prosecutor's "intersectionality". This is a gross omission harming both women and men.

46. Article 40 discusses the issue of group identity in the Rome Statute Article 7(1)(h). Element 2 of the crime must show that: "*The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.*" Article 40 focuses on any identifiable group or collectivity on prohibited grounds. The use of "by reason of" and "targeting" means the perpetrator must either (1) target a person or persons by reason of the identity of a group or collectivity or (2) target the group or collectivity as such.
47. If the perpetrator targets a person because she is female and should not be out on the street alone at night, she is targeted because she is a member of a group – women – based on her sex. If the perpetrator targets a person because he is male and should not be clean-shaven, he is targeted because he is a member of a group – men – based on his sex. If he is clean-shaven because his "gender identity" is that of a female, he was still attacked because he was a male not fitting into the sex norm in that society. Sex discrimination law is sufficient, and "gender" discrimination fails to encompass the harm.
48. The Prosecutor's office agrees in para 40 that a person can be attacked because they have or do not have the gender criteria demanded by the superior group. But that definition of persecution leaves out women who are targeted regardless of whether they have a criterion required or prohibited. Women are beaten and raped because they are women. Women can be doing everything they are supposed to be doing under the sexual stereotypes of their society (gender) and yet they are still beaten or abused. They are prohibited from going to school. They are prohibited from marrying whom they like. They are prohibited from working in this or that field. They are made to care for children or do the laundry or cook the food. They are abused even if they do it all. The existence of the stereotype women must live up to is abuse itself. Thus, to rely only on the social definition of "gender", which is a stereotype, erases women from the protection of the law.
49. In para 45 the Office claims that all persons have gender identities like they have racial and ethnic identities. No, they do not. We are born male or female with XX and XY chromosomes and SRY genes. Some small number of people have variations on that, which does not change the facts nor require them to be treated any differently. To identify as a "gender" means to identify with a stereotype, which women have fought for centuries.
50. The Prosecutor's office admits that gender is about discriminatory targeting based on roles, behaviors, activities, and attributes. However, what a person wears, the make-up they put on their face, how long their hair is or how they walk or talk does not identify a person as a male or female. To say that it does operates only to solidify gender discrimination, which is exactly the opposite of what the law is supposed to do.

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<sup>3</sup> <https://www.innerdrive.co.uk/blog/how-we-teach-boys-and-girls> and [https://economics.yale.edu/sites/default/files/2023-01/Neha\\_Anand\\_SeniorEssay.pdf](https://economics.yale.edu/sites/default/files/2023-01/Neha_Anand_SeniorEssay.pdf)

## ICC policy itself requires the inclusion of sex as a protected category

51. In its 2023 'Policy on Gender-Based Crimes' page 10 under "Key Terms and Concepts", the ICC states that Gender, for the purposes of article 7(3) of the Rome Statute, is understood as "*the two sexes, male and female*", but qualifies that it is strictly in terms of the "*context of society*." Article 16 reads as follows:

7(3) For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

In other words, gender is the social construction of sex, and not sex itself.

52. This reading is underscored by the explanatory notes in Articles 17 and 18 of the Policy.

Article 17 clarifies: "*As a social construct, gender varies from society to society and even within a single society. It can change over time, or due to events that can disrupt gender roles such as displacement, natural disaster and armed conflict.*" The material class of physical biological sex does not, on the other hand, change over time or between societies, and is not altered by natural disaster or warzones. The female sex will remain the sex most vulnerable to impregnation and therefore rape as a weapon of war.

Article 18 prescribes that the modifying clause "*within the context of society*" refers to "*social constructs and criteria used to define gender,*" and that these "*include constructs about sexual orientation, gender identity and gender expression.*" The material class of physical biological sex is not determined by an individual sense of self, performance choices in terms of feminine or masculine clothing or behaviours, or sexual orientation: a lesbian woman engaged in "same sex sexual activity,"<sup>44</sup> or a woman who chooses not to perform femininity, for instance, is no less a member of the sex class of women than a woman who does.

53. The ICC Policy is a sleight of hand that has introduced ambiguity into the textual references of "sex" and "gender", and is being utilized by some commenters to these principles to claim that the Policy has eliminated "sex" and substituted "gender" for all purposes. It did not. The base category of sex *must* logically remain in order for the quality of gender – ie sex as it is constructed ideologically by society – to have a reference. Society cannot construct a concept of sex if sex itself ceases to exist. This reading is unambiguously confirmed by Article 19 of the Policy, which states:

"Gender" and "sex" are closely related concepts that are tethered together. Where "gender" refers to social constructs and criteria about roles, expressions and behaviours used to define maleness and femaleness in a given context, "sex" refers to an individual's biological or physiological characteristics.

