

Response to Questionnaire from Professor Daphna Hacker



To:

Professor Daphna Hacker, the CEDAW Committee
and the Task Force on Gender/Sex Self-Identification
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From:

The Women's Declaration International-New Zealand Chapter
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Dear Professor Hacker and the CEDAW Committee,
We are writing from the Women's Rights Party of New Zealand and the Women's Declaration International- New Zealand Chapter.

The Women's Declaration International (WDI) has produced the Declaration on Women's Sex -Based Rights, which has been signed by 37,906 people. The WDI has chapters all around the world. This letter is co-written by the New Zealand Chapter. The Declaration reaffirms the sex-based rights of women guaranteed in CEDAW.¹

The Women's Rights Party is a registered political party, with 750 members, which contested the 2023 New Zealand general election.² The party was formed out of a concern for the erosion of the rights of women and girls in this country.

We are writing in response to a questionnaire that was circulated by Professor Hacker. The questionnaire contained these questions:

- (a) Should self sex/gender identity be recognized as a legal right? And why no/yes?
- (b) Is there reliable data on the impact of a recognized legal right of self sex/gender identity on all stakeholders, including cis- and trans- girls and women?
- (c) How should self sex/gender identity as a legal right, or the abolishment of sex/gender as a legal category, impact:

Language
Physical spaces

¹ <https://www.womensdeclaration.com/en/>

² <https://womensrightsparty.nz/>

Sport
Minors
Affirmative action
Statistics collection

We gather that these questions are being circulated in relation to Committee's establishment of a task force on gender/sex self-identification, which was decided upon in May 2023:

CEDAW/C/2023/II/CRP Report of the Committee on the Elimination of Discrimination against Women Eighty-fifth session (8 – 26 May 2023)

Decision 85/7

Task force on gender/sex self-identification

The Committee decided to establish a task force on gender/sex self-identification, to be chaired by Daphna Hacker, with open membership, and to review the proposed mandate of the task force inter-sessionally.

We are concerned about the direction the Committee appears to be taking, with the establishment of this task force and the circulation of these questions.

The questions appear to be considering a possible support for gender identity being included as a "right" in law. To do this, it appears that the CEDAW Committee may consider a re-interpretation of the Convention for the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW.) Instead of affirming the sex-based rights for women which are clearly laid out in CEDAW, it appears that the Committee might re-interpret CEDAW as providing rights to a "gender identity", thereby including men who identify as women in the category of women. If this path were followed, women's rights would no longer have any protection under CEDAW and CEDAW would cease to have any meaning. It would not be the correct function of the CEDAW Committee to undermine CEDAW in this way.

We are concerned about the language used in Decision 85/7 and in the questions, so first we would like to look at some definitions.

CEDAW and UN Definitions of Women, Sex and Gender

The Committee's use of terms like "self sex", "self sex/gender identity" and "gender/sex self-identification" undermine, obscure, conflict with, and risk replacing well-understood definitions of sex and gender that have been established by the United Nations, CEDAW, and the CEDAW Committee itself.

CEDAW makes it clear that the women's rights it protects are sex-based and that women are subjected to discrimination from society on account of their sex.

Article 1 states:

Article 1 For the purposes of the present Convention, 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.³

(bold type emphasis, ours)

Article 5 states:

States Parties shall take all appropriate measures: (a) 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;**

(emphasis ours)

The term "gender" is not in CEDAW. When it appears in UN documents, the term "gender" refers to these "social and cultural patterns" and sex-based stereotypes.

A United Nations definition of "gender" is :

Gender refers to **socially constructed differences** in attributes and opportunities associated with being female or male and to the **social interactions and relations** between women and men. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences and **inequalities** between women and men in roles and responsibilities assigned, activities undertaken and access to and control over resources, as well as in decision-making opportunities. These differences and **inequalities** between the sexes are shaped by the history of **social relations** and change over time and across cultures.⁴

(emphasis ours)

From this UN definition, it is clear that "gender" refers to socially constructed behaviours that society expects from one or other biological sex, which often perpetuate inequalities between the sexes.

