

## **Individual submission to the Committee on the Elimination of All Forms of Discrimination Against Women for its Update of General Recommendation No. 19**

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This submission<sup>1</sup> calls attention to actual and potential negative impacts on women and girls, including their right to live free from violence and abuse, of laws and policies that prioritize gender identity over sex in classifications of persons as male or female. The Committee has promoted such laws and policies without explanation in a number of General Recommendations and Concluding Observations.<sup>2</sup>

### **A. Impact of gender-identity laws and policies on women's and girls' right to live free from violence and abuse**

The following are some areas in which women's and girls' human rights related to the freedom from violence and abuse are negatively affected by gender identity laws and policies.

Policies that allow males to gain unrestricted access to female facilities if they identify as women or transwomen violates women's and girls' rights to privacy and bodily autonomy and puts women's and girls' safety at risk. These facilities include prisons, shelters, institutions, public showers and changing facilities.<sup>3</sup>

Conversely, such policies may exclude females who identify as men or transmen from women's prisons, shelters, and other accommodations, leaving them vulnerable to abuse in male facilities.

Women's and girls' bodily privacy and autonomy are similarly violated by policies that allow males who identify as women or transwomen to conduct a body search or medical examination when female personnel are requested.

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<sup>2</sup> GR No. 32 paras 6, 16, 38; GR No. 33 paras 8, 18; see also GR 27 para 17 and GR 28 para 18 using the terminology of 'sexual orientation and gender identity'; in GR 28 para 31 lesbians but not bisexual or transgender women were named as a disadvantaged group and GR 29 para 24 address women's rights in same-sex relationships. Recent Concluding Observations in which transgender women have been addressed as a group of women include those on Uruguay, Philippines, France, Albania, Mongolia and Haiti in 2016, and Slovakia, Russia, Croatia, Gambia, Kyrgyzstan, Ecuador and Denmark in 2015.

<sup>3</sup> US Department of Housing and Urban Development recently adopted a policy of assigning shelter accommodations based on gender identity, see [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2016/HUDNo\\_16-137](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-137). This follows similar policies adopted by the Department of Justice and the Department of Education, which are the subject of lawsuits objecting to the impact on women's and girls' privacy rights.

Lesbians and other women who gather in female-only environments face intense pressure to open those spaces to males who identify as women or transwomen, resulting in the loss of unique spaces where women and girls came to heal from systemic misogyny and male violence, share knowledge, and experience self-acceptance, freedom and safety with other women and girls. This includes rape crisis centers, women's centers on college campuses, women's sports activities, women's universities and independent women's cultural institutions.<sup>4</sup>

Lesbians are deprived of needed support when others in the LGBT community fail to respect their distinct sexual identity as females who are sexually interested exclusively in other females, in particular when LGBT organizations define lesbian in terms of gender identity rather than sex. This has led to sexual harassment of lesbians who reject as partners males who identify as women or transwomen.<sup>5</sup>

Medical transition protocols endanger the physical and mental integrity of women and girls when promoted irresponsibly as a standard of care for gender dysphoria without adequate consideration of adverse effects and alternative measures.<sup>6</sup>

Women's and girls' right to accurate knowledge of their own bodies, which supports their ability to exercise sexual and reproductive autonomy, is at risk of being undermined by informational materials that contain misleading descriptions of female and male anatomy that prioritize gender identity over sex.<sup>7</sup>

Gender-critical feminists and their supporters have faced censorship, exclusion and harassment, including death threats and rape threats, by gender identity advocates.<sup>8</sup>

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<sup>4</sup> One such loss is the Michigan Womyn's Music Festival, see <http://www.michfestmatters.com> for testimonies about its meaning to women and girls. See also Elizabeth Hungerford's letter to Smith College, <http://ehungerford.com/?p=65>.

<sup>5</sup> See Annex, Report by Esther Vali on Hungary. Similar experiences are commonly reported by lesbians in UK, USA, Australia and Canada (in English-speaking social media).

<sup>6</sup> See <http://guideonragingstars.tumblr.com/post/149877706175/female-detransition-and-reidentification-survey> and <https://4thwavenow.com>.

<sup>7</sup> See for example [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Trans\\_Safer\\_Sex\\_Guide\\_FINAL.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Trans_Safer_Sex_Guide_FINAL.pdf). This material while addressed to the trans community is likely to have an impact on lesbians, bisexual women, and other women and girls who resist gender stereotypes, since 'trans' is defined as including everyone who identifies outside the gender binary. See also <http://www.feministcurrent.com/2015/10/13/are-we-women-or-are-we-incubators-an-interview-with-marylou-singleton/>.

<sup>8</sup> See <https://terfisaslur.com>, <https://www.youtube.com/watch?v=3Wc6-HikFz4>, <http://www.butterfliesandwheels.org/2016/guest-post-let-them-call-me-whorephobic/>, <https://www.theguardian.com/commentisfree/2015/oct/09/no-platform-universities-julie-bindel-exclusion-anti-feminist-crusade>, as documentation and reporting of hostility and retaliation against feminist human rights defenders.