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<sup>44</sup> To use the language of CEDAW Committee, Views on Communication No. 134/2018 (2018) UN Doc CEDAW/C/81/D/134/2018

54. The language of the definition has, due to an internal debate that never reached consensus, used the terms “sex” and “gender” in an ambiguous way that allows state parties some leeway to obviate the protections afforded to women, including lesbians and girls in particular, by selectively interpreting and applying them. This must be curtailed by a return to clarity, and an express protection of sex as a material, biological quality.

**The protection of “sex” is materially different from the protection of “gender” and must not be replaced or subsumed by it**

55. As noted above in relation to the definition provided by the 2023 Policy, gender is defined by stereotypes and is culture-dependent. For example, in some societies women do all the agriculture work, in others it is men. In some societies women serve in the military, in others they do not. In some countries, girls and women are not allowed to go to school, while boys and men can. At one time, women could not be doctors or lawyers. Now, in most countries, but not all, they can. The cultural context changes: the underlying sex does not.
56. None of the distinctions named above is inherent in or a necessary consequence of sex, however. They are based on the creation of a stereotype by the prevailing power to control and circumscribe the power of the allegedly subordinate person. That is what “gender” is – an expression of sexual stereotypes created by the superior group to control the subordinate group. Women have been fighting against such sexual stereotyping for 5,000 years. Thus, to use sexual stereotyping as the definition of women and girls is to adopt the constrictors of the superior group – the complete opposite of the equality mandated under nearly every international document.
57. The legal harm of using “gender” is illustrated by a definition that is completely circular: gender-based crimes are defined as based on gender, and gender is defined as the changing social context in which sex exists and is understood, but not as sex itself: gender is therefore each society’s current understanding of gender. Under any legal rationale, that makes no sense, leaving a court without any basis to determine if a crime has been committed. It is not needed to protect human rights.
58. “Gender persecution” is the crime against humanity of persecution on the grounds of gender, under Article 7(1)(h) of the Statute. Gender persecution is committed against persons because of sex characteristics and/or because of the social constructs and criteria used to define gender, but this conflates sex and social gender stereotypes in a way that is both unhelpful and unnecessary. This could indeed encompass persecution that is directed against “drag queens” because they are violating the sexual stereotyping of how a male should behave in that society, but persecution on the basis of sex would also protect the “drag queen.” If a woman was dressed as he did, she would not be attacked. So, the sole reason the person is attacked is not because of how they are dressed, but what sex they are wearing that dress. That is sex discrimination. “Gender persecution” could also be the male person who presents as a female. He is attacked because he is adopting the sexual stereotyping for females e.g. clothing, hair style, make up, style of walking or talking. But that too is sex discrimination. If a woman wore those clothes, hair style, make up, or walked or talked like that, there would be no attack. So, he is being attacked because he is a male violating the sexual stereotypes males have set up for

him. That is sex discrimination. The inclusion of 'gender' is not only a redundancy, it is a redundancy that carries undesirable consequences in its wake.