Article 5 of CEDAW says that socially constructed behaviours can perpetuate harmful stereotypes based upon the social inferiority of women. It states that these stereotyped roles should be **eliminated**. Gender is not described as "inherent" or as a "human right" that should be encouraged or built into law.

General Recommendation 28 from the CEDAW Committee in 2010 states:

5. Although the Convention only refers to sex-based discrimination, interpreting article

³ <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁴ <https://unstats.un.org/wiki/display/genderstatmanual/Glossary+of+terms>

1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. **The term “sex” here refers to biological differences between men and women. The term “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**. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.⁵

The important points to note here are:

- biological sex and gender are two different things
- gender is a social construct which imposes a hierarchy of the male sex over the female sex
- CEDAW refers to sex-based discrimination only. CEDAW covers gender-based discrimination only in the sense that gender is the social construct which creates the discrimination against the female sex.

This statement is not saying that gender is an inherent feeling or right which needs to be upheld. Rather, it describes gender as a force of oppression upon the female sex.

Reem Alsalem the UN Special Rapporteur on Violence Against Women and Girls, in the Position paper on the definition of “woman” in international human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination Against Women ⁶

explains it this way:

"In General Recommendation No. 28, the CEDAW Committee defined “gender” as “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 [emphasis added]”.⁶ “This understanding of gender clarifies that the term ‘gender’ is not to be equated with women”.⁷ **It is also clear that the CEDAW Committee did not equate a person who may identify as a woman and a man with someone who is a woman or a man – the latter being defined as either biologically male or female.** "

She continues:

"While not addressing or defining the terms “sex” or “gender”, many foundational human rights treaties, and declarations, including CEDAW, enshrine a **prohibition of discrimination based on sex** which can only be taken to mean as referring to biological sex⁸. In General Recommendation No. 28, the CEDAW Committee reiterated that “the objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex”.

And furthermore:

"Based on the above analysis of relevant international law, it is clear that sex and gender are two different concepts. However, international law does not permit any derogation to the

⁵ <https://www.refworld.org/legal/general/cedaw/2010/en/77255>

⁶ <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240404-Statement-sr-vawg-cedaw-convention.pdf>

prohibition of discrimination against women based on sex. **Where tension may arise between the right to non-discrimination based on sex and non-discrimination based on gender or 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 discriminate based on sex to other rights.** Such a reading is supported by the General Recommendation No. 25 of the CEDAW Committee which states that “biological as well as socially and culturally constructed differences between women and men must be taken into account [emphasis added]”.

The understanding that women's rights are sex-based, and the obligation to continue to provide these sex-based rights, also applies to conventions which define the rights of women prisoners according to sex :

the **Nelson Mandela Rules**,⁷ which require the provision of single sex accommodation; and the **Bangkok Rules**⁸ which require special provisions for female prisoners.

It is very important to keep the distinctions between biological sex and gender clear, as United Nations definitions do. We ask the CEDAW Committee to continue to adhere to the definitions and meanings that have been established by CEDAW, United Nations and the CEDAW Committee itself. These are essential for protecting the rights of women and girls.

Language used in the Questions and in 85/7-

We are concerned that terms used by the Committee contribute to a conflation between sex and gender, and risk the erasure of sex in the process. The language used, without clear definitions of words, creates incoherence and creates a likelihood of incoherent answers.

The choice of the term "**self sex**" in the questions, in the expression "**self sex/gender identity**" contributes to the conflation of biological sex with gender identity.

The term "sex self-identification" in the notes from session 85, is better understood, as this expression has become a recognised legal fiction. However it still suggests that a person could determine their biological sex by self-identification alone.

The term "**sex**", correctly used, means **biological sex** .

It should not be used to mean gender, or conflated with terms that mean gender.

We ask the Committee to stop using the term "self sex" and to not encourage its use.

Furthermore the term "**sex**" was used on its own in the second part of question (c) creating the impression that this was a question about **removing the rights associated with biological sex from recognition in law.**

We expect that this was a typo, possibly from the person who sent the questions on to us, and we don't think the Committee is really considering this. However, it provides an example of the danger of conflating terms that refer to sex and gender. If the Committee **were** considering removing "sex" as a foundational concept in law, and in CEDAW, this would undermine the entire purpose of CEDAW and of this Committee.

