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Founded in 2009, Global Action for Trans Equality (GATE) is an international advocacy and expert organization focused on gender identity and expression. GATE works towards justice and equality for trans and gender diverse communities. Rooted in our movements, we collaborate with international, regional, and national strategic partners to ensure access to resources, knowledge, and decision-making spaces.

Submission to the call for inputs to the report of the Special Rapporteur on violence against women and girls to the HRC on Forms of Sex-based Violence against Women and Girls: New Frontiers and Emerging Issues

30 January 2025

1. Introduction

This submission responds to the Special Rapporteur’s call for inputs on the report “Forms of Sex-Based Violence Against Women and Girls: New Frontiers and Emerging Issues.” We would like to respectfully inform the mandate about the threat that the current ‘sex-based’ framing of violence against women and girls can pose by undermining decades of UN and feminist scholarship and activism, as well as the human rights standards aimed at ending gender-based violence against women and girls in all their diversity. We believe that this framing risks not only eroding progress in critically analyzing the full spectrum of conditions that enable gender-based violence in all its forms but also reinforcing the marginalization of one of the most oppressed groups under patriarchy—the trans and gender diverse community.

The ‘sex-based’ violence framework primarily defines violence in terms of biological sex, which can be limiting and exclusionary. We argue that this outdated approach oversimplifies the issues surrounding violence and neglects the nuanced realities of gender and identity, potentially leading to inadequate protections for all victims of violence, particularly those who do not conform to traditional gender norms.

2. Why Focusing on ‘Sex’ Can be Harmful to All Women

Sex is a complex concept that refers to multiple dimensions of biological and physiological characteristics used to classify individuals as male, female, or intersex. These dimensions include: chromosomal sex, gonadal sex, hormonal sex, anatomical sex, and genetic sex.

Focusing on the ‘sex’ aspect for purposes of analyzing violence against women and girls necessitates defining what ‘woman’ is.

1. If a ‘woman’ is defined biologically as a person who can produce eggs, this would lead to absurd and exclusionary outcomes where women who cannot produce eggs—whether due to menopause, sterilization, or a hysterectomy—would fall outside this definition and thus lose protections. Similarly, trans individuals would face inconsistent recognition. A trans man who retains the ability to produce eggs might qualify for protection, while a trans woman, who cannot produce eggs, would be excluded. This interpretation is not only impractical but also discriminatory. Reproductive capacity cannot be the basis for defining womanhood, as it creates unjust hierarchies among women based on their bodies’ biological functions.¹
2. Defining ‘woman’ anatomically (e.g., based on the presence of labia, clitoris, or breasts) also leads to exclusion and absurdity, where women who have undergone

¹ Chicago Journal of International Law. (2008). *Designing Women: The Definition of ‘Woman’ in the Convention on the Elimination of All Forms of Discrimination Against Women*. Retrieved from <https://cjl.uchicago.edu/print-archive/designing-women-definition-woman-convention-elimination-all-forms-discrimination>.

mastectomies, survived female genital mutilation (FGM) or were born with atypical anatomical traits would be excluded.²

3. If ‘woman’ is defined by genetics (e.g., XX chromosomes), this would exclude women with chromosomal variations, such as those with Turner Syndrome or Triple-X Syndrome. It would also fail to address the fact that a person’s genetic makeup is not visible or easily discernible in daily life. Under this definition, trans men with XX chromosomes might qualify for protection, but trans women would not, despite facing similar forms of discrimination based on their gender expression.³

In all these interpretations of ‘woman’ as sex, both cisgender and transgender individuals face exclusion based on arbitrary and impractical criteria.

Therefore, the most reasonable and inclusive approach is to define ‘women and girls’ through the lens of gender rather than sex as it captures how gender operates in societies and the lived realities of those facing discrimination and violence due to their gender.

