



THE COUNTESS

**Submission to the Pre-Sessional Working Group of the Committee
on Economic, Social and Cultural Rights**

Prepared for the 75th session (12th February and 1st March 2024)

Submitted by The Countess (CLG)

The Countess CLG¹ is a legally registered Irish civil society organisation that campaigns to highlight the impact of gender self-identification as permitted by the Gender Recognition Act², 2015 on the rights of women and girls in Ireland. We have a broad interest in women's rights and child safeguarding. Since being established in 2019 we have promoted constructive, respectful, and rights-focused dialogue on this issue. We wish to see a balanced approach to gender recognition that will:

- Vindicate the rights of women.
- Achieve best practice in safeguarding for children and young people.
- Defend the hard-won rights of same-sex attracted people. • Ensure those with gender-questioning identities are treated equally to all others in society. At our core is the belief that by virtue of our common humanity, all groups in society must be afforded the ability to live with dignity, respect, and safety.

¹ <https://thecountess.ie/>

² 18. (1) Where a gender recognition certificate is issued to a person the person's gender shall from the date of that issue become for all purposes the preferred gender so that if the preferred gender is the male gender the person's sex becomes that of a man, and if it is the female gender the person's sex becomes that of a woman. <https://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/print>

Purpose of this submission.

The purpose of this submission is to highlight the impact of gender self-identification or gender self ID on the State's ability to comply with the principles of the International Covenant on Economic, Social and Cultural Rights.

Gender Self Identification

Gender self ID is predicated on the belief that everyone has a gender identity – an internal sense of themselves as male, female neither or both which may or may not match their sexed body. This is an unfalsifiable belief. Gender self ID does not simply permit an individual to identify as the gender they wish but demands others perceive that individual as they wish to be seen.

When gender, gender identity and gender expression are conflated with sex it renders meaningless any attempt to offer specific protections against discrimination to females or opportunities for female advancement and securing equality based on sex.

The State enables an individual to acquire a gender recognition certificate without medical or psychiatric assessments and does not conduct vetting for criminal convictions. There is no assessment panel. The holder of a gender recognition certificate is permitted for all legal purposes to record their sex as the opposite to that they were born including on all official documentation. Gender self ID has been 'hard baked' into public policy via the current Programme for Government³. Many public and private institutions, schools and universities are introducing measures that aim to promote the inclusion of those who believe in gender identity while simultaneously discriminating against those who don't. These measures include ending single sex provision e.g. mixed sex toilets⁴, changing rooms and sport and prescribed pronoun use⁵. No consideration has been given to the impact of these measures on the dignity, privacy and safety of women and children.

In November 2022 the Scottish parliament attempted to introduce a gender Self ID regime that closely resembles the Irish process. Commenting on aspects of the Gender Recognition Reform (Scotland) Bill (GRR) Reem Asalem - UN Special Rapporteur on violence against women and girls wrote⁶,

According to the proposed amendment.....it is proposed that the requirement that a Gender Recognition Panel consider and be satisfied by the required evidence will be removed. Subsequently that person would obtain a gender recognition certificate that certifies them legally in that gender. For persons identifying as women, the certificate would create a legal presumption that they have the right to access women-only services, across Scotland. There are a variety of services that attend to anyone identifying as a woman, i.e.

³ [Programme for Government LGBTQI Strategy](#)

⁴ <https://thecountess.ie/the-countess-calls-for-rethink-on-introduction-of-mixed-sex-toilets-in-irish-schools/>

⁵ <https://genspect.org/the-folly-of-preferred-pronouns-policy-in-irish-higher-education/>

⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27681>

they consist of services and spaces for women born female, transwomen and other gender non-conforming women offered either in parallel or simultaneously and include shelters and support groups for victims of violence. However, I share the concern that such proposals would potentially open the door for violent males who identify as men to abuse the process of acquiring a gender certificate and the rights that are associated with it.

The Irish State has already implemented the gender self-identification regime that Ms Alsalem describes as ‘potentially open[ing] the door for violent males who identify as men to abuse the process of acquiring a gender certificate and the rights that are associated with it’. The Gender Recognition Reform (Scotland) Bill (GRR) was ultimately blocked by the intervention of the UK government who invoked section 35 of the Scotland Act in January 2023 to prevent the Gender Recognition Reform (Scotland) Bill receiving royal assent⁷. The Irish Self ID regime remains unchanged.

Concerns to be addressed by the State as set out in the ICESCR pre-sessional working group at its seventieth session (7–11 March 2022)

The ICESCR pre-sessional working group at its seventieth session (7–11 March 2022) set out concerns to be addressed by the State pertaining to non-discrimination legislation in particular the **Equal Status Acts 2000–2018 and the Employment Equality Acts 1998–2015**⁸.

The ICESCR PSWG requested that the Irish State indicate the efforts undertaken to ensure that the revised legislation is fully in line with article 2 (2) of the Covenant with a view to prohibiting explicitly all forms of discrimination in all areas relating to economic, social and cultural rights and on all prohibited grounds.

Full participation in these domains is predicated upon the observation of other human rights including freedom of speech, freedom of thought and expression (including the press), freedom of religion and belief, political rights, and the right to equality and to be free from discrimination.