⁷ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

Some of the questions also appear to be based upon **incorrect assumptions** which make them impossible to answer without appearing to agree with these incorrect assumptions. We reject the term "**cis and trans girls and women.**" Women and girls are women and girls, human females; and need no further qualifications. The term implies that males who identify as women and girls are another type of female, which is false.

The Questions and our Answers.

(a) "Should self sex/gender identity be recognized as a legal right? And why no/yes?"

Our Answer:

No. Not if "gender identity" includes the right to be considered as the other sex, with the rights of the other sex.

It is Sex, not Gender identity, which must continue be recognised as a legal right, and as the basis for women's rights.

"Self Sex / gender identity", means identification with sex-based stereotypes, which oppress women. These stereotypes should not be built into law as a legal right.

People with a gender identity do have rights to be protected from discrimination. To achieve this, they can be protected by laws against discrimination on the grounds of non-conformity to sex-based stereotypes. This has been outlined by WDI- USA in their suggested legislation the "Equality for All Act."⁹

The Definitions from the United Nations, including CEDAW, make it clear that women's rights are sex-based. The purpose of providing sex-based rights in CEDAW is to promote women's equality and to stop concepts of gender from preventing women from participating fully in society.

Gender identity is not defined by the UN as "inherent" or as a "human right". It is defined as a cultural construct that contributes to the oppression of women, which needs to be eliminated, not reinforced.

To define these stereotypes as a "right" of some men, would be to support the hierarchy whereby men have more power and importance than women, and to reverse the intention of CEDAW to promote women's equality.

Concepts of gender are imprecise, subjective and ultimately incoherent, leading to potentially dangerous law, because of the wide-open possibilities of interpretation.

Attempts to define concepts of gender and gender expression in law fall back upon circular definitions and sex-based stereotypes.

Concepts in law need to be clear, logical and objective in order to be fair and just.

It vital that the reality of biological **sex** continues to be recognised in law and that the **sex-based rights** of women and girls continue to be upheld as a legal right.

When vague concepts of gender are introduced into law, they risk being conflated with, and then replacing, biological sex. This leads to the decline and erasure of women's rights in law, as a sex.

Sex, not gender, must continue to be the basis of international law about women's rights.

⁹ <https://womensdeclarationusa.com/equality-for-all-act/>

The Women's Rights Party

The Women's Rights Party Policy ¹⁰ states:

The Women's Rights Party is about protecting the rights of women and children. We advocate for women's sex-based rights, so that these rights are respected and extended, and not eroded. Women's and girls' sex-based rights as biological females, need to be protected in policy and law, and this should be given precedence over any proposed provisions based on concepts of gender.

Gender is an imprecise concept that refers to sex-based stereotypes and social expectations, e.g. what is considered feminine and masculine. Gender identity and expression refer to the identification with, and expression of these stereotypes.

The Women's Rights Party affirms these sex-based rights.

The right to speak freely.

The right to peaceful assembly, association, and movement.

The right to safe single-sex spaces for women and girls.

The right to be free from violence in all its forms.

The right to equitable reward and recognition for women's contributions to society and work, whether paid or unpaid.

The right to have control of our own bodies, including reproductive autonomy.

The right to protect and safeguard our children.

The right for motherhood to be recognised as exclusively female.

The right to fair play in sports.

The right to evidenced-based education and healthcare with informed consent.

The right to use clear and plain language when referring to women in the media, academia, in healthcare, at work and at home.

These rights are all at risk when concepts of gender replace concepts of sex.

The Declaration on Women's Sex Based Rights

The Declaration on Women's Sex Based Rights, produced by the Women's Declaration International (WDI), recognises the importance of CEDAW.