This inclusive definition ensures that:

- Women who cannot or do not produce eggs (e.g., due to menopause, surgeries, or medical conditions) are protected.
- Women with diverse anatomical or genetic characteristics are recognized.
- Trans women and other gender diverse individuals who experience gender-based discrimination are fully included.

It acknowledges that the root of inequality lies in societal perceptions and norms rather than biological characteristics. This interpretation not only aligns with the spirit and intent of CEDAW but also ensures that no individual facing gender-based discrimination is left unprotected. There can be no reasonable justification for the exclusive definition of ‘women and girls’ that does not reproduce the patriarchal violence the mandate is created to fight against.

3. How ‘woman’ should be interpreted in CEDAW

The object and purpose of a treaty represent a unified concept that reflects the goals its drafters aimed to achieve. The Vienna Convention’s directive to interpret a treaty “in light of its object and purpose”⁴ underscores the importance of understanding these goals by analyzing “the normative logic that presents itself when the entirety of the treaty’s provisions are considered together.”⁵ For CEDAW, the interpretation of its goals depends on the level of generality applied during such an inquiry. As a human rights treaty, CEDAW’s overarching

² *ibid.*

³ *ibid.*

⁴ Vienna Convention, *supra* note 15, art. 31(1).

⁵ Jonas, D. S., & Saunders, T. N. (2010). The object and purpose of a treaty: Three interpretive methods. *Vanderbilt Journal of Transnational Law*, 43(3), 565, 578. *Id.* at 579.

aim aligns with that of all human rights treaties: “the protection of the rights of individuals,” while certain broader values are preserved through derogation and limitation clauses. At its most general level, this suggests that CEDAW must be interpreted in a way that prioritizes the effective protection of individual rights. This approach requires an expansive understanding of who constitutes the rights holders under the treaty. Since the rights holders in CEDAW are women, an inclusive and expansive definition of ‘woman’ aligns with this interpretative framework, as it provides the most comprehensive protection of individual rights.

More specifically, the object and purpose of CEDAW are likely twofold: 1. the elimination of all forms of discrimination against women and 2. the promotion of gender equality. These goals are evident from the treaty’s title and are reinforced by Article 2, which the Committee has identified as central to the treaty’s objectives:

- **Elimination of All Forms of Discrimination Against Women:** The phrase “all forms” inherently encompasses discrimination based on biology, anatomy, genetics, gender identity, and gender performance. The Committee has explicitly recognized that “all forms” include those “not explicitly mentioned in the Convention or that may be emerging.” Discrimination against women can arise from any of these dimensions, and addressing such forms of discrimination is integral to fulfilling the treaty’s purpose.
- **Gender Equality:** Achieving gender equality, as articulated in CEDAW, necessitates an expansive definition of ‘woman’ that includes cisgender and transgender women, as well as other individuals who experience discrimination on the basis of their alignment with ‘womanhood’ across biological, anatomical, genetic, gender identity, and gender performance dimensions.

Both broad and specific interpretations of CEDAW’s object and purpose support an expansive understanding of ‘woman’ that incorporates one or more of these categories. This approach ensures the treaty’s protective scope aligns with its intended goals while remaining inclusive of the diverse experiences of discrimination faced by all women. Thus, the proposed definition of ‘woman’ through gender as an analytical tool is consistent with the object and purpose of CEDAW, enabling it to effectively safeguard and promote the rights of women in their broadest and most inclusive sense.

4. How International Human Rights Have Evolved to Include Women in All Their Diversity

Indeed, the UN and regional human rights mechanisms and bodies have increasingly recognized that a person’s sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) help shape and exacerbate people’s experiences of gender-based violence. The UN defines gender-based violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether

occurring in public or in private life.”⁶ The CEDAW Committee has recognized intersecting forms of discrimination against lesbian, bisexual, and transgender women and intersex persons in General Recommendation No. 35.⁷ The UN High Commissioner for Human Rights has indicated that transphobic violence “constitutes a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.”⁸