59. So, under the law, one does not need "gender persecution" to protect anyone. All women, no matter how they are leading their life, are protected by the prohibition of sex discrimination. The "gender persecution" label is not necessary for justice.
60. The policy admits that "gender-based crimes" are acts of regulating the inferior group by defining what is accepted in roles, activities, and attributes. That is simple discrimination. If males can marry females, but females cannot marry females, and males cannot marry males, then a person is being denied their right to marry based on their sex. No reference to gender is needed. In the 1950s in New York City, United States of America, women had to wear at least five items of what were referred to as "women's clothing." Men didn't. That is simple sex discrimination – one sex has to wear X and the other may not.
61. In South Africa women who step out of the sexual stereotype and love women are targeted for rape, on the basis that it will cure them of their homosexuality. This is the clear use of violence by the superior group to enslave the inferior. It can be prosecuted based on sex discrimination.
62. The policies also talk about the need to understand the underlying discrimination and crime. The ICC must understand that the underlying violence is caused by the superior power trying to keep hold of that power and thus not allowing others to step out of the box that they drew for them. Whether it is a woman who wants to go to school and be a jet pilot or a man who wants to wear a dress. That person is stepping out of the box the superior has created and for that they must be punished. It is because the person has violated the sexual stereotypes created (the gender role) because they are of the other sex.
63. Only when you understand the underlying power structure can you intervene to break its hold. By relying on sexual stereotypes (gender) to define what is a crime, the principles support the underlying power structure rather than attack it.
64. The policy does mention "sexual and gender-based crimes", thus admitting there is a difference. Thus, a definition must be included for sex, and a list of factors. Presumably sexual crimes would include vaginal rape, forced pregnancy, and forced marriage. Internationally we know that sex crimes against women are the most under-prosecuted crimes of all. In the principles, by using gender only, such crimes are eliminated altogether.
65. It was astounding to read in the 2022 Policy (Executive Summary, page 5) that *"...sexual violence is often viewed as a gender-neutral crime, which ignores the prevalence of gender discrimination in such crimes."* It seems impossible to understand how anyone could suggest that sex crimes are gender-neutral when the entire basis behind sex crimes is to make sure that women know their place under men, that women know that men control their bodies, and that women do not have agency over their own bodies. While males can also be raped and sexually assaulted, that does not change the dynamic that the structural reason behind the action is to show the superiority of one sex and the inferiority of another. As the policy admits, the basis is sex discrimination from reason to intent to result.



## The principles as drafted are impractical and dangerous

66. Paragraph 46 of the policy discusses the mental elements for persecution, which can be analysed in the context of sex and gender:
- The perpetrator:
- a. meant to cause a severe deprivation of fundamental rights or knew that it would occur in the ordinary course of events;
  - b. had the specific intent to discriminate (targeting based on the statutory ground of gender); and
  - c. knew that the conduct was part of a widespread or systematic attack or intended that it be part of the attack.
67. Male violence against women and girls in the context of an intimate relationship or family is not generally driven by a specific intent to discriminate on the ground of a social construct of gender, but because of the historical Othered status and material vulnerability of women and children. This historical and physical vulnerability holds true even if that society is in the midst of a social discourse focused on “strong women” (thus upsetting the gender archetype of women as weak or passive) or “female empowerment”, and even if one of the women in that man’s family claims to identify as a male or as a “non-binary” person. It is sex-based persecution.
68. If the test for intent relies upon the perpetrator’s target being the social construct or ideological archetype of sex rather than sex itself, all instances in which this is immaterial may fail to be captured by the policy. The ephemeral and, as the 2023 Policy itself acknowledges, changeable nature of this quality also introduces a vulnerability that makes the principles more difficult to enforce.
69. The policies themselves give examples of how the same act can be done against a male or a female but both be based on sexual discrimination. Women in war may be raped because they are viewed as property and treated as chattel. Men may be raped to “feminize” them to force them into the role of the lesser person i.e. the female. Both are sex-based discrimination with the underlying belief that women as a biological sex class are lesser than men. The men are not being raped because of their “gender” in terms of their looks, behavior, or attributes: they are being raped to devalue them by treating them as women. One need not twist themselves in knots over the application of the law. It is sex discrimination and sufficient for prosecution.
70. The policies talk about gender persecution charges capturing a wider range of criminality such as attacking property or objects or places that have significance to certain groups. Again, there is no need for knots. If the Taliban burn down a girls’ school, it is sex discrimination targeted against girls’ education. If someone destroys all the dispensers of period products in public bathrooms, it is clear it’s sex discrimination; likewise if they destroy all dispensers of condoms. If only women work in an office or building because the society requires them to remain separated from men except family, and someone destroys that office, it’s sex discrimination. If someone destroys a statue of a woman saint because women flock to it, it’s sex discrimination. The problem is not definitional, the problem is political will. The political will to protect women

has been absent worldwide. The result of these draft principles would be to eliminate the need to even pretend to protect women based on their sex.