The Declaration outlines how the Yogyakarta Principles, which assert the concept of an inherent gender identity, are attempting to erase the sex-based rights of women and girls in CEDAW, despite the Yogyakarta Principles having no legitimacy in international law. ¹¹

This is further explained in the document:

On Sex vs Gender Identity in International Human Rights Law. ¹²

¹⁰ <https://womensrightsparty.nz/wp-content/uploads/2023/07/POLICY-Womens-Rights-Party-adopted-at-AGM-2023-160723.pdf>

¹¹ https://www.womensdeclaration.com/documents/78/DECLARATION_-_FINAL_VERSION_AMENDED.pdf

¹² https://womensdeclaration.com/documents/377/On_Sex_vs_Gender_Identity_in_International_Human_Rights_Law_1.pdf

The Women's Declaration re-affirms the following sex-based rights which are in CEDAW: ¹³

- We reaffirm motherhood as an exclusively female status.
- We reaffirm women's and girls' rights to physical and reproductive integrity and oppose their exploitation through surrogacy and related practices.
- We reaffirm women's rights to freedom of opinion and expression, peaceful assembly and association, and political participation.
- We reaffirm women's rights to fair play in sports.
- We reaffirm the need to end violence against women and girls, and to protect rights of children.
- We oppose all forms of discrimination against women and girls that result from replacing "sex" with "gender identity" in law, policy, and social practice.

The rights in these two documents can only be won and protected when women and girls are recognised as belonging to a biological sex. They will be eroded as soon as concepts of gender and "gender rights" are included in law.

(b) Is there reliable data on the impact of a recognized legal right of self sex/gender identity on all stake holders, including cis- and trans-girls and women?

Firstly, we don't accept the terms "cis- and trans-girls and women"
Women and girls are human females. Men who identify as women are not women.

International Impacts

For an in depth analysis of the international impacts of inclusion of concepts of gender in law, we recommend reading the article from the Women's Declaration International: 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.¹⁴ The impacts on women and girls are described from pages 10-16.

New Zealand Impacts

We will describe some of the impacts in New Zealand of recognising concepts of gender and "sex self-identification" in law and policy ; and of interpreting the law as if it refers to these concepts, even when it doesn't. We can provide further data with references upon request.

Legislation which, rightly or wrongly, has been used to promote concepts of gender in New Zealand, includes the Human Rights Act (HRA) 1993, The Births Deaths, Marriages and Relationships Act (BDMRRA) 1991, and the Conversion Practices Prohibition Legislation Act (CPPLA) 2022, amongst others.

In a country with high rates of violence against women and children, we have seen impacts including the loss of women's spaces in swimming pools, changing rooms, refuges and prisons; misleading education guidelines; loss of women's free speech rights and safety;

¹³ <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-summary/>

¹⁴ <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1366&context=dignity>

loss of children's safety from harmful medical practices; loss of language centring women, mothers and babies in midwifery; loss of fairness and safety for women and girls in sport; and incoherent statistics.

Births Deaths Marriages and Relationships Registration Act (BDMRRA) 2021

The concept of gender identity, which is termed “nominated sex”, was included in our Births Deaths Marriages and Relationships Registration Act 1995 (**BDMRRA**).

In 2021 this was changed to allow self-identification to be a sufficient basis for changing the sex on the birth certificate. This harmfully extends a legal fiction. It removes any objective standard whereby women can claim rights to their own spaces in prisons, changing rooms, refuges, rape crisis support groups, sports and so on; and it contravenes the rights to these spaces provided in our own HRA and CEDAW.¹⁵

At the same time S79 (2) acknowledges that what is on the birth certificate does not necessarily determine what a person's sex actually is. So organisations are not legally compelled to allow males who identify as females in women's spaces. However, many organisations are not aware of this. Furthermore, S79 (2) provides no answer as to how the sex could be reliably determined.

Conversion Practices Prohibition Legislation Act (CPPLA) 2022¹⁶

In New Zealand the word “gender” “gender identity” and “gender expression” were included in the Conversion Practices Prohibition Legislation ACT (CPPLA) 2022. The law strongly encourages practitioners to take an affirmation approach to gender dysphoria- an approach that has recently been questioned by the Hillary Cass Report in the UK.¹⁷

This law would allow parents to be imprisoned for not affirming their child's gender identity. Recently, Oranga Tamariki, our Ministry for Children, announced that it will investigate such parents.¹⁸

The CPPLA excludes from prosecution, medical professionals who provide medicalisation and surgery to convert the appearance of a child's sex to resemble the opposite sex, or to convert a potentially gay child's sexual orientation to appear to be heterosexual.