The previous Special Rapporteur on violence against women and girls, Ms. Rashida Manjoo, has numerous times called violence against transgender people a manifestation of gender-based violence against women and has highlighted the need to address violence against transgender women, who are often excluded from protections designed for cisgender women.^{9 10 11} Reports by the Independent Expert on Sexual Orientation and Gender Identity have emphasized the need to move beyond binary understandings of sex and gender to ensure the inclusion of all individuals in human rights protections.¹²

As international human rights law is evolving in response to the global context, the term ‘gender-based violence against women’ is increasingly being used by regional human rights institutions too. For example, the Council of Europe’s Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), Article 3, offers the following definition: “Gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.”¹³ Based on the Explanatory Report to the Istanbul Convention, CoE expands this definition to include harm based on perceived sex, gender, sexual orientation, and gender identity:

⁶ United Nations. *Declaration on the elimination of violence against women*. New York: UN, 1993.

⁷ The Committee on the Elimination of Discrimination against Women. (2017). *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19*. CEDAW/C/GC/35.

⁸ United Nations High Commissioner for Human Rights. (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (para. 20)*. A/HRC/19/41.

⁹ United Nations Special Rapporteur on Violence against Women, its Causes and Consequences. (2013). *Statement on the finalization of the country mission to India*. Retrieved from <https://www.ohchr.org/en/statements/2013/05/special-rapporteur-violence-against-women-its-causes-and-consequences-finalises>.

¹⁰ United Nations Development Programme (UNDP). (n.d.). *Caribbean Study Visit Report*. Retrieved from <https://www.undp.org/sites/g/files/zskgke326/files/migration/jm/Caribbean-Study-Visit-Report-Final.pdf>

¹¹ Manjoo, R. (2010). *Statement by Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, 65th session of the General Assembly, Third Committee, Item 28, 11 October 2010*, New York. Retrieved from <https://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>.

¹² United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. (2018). *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*. A/HRC/38/43. United Nations Human Rights Council.

¹³ Council of Europe. (2011). *Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), Article 3*. Retrieved from <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>

“Gender-based violence refers to any type of harm that is perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation, and/or gender identity.”¹⁴

These frameworks emphasize that violence is rooted in power imbalances and social perceptions rather than immutable biological traits.

Transgender individuals face disproportionate levels of violence globally, often due to their gender identity and expression. The concept of "sex-based violence" risks erasing these experiences by centering solely on biological sex, which does not account for the intersectional discrimination faced by transgender people. By focusing on "sex-based violence," legal frameworks risk excluding transgender individuals from protections and remedies, as their experiences of violence are often rooted in societal perceptions of biological sex. That is, discrimination and violence experienced by trans women (and men alike) stem from the societal perception of what is appropriate for each sex. Thus, it is impossible to separate gender from sex and that is true for cisgender persons as well.

5. Conclusion

GATE strongly believes that violence against all women—cis and trans—can only be eradicated through an intersectional and inclusive approach that centers the voices and experiences of those most affected. As a feminist human rights organization, we respectfully call on the Special Rapporteur to adopt an inclusive framework that does not support anti-rights actors in their efforts to perpetuate patriarchal violence.

GATE respectfully urges the Special Rapporteur to:

1. **Adopt an Inclusive, Evidence-Based Approach:** Violence against women in all their diversity must be understood through a comprehensive gender-based lens that addresses power imbalances in all their forms, as well as the intersectionality of violence and systemic inequality.
2. **Reject Divisive and Transphobic Narratives:** Cease promoting biologically deterministic views that marginalize trans and gender diverse people, artificially fueling unnecessary divisiveness among feminist movements.
3. **Center Trans Voices in Policy Discussions:** Actively include trans and gender diverse people in conversations and policymaking processes that affect their lives, ensuring that their rights are upheld and their autonomy respected.

¹⁴ Council of Europe. (n.d.). *What is gender-based violence?* Retrieved from <https://www.coe.int/en/web/gender-matters/what-is-gender-based-violence>