71. Paragraph 74 of the policies says that staff will receive briefings about local situations which is appropriate and should be *de rigueur*. However, the staff must also understand how cultural traditions themselves can be discriminatory. A 1995 UN Factsheet says that harmful cultural practices “reflect values and beliefs held by members of a community for periods often spanning generations” and they are for the “benefit of men”. (United Nations, 1995, p. 3)
72. Biological essentialism, the belief that gender roles are biological and therefore immutable, is a foundational value of male dominant societies. It benefits men because their “gender role”, as defined by them, entitles them to benefits, privileges, and political power. Harmful cultural practices “persist”, the Factsheet tells us, “because they are not questioned and take on an aura of morality in the eyes of those practising them”. (United Nations, 1995, p. 3) That is precisely what is happening in these draft principles by only using undefined “gender”. These practices are sexist and homophobic: girls are being told that it is not possible to be female unless one conforms to sex-role stereotypes. If a girl likes trucks, soccer, math, and other girls, she is told she must be a boy. That is sex discrimination, but it is being reified and protected by the linguistic reliance on ‘gender’.
73. The use of sexual stereotypes (i.e. “gender”) to categorize women is an example of a harmful cultural pattern. The mandate of CEDAW Article 5 is to stop harmful cultural practices, not reinforce them. (Article 1) In 2019, the CEDAW issued recommendations regarding harmful cultural practice.<sup>5</sup> The CEDAW committee noted that such practices are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles. The CEDAW committee also noted that the practices highlight the gender dimension of violence and indicate that sex- and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve violence or coercion. (para.6) Continuing to define women and men by “gender” leads to more violence and suppression of women’s rights, not less.
74. Subjective beliefs may not be imposed on the public nor used to justify eroding civil rights protections or erasing women as a sex class in law or policy. Women and girls are female whether they look, act, or live their lives in a stereotypically feminine manner. To believe that sex is determined by a gendered soul or feminine appearance is to believe that stereotypes about women are real. This belief is offensive, harmful to women, antithetical to human rights, and violates numerous UN treaties and international human rights.
75. CEDAW Article 11 (3) says: “Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.” Decisions cannot be based on subjective belief or feeling but must rely on evidence-based science. No international consensus, scientific or otherwise, exists on gender-identity ideology. Recent research has resulted in modifications of policy in various countries based on scientifically-identified harms.

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<sup>5</sup> Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices (8 May 2019) (CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev. 1)

76. Using only undefined “gender” fails to recognize that children, women, and men are targeted for different reasons. Women are targeted for rape and sexual slavery, children are targeted for child soldiers or difficult jobs that small size makes easier, and men are targeted for fighting abilities. Only recently have international bodies recognized the use of rape as a weapon of war and genocide. Only recently have child soldiers been recognized and a treaty on it developed. By lumping them together, it is women and children who will be overlooked as they historically have been. We know from history that the independent rights of the woman and children must be specifically stated, or they are subsumed and lost.
77. Para 79 of the policy says that the prosecution office will analyze pre-existing norms as an indicator of fundamental rights deprivations. However, “gender roles” are themselves pre-existing discriminatory sexual stereotypes: that is the entire basis of patriarchy that establishes a social order of male superior to female. The maintenance of these gender roles is, in and of itself, a form of persecution. Analyzing pre-existing gender roles, that are by their nature oppressive, is no guide to fundamental rights deprivations because they establish a baseline that is itself oppressive.
78. The use of “gender” as the grounds for prosecution is, additionally, circular. Gender is an ontologically social kind – not a natural kind – that is constructed by social norms, while gender persecution is defined as an act of oppression driven by the intent to discriminate on the grounds of gender. If society is able to define gender in terms that naturalize oppression – as, for instance, the Taliban has done in Afghanistan by constructing a ‘natural’ definition of women in gendered terms that prohibit a woman’s voice from being heard in public – the very meaning of “gender” has shifted to encompass this rights violation and denial of human dignity. There is no baseline of what the correct or proper definition of ‘woman’ as a gender *should* be, against which the Prosecutor could measure whether an intent to discriminate exists, because the discrimination has itself been baked into the baseline meaning of “woman”. If this were adopted wholesale across ICC policies and the fixed baseline measurement of “sex” were abandoned, the result would be to excuse violations of fundamental rights violations.
79. An additional area of concern in relation to enforcement focuses on gathering accurate information to analyze criminal patterns. Though many international documents mention the need for accurate data, the conflation of sex with gender leads to the collection of data on violence against women and girls that is inaccurate and misleading because it identifies perpetrators of violence on the basis of their self-described “gender” rather than their sex.
80. States should: *“Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public.”* (UNDEVW, Article 4 (k))

*“Sex-disaggregated data is data that is cross-classified by sex, presenting information separately for men and women, boys and girls. Sex-disaggregated data reflect roles, real situations, general conditions of women and men, girls and boys in every aspect of society. [...] When data is not disaggregated by sex, it is more difficult to identify real and potential inequalities.”* (UN Women, Gender Equality Glossary)