The harm that such treatments can cause has recently been outlined in the Hillary Cass Report in the United Kingdom.¹⁹

¹⁵ <https://www.legislation.govt.nz/act/public/2021/0057/latest/whole.html>

¹⁶ <https://www.legislation.govt.nz/act/public/2022/0001/latest/LMS487215.html>

¹⁷ <https://cass.independent-review.uk/home/publications/final-report/>

¹⁸ <https://centrist.co.nz/oranga-tamariki-may-intervene-in-cases-where-families-resist-childs-gender-transition-to-protect-emotional-wellbeing/>

¹⁹ <https://cass.independent-review.uk/home/publications/final-report/>

Reem Alsalem, the UN Special Rapporteur on Violence Against Women and Girls has said that implementing the Cass Report is key to protecting women and girls from serious harm.²⁰

The CPPLA, by encouraging the affirmation of gender, discouraging the questioning of it, and excluding medical practitioners from accountability, increases the likelihood of children suffering permanent harm from these treatments.

New Zealand has very high rates of puberty blocker use,²¹ which is of great concern, considering the increasing acknowledgement by health authorities around the world that there is no reliable evidence that they are either safe or effective. The final Cass Report is a recent example. The Ministry of Health removed the advice on its website that puberty blockers are safe and effective around the time that the interim Cass Report was produced in 2022²²; but still continued to assert that they were. We are currently awaiting a review of puberty blockers from the Ministry of Health.²³

The Human Rights Act 1993²⁴

New Zealand is a signatory to CEDAW and has ratified its commitment. New Zealand's Human Rights Act 1993 (HRA) includes sex-based rights for women, making it compatible with CEDAW. These include provisions which forbid discrimination on the grounds of sex, and provisions which allow for the provision of single sex spaces where they are required on the grounds of dignity and safety.

However, the Human Rights Commission has incorrectly advised that the sex provisions in the Human Rights Act allow people who identify as the opposite sex to claim all the rights that belong to that sex.

The Human Rights Commission has misrepresented our Human Rights Act as being about gender, when it isn't. The Act protects rights based upon sex. This misrepresentation has led to most government departments, educational institutions and councils acting as if gender were protected in law, when it is not.

The misrepresentation of the HRA by the HRC; combined with cultural change coming from within our institutions; and other legislation; have had a number of impacts:

Restrictions in Free Speech

In New Zealand, free speech is protected by the Bill of Rights Act (BORA).

We have no hate speech or hate crime laws.

Currently, our Human Rights Act only outlaws speech which contributes to discrimination on the grounds of race

²⁰ <https://www.ohchr.org/en/statements/2024/04/uk-implementation-cass-report-key-protecting-girls-serious-harm-says-un-expert>

²¹ <https://tinyurl.com/2fbtec2y>

²² <https://tinyurl.com/2fbtec2y>

²³ <https://www.rnz.co.nz/news/national/514044/ministry-of-health-taking-the-time-to-get-it-right-on-puberty-blockers>

²⁴ <https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html>

The previous government proposed to change the law to apply these speech restrictions to other categories in the HRA, as well as proposing to add gender to the HRA. However, any restrictions of freedom of speech were strongly resisted by the NZ public, and the proposals were put on hold.

Despite this, the New Zealand Police are acting as if we have hate crime laws, when we don't. Their list of categories needing protection against this "hate" include "gender" but not "sex",²⁵ even though sex is a category in the HRA, but gender isn't.

Furthermore, although the Law Commission has been instructed by the current government not to continue developing hate speech law, it is still examining ways to include gender in law.