Data and reporting on violence against women are unreliable if males who identify as women or transwomen are not differentiated from women when classifying perpetrators and victims.<sup>9</sup>

B. Questions requiring consideration by the Committee and by states parties in consultation with women and girls

Laws and policies related to gender identity have to be examined in close consultation with women and girls, including lesbian women and other women and girls whose womanhood or girlhood is questioned notwithstanding their female sex because they do not fit within normative physical beauty standards and/or feminine gender performance.

The Committee and states parties should consider the following, along with other issues that may be raised by women and girls:

- Do laws and policies that re-define sex-classes of male/men and female/women to prioritize gender identity benefit or harm women and girls, including lesbians, disabled women and girls, ethnic minority women and girls, and other women and girls whose womanhood or girlhood is questioned because they do not fit within normative standards?
- What impact do social and legal definitions of gender as an internal identity have on the elimination sex-role stereotyping and practices based on inferiority or superiority of one sex over the other, which is required by CEDAW Article 5(a)?
- What are the legal and social consequences for women, men, and transgender males and females, of defining women to include the sex-class of females, unless they have identified as men or transmen, plus males who identify as women or transwomen?
- Do females who identify as men or transmen shift from a position of subordination to one of domination in the gender hierarchy of men and women? Do males who identify as women or transwomen shift from a position of domination to one of subordination? How can this be determined?
- Are conflicts between the human rights and identities of women and girls, including lesbians and other women and girls whose womanhood or girlhood does not fit normative standards, and the human rights and identities of transgender persons, resolvable? What are the options?
- Is it feasible to encourage promotion and protection of the human rights of male and female transgender persons, as individuals who violate normative standards of sex

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<sup>9</sup> For example, <http://m.calgarysun.com/2016/09/28/female-molester-facing-strict-release-conditions>. See also <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885%20> (2011 study shows male to female transsexuals retain male patterns of violence after transition).

and gender applied to men and women, as a general obligation of states under Article 5(a), while limiting legal recognition as women to females?

- How can the unique needs and experiences of intersex persons be addressed as separate and distinct from the experiences of non-intersex transgender persons, to allow for adequate nuance and care in accordance with the consultation of intersex persons?
- How should the social, legal and psychological needs of women and girls who experience gender dysphoria be addressed responsibly?
- What are the legal and moral obligations of the Committee and states parties toward women and girls with respect to concerns raised about the impact on their human rights of gender identity claims? In addressing these concerns, what guidance is offered by the text of the Convention, its asymmetric object and purpose, the Committee's jurisprudence, travaux préparatoires, and other relevant sources?

### C. Concluding remarks

The Committee has made the decision in certain Concluding Observations and General Recommendations to incorporate males who identify as women or transwomen into the class of women protected by CEDAW. This position should be reconsidered in light of concerns and questions raised about its impact on the human rights of women and girls.

Gender identity poses a paradox in its relationship to sex- and gender- based discrimination. While gender identity is said to intersect with sex and gender as an independent classification leading to discrimination, it simultaneously reverses the classification of sex or gender itself.

The reversal of sex and gender classifications as applied to transgender persons has the effect of claiming that males who identify as women or transwomen constitute a disadvantaged subclass of women whose rights are to be particularly promoted and protected. It is difficult to see how this differs from conventional discriminatory patterns in the allocation of power and resources,<sup>10</sup> in which males are prioritized over females.

### D. Recommendations to the Committee

The following recommendations are offered for consideration in the updating of General Recommendation No. 19, without prejudice to comprehensive examination of the underlying issues at a later time.

- Respect the distinct identities of lesbians and bisexual women, and refrain from grouping them with males who identify as women or transwomen in conglomerate appellations such as 'lesbian, bisexual and transgender women'

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<sup>10</sup> See GR 25 paras 8, 10, 33, 36 and footnote 2.

- Indicate that states must:
  - Ensure that women's and girls' privacy and bodily autonomy are respected and that they are not required or pressured to accept the presence of males who identify as women or transwomen in female-only facilities or public accommodations
  - Ensure that females who identify as men or transmen are not required to be housed in male facilities
  - Ensure that females who request female personnel to conduct a search or medical examination are not required to be searched or examined by males who identify as women or transwomen
  - Ensure that public and private actors respect lesbians' distinct sexual identity and orientation, and that they are not pressured to accept as partners males who identify as women or transwomen
  - Ensure that women and girls can freely engage in female-only autonomous cultural and political activities in public and private spaces
  - Ensure that women and girls who defend female-only spaces or question gender identity laws and policies are protected against retaliation of any kind
  - Ensure that data on violence against women accurately records the sex of victim and perpetrator, and does not assimilate males who identify as women or transwomen in the category of women
  - Ensure that women and girls who experience gender dysphoria are provided with accurate information and alternatives, and that the standard of care is not limited to social and medical transition
  - Ensure that women and girls have access to accurate information about their own bodies and about sex and gender as described in General Recommendation No 25, so as to enable them to confidently exercise their sexual and reproductive rights and defend themselves against sexual violence
  - Consult closely with women and girls, including lesbians and other women and girls whose womanhood or girlhood does not fit normative standards, before adopting any new policies that relate to sex, gender or gender identity, and to examine existing policies with a view to eliminating any negative impact on women and girls