81. Data collection must include recognition that violence against women is one of the crucial social mechanisms by which women as a sex are forced into a subordinate position compared with men as a sex, and that accurate research and data collection relating to violence against women and girls requires that the identification of both the perpetrators and victims of such violence must be based on biological sex and not social gender.
82. The failure to collect accurate data creates a significant impediment to the development of effective laws, policies, strategies, and actions aimed at the elimination of violence against women and girls. The inability to keep accurate statistical records in every context means that male violence and exploitation against women and girls is hidden.
83. The refusal to name a problem and its victims means that the problem cannot be solved. Sexual harassment in the workplace did not exist in the law of the United States of America until the *Meritor Savings Bank v. Vinson* case in 1986. Now it is a well-known worldwide phenomenon. Date rape is another example as is wife-battering and spousal rape. If you can't name it, you can't count it and you can't solve it. If we can't say women are women, women's self-determination protected by the UN Charter Article 1.2 is obliterated.
84. The ICC Policy recognizes that gender is a cultural construct in para 91 because it refers to how a person behaves, how they dress, where they work or live, what they can eat and when, how they define family, and even if they have a right to life. The ICC Policy also recognizes in that same paragraph that deviation from the sexual stereotype constructed is often what triggers the violence. Women are often murdered or beaten for no deviation from the "gendered" role at all but simply because they are women and have no value, or because as bearers of children they do.
85. Para 96 of the policy talks about looking at the "gender of victims" to ascertain patterns of discrimination. The women nursing students murdered in Canada is an example showing clearly that the expectations of men regarding discriminatory sexual stereotypes results in targeting women in particular. But, in the United States of America case of the murders of several Asian women in Florida, investigators refused to look at the fact that the man did not just murder Asians or people who had been trafficked for sex: he murdered Asian *women* who had been trafficked for sex. Because they refused to recognize that the victims were all women, they refused to call the act a hate crime against women.
86. The policy also addresses reparations. Using gender rather than sex needlessly complicates this analysis.
87. The use of gender rather than sex for the basis of reparation would result in ridiculous results under positive action programs required by CEDAW to remedy historical discrimination against women. For example, because of period poverty many girls lose a week a month from school, thus harming their educational possibilities. Suppose a country decided, due to this long-standing discrimination based on sex, that they would offer free tutoring to the girls to make up the time they had missed so they could pass college exams. Would men who identify as women be eligible for free tutoring though they never experienced the problem of missing school due to period poverty? Every program one could imagine to remedy existing discrimination against women and girls could be abused by men identifying as women. States could not recognize and

remedy historical discrimination and inequality for women because men did not experience it. Therefore, to take special actions for women, the actual victims of violence and discrimination, would be decried by those claiming a gender-identity as discrimination itself.

**Relying on undefined and culturally based “gender” rather than internationally definable “sex” makes it more difficult to convict a perpetrator**

88. The fact that, in the past, abuse of those who stepped outside of the sexual stereotyping (gender) box has not been prosecuted is not because of the structure of the law but because of discrimination. Prosecutors have been hesitant to prosecute spousal rape not because it didn't happen, but because of discrimination against women. Sexual assault cases are still the least prosecuted. Again, that is not for want of cases or evidence but due to discrimination.
89. People who step out of the sexual stereotyping (gender) box have existed for a long time. In some societies they were never prosecuted, in some lauded, in some created (eunuchs), in some ignored, and in some persecuted. The problem is not the structure of the law but the structure of the society. The problem is discrimination. To eliminate “sex” from the principles obscures the basis of the discrimination rather than enlightens.
90. In the United States of America, hate crimes are rarely charged because it is very difficult to determine what was in the minds of the perpetrator. If a claim is based on gender, how can the prosecutor ascertain what was in the mind of the attacker? Did he do it because he thought the person was a woman? Did he do it because he thought it was a man in what he considered a woman's role? Did he do it because the person was in fact a woman? It is difficult to ascertain, making a successful prosecution unlikely.
91. People claiming an alternative gender are not persecuted because of their appearance, but because they have breached the place men reserved for women. Such persecution is still discrimination because it is based on the desire to subordinate women. By focusing on gender rather than sex, however, it is more difficult to convict because the prosecutor must ascertain what is going on in the mind of the perpetrator: ‘gender’, as defined, is an artifact of culture, and is thus something that exists in the abuser's apprehension of it. Abusers may escape liability by saying I didn't assault the person because of their gender, but because of sex. If sex is not a protected class, then the perpetrator escapes.
92. But either way, the abuse is based on sex. Either the perpetrator committed the action because he believes or wants to believe that women are subordinate to men, or the perpetrator committed the action because a person was acting outside of sexual stereotypes established for that perceived sex and therefore warranted punishment – the perpetrator committed the action because he recognized that the person was in fact a male, and therefore it was not only a violation of sexual stereotypes for a man to be acting like what he perceived a woman would, but it was threatening to his own sexual identity that any man would want to subordinate himself thusly. Any way it is analysed, the reason for the action is sex. But, if sex is not a protected class, then the charges must be dropped. The ground of gender is far more difficult to make out, and it therefore exposes prosecutions to needless weaknesses.