The culture promoted by the Human Rights Commission, government ministers, the judiciary, the mainstream media, and public institutions, that women who speak up for their sex-based rights are committing "hate speech", led to about 250 women being violently attacked by a mob of around 2,000 trans-activists on 25 May 2023 at Albert Park in Auckland, while the police stood by and did nothing.²⁶

This breached the women's rights of free speech and assembly under our Bill Of Rights Act.²⁷

For several years, there was almost complete silence from the mainstream media about the dangers of the medicalisation of children with "gender dysphoria", and even now, there is very little being published, for example, about the latest findings of the Cass Report in the UK.

Women have suffered job losses for speaking out about their rights. Women speaking about their rights were also banned from using council facilities, until a court case ruled that a group of such women were not a "hate group" and required the council to provide these facilities.²⁸

Statistics Collection

The 2023 census in New Zealand contained meaningless and illogical questions and instructions which will cause important data about sex, for example data required for the provision of health services, to be unavailable.

Although sex was defined differently to gender, questions about gender were the default questions, and were written in such a way as to be understood to be about sex. In most cases, there was no option to answer questions about sex, or to state that one did not have a gender identity.²⁹

²⁵ <https://www.police.govt.nz/advice-services/advice-victims/hate-motivated-crime>
<https://www.police.govt.nz/advice-services/advice-victims/hate-motivated-crime?nondesktop>

²⁶ <https://womensrightsparty.nz/day-of-shame-for-new-zealand-its-media-its-police-and-its-left-political-leadership/>

²⁷ <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>

²⁸ <https://www.franksogilvie.co.nz/news/case-brief-whitmore-v-palmerston-north-city-council>

²⁹ <https://www.census.govt.nz/what-questions-are-in-the-2023-census/>

Prisons (Spaces)

Violent male offenders have been placed in women's prisons.³⁰ Women prisoners are said to have become pregnant. The Department of Corrections considers women's safety to be only one factor in a long list of considerations, when deciding where to place a male prisoner. This breaches the Mandela Rules and the Bangkok Rules which make it clear that women's safety is paramount.

The Corrections Regulations have been re-written to accommodate the Births Deaths Marriages and Relationships Registration Act 2021, which allows for sex self-identification alone to determine the "nominated sex" on the birth certificate.

Corrections have determined that a male prisoner who identifies as a woman can demand to be searched by a female prison officer, placing that "right" of a male prisoner ahead of the right of a female officer.

Education (Minors)

New Zealand schools have increasingly been promoting gender neutral toilets leading to a loss of privacy, safety and cleanliness for girls.

The New Zealand Ministry of Education's **Relationships and Sexuality Education Guidelines (RSE Guidelines)** promote the fiction that children can be born in the wrong body and can change sex, and that sexual orientation is about being attracted to a certain gender. The Guidelines also normalise the taking of puberty blockers. Some schools have supported the hiding of information about students' gender identities from parents. Social and medical transitioning, supported by these Guidelines, are regarded by many countries, including the UK, as being neither safe nor effective.³¹

The use of these Guidelines in New Zealand schools has caused a high degree of concern amongst teachers, parents and children, to the extent that it became an issue in the 2023 election. Although the new coalition government has promised to remove and replace the RSE Guidelines this could take months or years.³²

Councils (Spaces, free speech)

As noted, city councils tried to ban women from gathering to speak about their rights in council facilities, until a judge ordered them to stop this practice.³³

Councils in Christchurch, Dunedin and Invercargill have failed to protect the rights of women and girls to single sex changing facilities at swimming pools.³⁴

This breaches women's sex-based rights in the Human Rights Act, and in CEDAW.

These decisions are based on a misinterpretation of the HRA and of the Births, Deaths Marriages and Relationships Registration Act 2021 (BDMRRA).

