

Statement on the decision of the Federal Court of Australia in the case of Roxanne Tickle v. Giggle for Girls Pty Ltd and Sally Grover

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I am gravely concerned over the decision of the Federal Court of Australia in the case of [*Roxanne Tickle v. Giggle for Girls Pty Ltd and Sally Grover*](#), which ruled that the exclusion of a male who identifies as a woman and is recognized as a female under the law from a female-only social media platform constitutes unjustified indirect discrimination.

The ruling demonstrates the concrete consequences that result when gender identity is allowed to supplant sex - and override women's rights to female-only services and spaces.

The Federal Court of Australia's ruling concerned the Australian Sex Discrimination Act. While the Act differentiates between the concepts of sex and gender identity, this distinction is abandoned in practice. The Act also severed the term sex from its ordinary meaning of biological sex, operating what I would describe as a built-in and fictitious premise that every human being has a gender identity. Consequently, the Federal Court has argued that the Convention on Discrimination against Women (CEDAW), ratified by Australia in 1983, was irrelevant to certain aspects of the case, on the pretext that gender identity discrimination was not alleged in favor of a man or men. However, it is my view that the Court ignored the fact that the CEDAW Convention recognizes that women suffer discrimination on intersecting grounds and that there are women that are more vulnerable to discrimination as a result of the interplay between sex and other factors that affect their lives.

Furthermore, the Federal Court relied on a general anti-discrimination provision of the International Covenant on Civil and Political Rights (ICCPR), article 26, next to Australian legislation to argue the prohibition of discrimination based on gender identity. However, as noted by the United Nations Human Rights Committee, "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant" (General Comment No. 18 (1989) on non-discrimination, para. 13).

I take the opportunity to refer to the [position paper](#) I issued at the request of the Australian Human Rights Commission in March 2024, in relation to this court case, which highlighted that "where tension may arise between the right to non-discrimination based on sex and non-discrimination based on gender identity, international human rights law does not endorse an interpretation that allows either for derogations from the obligation

to ensure non-discrimination based on sex or the subordination of this obligation not to discrimination based on sex to other rights”.

I am also concerned that the court decision could make it potentially harder for women and girls to argue for the proportionality, legitimacy and necessity of female-only spaces in some circumstances. Even if unintentional, the ruling by the Federal Court may have made it potentially harder for women and girls in Australia to avail themselves of the full breadth of protections provided by the international human rights treaties that Australia is part to, including CEDAW and the ICCPR, and which require States to ensure equal rights for men and women and not to discriminate on the basis of sex.

The Sex Discrimination Act contains provisions that could potentially justify the maintenance of single sex services or the reasonableness of distinguishing on the basis of biological sex. They were unfortunately not relied on in this case, leaving it unclear whether Australian law is fully compatible with international obligations to eliminate all forms of discrimination against women and girls.

I hope that if the case moves to the appeal stage, all parties would consider applicable international laws and their obligations, as well as the circumstances in which exceptions can be applied.

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*** The Special Rapporteur on violence against women and girls, as a Special Procedures mandate of the Human Rights Council, serves in her individual capacity independent from any government or organization.**