## CONCLUSION

93. International law, as outlined above, bases fundamental rights on sex, not gender. To eliminate “sex” and “women” and “girls” from the principles violates the Charter of the UN, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and the Human Rights Council’s resolutions A/60/L.48 and A/HRC/RES/17/19. International documents outlining human rights from the International Declaration of Human Rights to the Convention on Civil and Political Rights, from CEDAW to the Palermo Protocol on Trafficking, all use the term sex, and use it to mean biological sex. To rely only on cultural definitions of gender would make it impossible to protect women and to address harmful cultural practices or religious beliefs. It would set women’s rights back a hundred years.
94. Men and their stereotypes do not define women. Women must have autonomy to define themselves. International consensus and political will cannot be developed to formulate such principles by excluding women. Excluding women only perpetuates the existing discrimination against women. The ICC lists politicization of crimes against humanity as the biggest obstacle. Excluding 51% of the world’s population by relying on stereotypes rather than reality personifies the power of men over women that is the reason women need international human rights in the first place.
95. If the goal is to draft principles that are effective, using gender rather than sex will not address the underlying structural basis of inequality leading to violence. If the goal is to have provisions that States will accept, using gender rather than sex will not be acceptable because of the amorphous and changing concepts of “gender” that are based on societal stereotypes not fact. To claim that some international recognition of “gender” exists is false, as new scientific research emerges regularly and states are changing positions rapidly depending on that research. An international definition cannot be based on such shifting sand.
96. The foundational international treaties use ‘women’ and ‘men’; the non-discrimination language includes not just race, religion, and age, but also sex; UN definitions themselves acknowledge that gender is not the same as sex. The domination of and discrimination against women is based on sex. The conflation of gender and sex has caused great confusion, and has resulted in women being ignored when women are in fact the most frequently targeted victims of crime in the world at the hands of males. International human rights norms seek to improve women’s status by dismantling sex-stereotyping; gender, on the other hand, depends for its very definition on acceptance and continuation of sexual stereotypes. Using “gender” papers over the essential fact that women are attacked to keep them as a subordinate caste. Relying on “gender” is a harmful cultural practice and violates international human rights norms.
97. The stereotypes embodied in “gender” should not be accepted. People who operate outside of any stereotypes should be protected and granted all rights. But so too should those who act/live within the stereotypes whether by consent or force.
98. Knowing that gender is a societal concept not a fact, by not including sex the structure to combat the exclusion of half the population is undermined. By not including persecution because of sex, the attack on women’s subordination is sidelined. Women are left as they were – defenseless.

99. In the 2022 Policy, it is stated: *“Gender persecution may, and frequently does, intersect with and constitute multiple forms of persecution based on political, racial, national, ethnic, cultural, religious or other grounds that are universally recognised as impermissible under international law.”* Astoundingly, the policies mention every other internationally recognized category of discrimination but sex. This is inexcusable and shows clearly the intent is to erase women from the protections of international law.
100. In an ideal world, there would be no gender. Society should not determine what role a person plays in it merely by reference to their role their biology may play in reproduction. We should all be encouraged to be our best. It should not matter if a man cries, or a woman rides a motorcycle. That is the world we work for: not one where society chooses a role for the sexes based on a hierarchal system, but one where each person is free to choose their own role within society to add to the rich tapestry of humanity. That is the ideal to which the human rights documents aspire. Each person has the right; each person is accepted for who they are. No re-assembly is required. Otherwise, the entire structure is a sham. If women are left out of these principles by the principles focusing on gender not sex, half the world is left out.
101. Thus, we ask that “sex” be used in place of gender; or, in the alternative, that both be used and that both, in any case, be defined.