Sport

Polls before the election revealed that the protection of places for women in sport, on the basis of sex, was vitally important to New Zealanders. We have seen these places undermined. For example, Laurel Hubbard, a man who identifies as a woman, took a woman's place to represent New Zealand in the weight lifting division at the Tokyo

³⁰ <https://reduxx.info/nz-trans-identified-male-sent-to-womens-prison-after-stabbing-spree/>

³¹ <https://cass.independent-review.uk/home/publications/final-report/>

³² <https://hpe.tki.org.nz/guidelines-and-policies/relationships-and-sexuality-education/>

³³ <https://www.franksogilvie.co.nz/news/case-brief-whitmore-v-palmerston-north-city-council>

³⁴ https://aboldwoman.substack.com/p/its-official-control-of-womens-and?utm_source=publication-search

Olympics. Sport New Zealand guidelines promote trans inclusion more highly than fairness and safety for women and girls in community sports.³⁵

Midwifery

Recently the Midwifery Council attempted to erase the words for “woman”, “mother” and “baby” from the Midwifery Scope of Practice; preferring, instead, the more general term “whanau” referring to extended family, making the scope of the midwife's practice unclear. After protests from midwives and a widely supported petition,³⁶ the Council backed down and re-introduced the word “woman”, but the Scope of Practice still fails to centre mothers and babies and risks neglecting pregnant women’s needs for privacy and focussed care.

Women's Spaces and language.

In New Zealand, women and girls are losing their own spaces in prisons, swimming pools, changing rooms, public toilets, toilets in schools, refuges and sports. Mothers and midwives are losing the language to describe ourselves. This puts our health, dignity and safety at risk. When we can no longer define what a woman is, it is impossible for women to organise for our rights, including such things as pay equity, maternity care, childcare, and eliminating violence against women.

(c) How should self sex/gender identity as a legal right, or the abolishment of sex/gender as a legal category, impact:

Language, Physical spaces, Sport, Minors, Affirmative action, Statistics collection

"Abolishment of Sex as a legal category? Is this being considered?"

We hope that the Committee is not considering "the abolishment of sex" as a legal category from law. It would be alarming if this was the case, coming from the CEDAW Committee. If the sex provisions of CEDAW were removed, it would end CEDAW.

We think it is more likely that the Committee meant "the abolishment of self sex/gender", referring to socially constructed sex-based stereotypes.

Nevertheless sex is indeed being undermined and abolished, by the inclusion of gender, and so we will comment on the further impacts of this.

We predict that the impacts of the erasure and abolishment of biological sex as a legal category and the inclusion of gender as a legal category in its place, as described in (b) will continue to intensify. This will further harm the rights and safety of women and children, reduce their status in society, and prevent women from being able to organise for their rights.

When biological sex is no longer a category, there is no meaningful category left, from which women can organise for their rights. Affirmative action would be meaningless.

Women's rights would be eroded and eventually abolished.

The category of Sex needs to be protected as a legal right for women and girls.

"Gender as a legal right"-the unfolding impacts

³⁵ https://sportnz.org.nz/media/z1rbu0gp/spnz015_gps-for-the-inclusion-of-tg-in-comm-sport-1_3_v3.pdf

³⁶ https://womensrightsparty.nz/midwifery-petition-presented-to-parliament-today/?fbclid=IwAR3VBBGJ2tvoBuEtcXLWBZJ_kFOx0YxkPtkBaSyB3erjBW98mH7XCPUN8Ts_aem_

We have discussed the impacts of including gender or "sex self-identification" in law in answer to question (b) and given several examples of the harm this causes.

When gender is introduced into law it leads to the conflation of gender with sex and then the eventual replacement of sex by gender, thereby erasing sex as a legal category or right.

The more gender is included in law and the more sex is removed, women will lose our sex-based rights and there will be further damage to women's equal inclusion in society.

The erasure of sex in law, internationally, is explained well in the WDI 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*. Page 6³⁷

- Step 1: Allowing change of legal sex under restricted conditions (age, medical diagnosis, waiting period). This step has been completed in most countries in the world.
- Step 2: Allowing change of legal sex without any restrictions (age, hormonal treatment or surgery, mental health diagnosis, criminal records). This step has been completed in several countries in Europe, South and North America, and other regions.
 - Step 3: Removing the record of sex from specific or all legal documents (e.g., birth certificates, passports, IDs), also known as "gender neutral" documents. This step is being implemented in the Netherlands (Wareham, 2020) and was proposed (and rejected through citizens' initiative) in Finland (Citizens' Initiative, 2020).
 - Step 4: Biological sex is treated as private information, and its disclosure is punished by law.
 - Step 5: Replacement of the category of legal sex with • a) sex characteristics, • b) gender identity, and • c) gender expression in all legal document

In New Zealand, the Law Commission is looking at ways to include gender, gender identity and gender expression as a category in the **Human Rights Act (HRA)** or similar legislation. We strongly oppose such inclusion; because experience has shown concepts of gender undermine and seek to replace women's sex-based rights.

