



Submission to the report on gender, sexual orientation and gender identity

From: Human Rights and Family Policy Institute, Slovakia

To: Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Date: March 12, 2021

Dear Mr. Madrigal-Borloz,

we are deeply concerned of your activities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, including your call for input to a thematic report: Gender, sexual orientation and gender identity. Hereto, we would like to add few comments to the call, to highlight the risks of ideological approach, you seem to represent.

Further we would like to focus on problems related to social construction theory of gender, medical treatment of gender dysphoria, right to know real sex of a person, and freedom of conscience.

Problems with the theory of social construction of gender

What we, human beings, have in common with other animals is the fact, that we are bodily creatures (although specific, since we have rational nature). Our body is not extrinsic to “us”, it is not something we just happen to live in, it is not a thing which just belong to us. We *are* our bodies. This philosophical claim is expressed also in law. When an aggressor damages our car, or house, he will be responsible for causing damage to our property. But when he damages our arm, or other part of our body, he will be responsible for causing damage to us – to a human person. Our body is intrinsic to us. Our body is who we *are*.

Our sex is important part of who we are. Human beings reproduce sexually – new human being comes to an existence by uniting of the female sex cell (ovum) with the male sex cell (sperm). It means both man and woman are necessary to procreate. Human reproductive system is as if split into two parts – male and female. One makes no sense without the other. Depending on our role in reproduction, we are either male or female.

Sex is rather complex and deep rooted reality. It begins in the very moment of conception, when we normally gain (*genotype*) either XX sex chromosome (girls), or XY sex chromosome (boys). Y chromosome is responsible for development of male sex organs, therefore presence of Y chromosome constitutes a male, while absence of Y chromosome constitutes a female. In normal human development, genotype gives bases for phenotype – boys starts to develop testes and girls ovaries, which produce sex hormones which further influence our sexual development as males and females. When a baby is born, normally we can say whether it is a boy or a girl. Sexual development becomes complete after puberty. The point is, that our sex is deeply rooted in each cell of our body as well as in bodily systems, especially in our reproductive system.

There may be various defects or deviations from the normal development – both on the level of genotype (such as sex-chromosome trisomies) and phenotype. It may be sometimes even difficult to identify which sex a person is. But variations from the norm does not mean a person is not either male or female – depending on our role in reproduction (albeit male or female with defective reproductive system, as it may be).

Our sex – being male or female – is a biological reality. How we as individuals and as society react to this biological reality falls into the category of gender (although this term did not develop in many languages). We hold, that gender is manifestation of sex in social context (please, compare this with definition of gender in Article VII point 3. of Rome Statute of the International Criminal Court: “*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.*”) Gender is not the same as sex, but is attached to sex. We have already mentioned, that humans are bodily beings (our body – male or female, is who we are). But we are also reasonable beings, who are capable to recognize



reality (intellect) and act freely (free will). (As a lawyer you know well, that this philosophical claim, again, is strongly present in our legal systems, it is foundation for establishment of criminal responsibility, and elsewhere.) So our reaction to bodily reality (in this case we speak about male-female reality) is not solely defined by programs encoded in our genes, hormones and instincts. In large part we react to male-female reality freely and creatively, which is the reason why various cultures (societies) developed various gender models, fashions, attributes, expectations, etc. of behavior. These various gender models do not mean that they are utterly socially constructed, completely apart from sexual (biological) reality. Rather they are various ways how people incorporated this biological reality into social life. In accordance with the definition of gender in the Rome Statute of the International Criminal Court gender has clear link to biological reality of two sexes – male and female, thus making point that gender cannot be understood apart from biological reality.

To the contrary, social theory of gender (gender understood exclusively as a social construct), which seems to be also your position, enables to separate gender from biological reality of two sexes (which is probably the key idea of what its critics call a “gender ideology”, although we believe this term is not yet defined). This theory allows for various manipulations with gender. Some radical feminists want to eliminate gender differences among men and women, because they find them to be utterly socially constructed in order to oppress women. To the contrary transgender activists wants to replace in an individual one gender with another. Yet another see in separation of sex and gender place for creating more than just male and female genders, etc. Many cultures and countries find these manipulations with gender unacceptable and ideological. There is no international consensus on these topics, such approach is not approved by UN member states (in fact as we see from Rome Statute of the International Criminal Court the opposite is true) and therefore should not be promoted by United Nations.