If gender were included in the HRA, it would conflict with women's sex-based rights in the same legislation. Men who identify as women would be likely to believe they have a right to enter all women's spaces, no matter how private these spaces are, and no matter how vulnerable the women and girls may be.³⁸ Women's sports and the rights of lesbians to meet together or to assert their same-sex attraction would be severely undermined. Violence, including sexual violence, against women and girls would increase. Including gender in the HRA would pave the way for gender to be included in hate speech legislation, further suppressing women's rights to free speech.

The protection of "gender" rights in the **Conversion Practices Prohibition Legislation Act (CPPLA)** is likely to contribute to broken families and increasing numbers of young people being harmed for life by medicalised gender treatments, and suffering adverse health conditions such as pain, sterility, brittle bones, reduced sexual capacity, heart conditions and shorter lives.

The abolishment of gender as a legal category-likely impacts

³⁷ <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1366&context=dignity> Page 6

³⁸ <https://womensrightsparty.nz/changes-to-human-rights-act-will-harm-women-and-girls/>

We think that if the term "gender" were removed as a legal category, this would restore the understanding of biological sex as a legal category, lead to more clarity, and improve the rights and status of women and girls.

We recognise that people who have a gender identity have a right to not be discriminated against. The best way to protect this in law is to use the more accurate and objective term "non-conformity to sex-based stereotypes."

This is the term used in the Equality for All Act, proposed by the Women's Declaration International- USA.³⁹

Maintaining Sex as a legal category and protecting sex-based rights .

It is critical to recognise the reality of biological sex, and the social constructions that have been built upon this; in order to protect and further the legal and social rights of women and girls. Women's sex -based rights are at the heart of international law, such as CEDAW, and these must not be lost.

Recommendations

- Support and promote the provisions for women's sex-based rights, established in international law, including CEDAW.
- Maintain the clear distinction between sex and gender which is provided by UN definitions.
- Do not conflate sex and gender or use language which could confuse or conflate them. That includes not placing terms about sex, gender and identity together with a diagonal line , for example " self sex/gender identity" "sex/gender" or "gender/ sex self-identification".
- Support the General Recommendation 28 of the CEDAW Committee in 2010.
- Endorse the position paper by Reem Alsalem, the special rapporteur on violence against women and girls , on the definition of “woman” in international human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination Against Women, written 4 April 2024
- Use the term "non-conformity to sex -based stereotypes" if there is a need to protect the rights of those who do not conform to the behaviour expected of their sex .
- Recognise that the right to non-conformity to sex-based stereotypes is held by a someone as the sex that they are, not as the sex that they may want to be.
- Recognise that the right to non-conformity to sex- based stereotypes does not give a male the right to enter women's spaces, or to claim rights that are specifically for women.
- Do not use the terms 'self sex" , "self sex/gender identity" "sex/gender identity" or "sex/gender" or support them in law.
- Do not support terms like " gender" "gender identity" or "gender expression" being categories in law.
- Do not support "sex self-identification", "gender self- identification " or "gender/sex self-identification" being provided as a "right" in law.
- Do not use the term "cis."
- Reject any proposal to interpret CEDAW as being about, or including, gender.

³⁹ <https://womensdeclarationusa.com/equality-for-all-act/>

- Reject any proposal to include gender in CEDAW.

We ask the CEDAW Committee to maintain and uphold the sex-based rights provided for women in CEDAW. The Committee must not be part of a process which would undermine or erase these rights.

Kind regards

Jill Ovens, Women's Rights Party

Janet, Women's Declaration International- New Zealand