Gender dysphoria treatment

When speaking about biological reality of oneself, reactions of individual persons may be various. Most of the people are capable of understanding reality as it is. But there are various exceptions, when persistent views of oneself contradicts reality. Such are the cases of anorexia (a girl persistently believes she is extremely obese, even she is not) or body dysmorphic disorder (a person is convinced that he or she is extremely ugly), or body integrity identity disorder (when someone identifies as a disabled person, and feels at odds with fully functional body). In all these cases respective persons do not capture reality about themselves. Psychiatrists call these instances delusions, and appropriate treatment is to help these persons to accept themselves as they are. The question is, why the gender dysphoria should not be treated in the same way? There are psychiatrists who are convinced that the same approach should be applied accordingly, in order to really help people with gender dysphoria. In case of psychological problems, we have to treat mind, not body (which in this case is healthy).¹

Our understanding is, that many countries provides for changing of sex,² or gender, in order to help patients who suffer gender identity disorder, to ease their suffering. This may not be as effective as one would hope, as recent research points out³ and there may possibly be other forms of treatment, which will be more beneficial to persons with gender dysphoria. The free and critical discussion of professionals should not be negatively influenced by politicians, ideological activists, courts, nor international human rights bodies.

Right to know real sex of a person

But the political and ideological activists push the agenda yet into different level, from medical treatment to “human right” for changing ones gender. Also, trans-gender activists push to understand changing of gender as if real change of sex (which from biological point of view is impossible), even in cases when no psychiatric diagnoses, or surgical treatment is involved, etc. This shift in approach is very far reaching and has potential to negatively influence many people and areas of peoples lives.

1 More on this argument can be found in Anderson R.T., „When Harry Became Sally. Responding to the Transgender Moment.“ Encounter Books, New York, 2018, and works cited therein in Chapter 5.

2 Although when sex is understood in its complexity as mentioned earlier, change of sex in human beings is not possible, only certain traits typical for sexes can be changed.

3 McHugh, P.R., Mayer, L.S., „Sexuality and Gender, Findings from the Biological, Psychological, and Social Sciences.“ The New Atlantis 50, Special Report, Fall 2016. Ryan T. Anderson, “Transitioning procedures don’t help mental health, largest dataset shows”, The Daily Signal (August 3, 2020) <https://www.dailysignal.com/2020/08/03/transitioning-procedures-dont-help-mental-health-largest-data-set-shows/>



Inštitút pre ľudské práva a rodinnú politiku, o.z.

To mention some, there is problem in sports, when biological males should compete with biological females. There is problem of privacy, when biological males (often with untouched male genitalia) should enter showers and similar facilities for girls. There are medical problems – different effectiveness or safety of some medical drugs or procedures for men and women. Problems with transplantations since some form of transplantations from opposite sex donor may be medically improper. Lack of medical help (such as in gynecology, or in relation to pregnancy) depending on biological sex of patients, lack of sufficient protection (of women) at work, etc.

As we can see, there are situations, when it is in best interest of transgender persons, their children, other people, or the whole society, to be aware of real (biological) sex of such transgender person. Allowing official change of sex (gender) is one thing, but pretending, that such person is truly opposite sex in all instances, is another. The point here is, that there certainly are legitimate situations when disclosure of true sex of a person is needed in order to protect rights and interests of said person or other people.

Among those other people, who shall be entitled to know truth about biological sex of a transgender person, are certainly their children. We have a right to know our own identity. Convention on the Rights of the Child (Article 7.1) stipulates, that the child has the right to know (and be cared for) by his or her parents, which is part of our wider right to know our identity. In a wider context, it is also in the interest of grandchildren and possibly other family members to know other family members including their biological sex.

When speaking about right to know our identity, it is in the best interest of a child to know both parents. As we mentioned earlier, being man or women refers to our role in reproduction. In relation to offspring, father means male parent, and mother means female parent. And that is biological reality. In order to know ones mother, we need to know which parent conceived the baby, carried the baby throughout the pregnancy and delivered the baby.

In our view, all efforts to hide real sex of a person completely may be in contradiction with the rights and legitimate interests of various people (including transgender persons), and should not be promoted by United Nations.

Freedom of conscience

Europe has experience with totalitarian regimes and ideologies. In twentieth century both fascism and communism gained control over large parts of Europe (and not only Europe). The experience of post totalitarian countries is that totalitarian ideologies always oppress freedom of conscience. It is because conscience is strong force in promotion of truth and thus is combating ideologies of any kind.

We are therefore deeply concerned of No. 8 on your list of Key questions and types of input sought, asking whether there are initiatives in connection with the right to freedom of religion, belief or conscience that have had the practical impact of limiting the enjoyment of human rights (including sexual and reproductive rights) of LGBT persons. Understanding conscience as a source of limiting of (human) rights is a very totalitarian idea. It is the freedom of conscience which is the fundamental human right, which must be protected. We kindly urge you to value and respect freedom of conscience in the fullest possible extent.

Respectfully yours,

Patrik Daniška
Inštitút pre ľudské práva a rodinnú politiku, o.z.

Inštitút pre ľudské práva a rodinnú politiku, o.z. (in English: Human Rights and Family Policy Institute) is civic association based in Slovak Republic, promoting protection of fundamental human rights and freedoms and protection of family and marriage.