In Ireland those who do not believe in gender identity and are critical of gender self ID are not protected from discrimination. Their belief that sex is binary and immutable is not a protected belief in equality or employment law. This has arisen, in part, from the State’s failure to correctly apply European Union Framework Directive 78 of 2000⁹ that required EU member states to introduce legislation prohibiting four types of discrimination, one of which is religion or belief discrimination. Most States took the words "religion or belief" and added them to their domestic legislation. Ireland restricted the new provision to religion alone. If the State extended equality legislation to protect both religion AND belief the right to believe sex is binary and immutable would have absolute but qualified protection.

⁷ <https://www.scottishlegal.com/articles/scottish-government-loses-first-court-battle-over-gender-recognition-bill>

⁸ [Reference to Ireland's Equality Legislation](#)

⁹ [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#)

This gap in the equality legislation has emboldened organisations, including some funded by the government, to call for the political and media disenfranchisement of citizens who do not believe in gender identity and are critical of gender self ID. In December 2020 a letter calling for discrimination against people who do not believe in gender self ID was signed by 21 organisations many of whom are in receipt of government funding. They publicly called for those who do not believe in gender self ID to be denied access to political and media representation¹⁰. The International Covenant on Civil and Political Rights (ICCPR) guarantees freedom of religion or belief under international law. In addition, article 18 of the Universal Declaration of Human Rights adopted in 1948 states that “everyone has the right to freedom of thought, conscience and religion”. According to international human rights law, the obligation to fulfil human rights means that States must take positive action to facilitate the enjoyment of basic human rights. It is also recognised that substantive equality may require positive action by the State to address the specific disadvantage and needs of women¹¹.

The importance of protecting belief in equality legislation was demonstrated in *Forstater v CGD Europe*¹². In June 2021 Ms Forstater was found to have been discriminated against by her former employer CDG Europe for her belief that biological sex is real, important, immutable, and not to be conflated with gender identity. She considered that statements such as “woman means adult human female” or “trans women are male” are statements of neutral fact and are not expressions of antipathy towards trans people or “transphobic”. Some of Ms Forstater’s colleagues found her statements offensive and complained. Her consultancy contract with CDG Europe was not renewed. Consequently, she brought a case against her employer for discrimination on the belief ground. On appeal, the UK Employment Tribunal found that she had been discriminated against because of her belief. The tribunal found that her ‘gender-critical beliefs, which were widely shared, and which did not seek to destroy the rights of trans persons, whilst offensive to some fell within the protection under Article 9(1), ECHR and therefore within s.10, EqA’.

The ICESCR pre-sessional working group at its seventieth session also sought clarification on how the implementation of the **Domestic Violence Act 2018 and the accession of the State party to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)** have effectively helped in protecting victims of domestic violence.

The State has implemented its third National Domestic Violence and Gender Based violence strategy.¹³ The ability of this policy to adequately protect vulnerable females is undermined by the gender self ID. The NDVGB strategy does not provide any safeguarding measures to reasonably ensure that gender self ID is not abused by male sexual predators or male

¹⁰ [Open letter calling for the disenfranchisement of those critical of gender self ID](#)

¹¹ <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>

¹² [Forstater Judgement](#)

¹³ [Third National Domestic and Gender Based Violence Strategy 2022 - 2026](#)

perpetrators of violence. The Countess agrees with the UN Special Rapporteur on violence against women and girls observation that,

‘It is important to note that insistence on safeguarding and risk management protocols does not arise from the belief that transgender people represent a safeguarding threat. It is instead based on empirical evidence that demonstrates that the majority of sex offenders are male, and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse. One way they can do this is by abusing the process to access single-sex spaces or to take up roles which are normally reserved to women for safeguarding reasons’. The Irish State recognises a male in possession of a gender recognition certificate ‘shall from the date of that issue become for all purposes the preferred gender so that if the preferred gender is the male gender the person’s sex becomes that of a man, and if it is the female gender the person’s sex becomes that of a woman’.

In Ireland gender self ID has resulted in violent males, some convicted sex offenders, who hold gender recognition certificates being housed in the female prison estate¹⁴ and being accommodated in women’s homeless shelters¹⁵. Women who have experienced male violence are being discriminated against, retraumatised, and stigmatised by the State’s failure to guarantee their right to single sex provision. This will result in some females self-excluding from services due to their experience of male violence or for religious or cultural reasons.

The Countess founder Laoise de Brún, Barrister at Law, has written an amendment¹⁶ to the Gender Recognition Act that would ‘make provision for single-sex accommodation in prisons; and to provide for related matters’. The amendment was introduced to the Dáil by Peadar Tóibín TD in December 2023. Regarding prisons the amendment states,

‘The fact that a gender recognition certificate is issued to a person shall not affect the sex or gender of the person for the purposes of Rule 52(1) of the Prison Rules 2007 (S.I. No. 252 of 2007¹⁷).

Rule 52(1) of the Prison Rules 2007 states that “male and female prisoners shall be accommodated in separate areas to which prisoners of the opposite gender do not normally have access, and, subject to paragraph (2), prisoners of one gender shall not be permitted access to areas to which prisoners of the other gender have access at the same time”.

¹⁴ <https://gript.ie/report-barbie-kardashian-removed-from-limerick-womens-prison/>

¹⁵ <https://gript.ie/homeless-women-suffer-intimidation-sharing-hostel-with-trans-identified-male/>

¹⁶ <https://thecountess.ie/wp-content/uploads/2023/06/Gender-Recognition-Amendment-Prisons-Bill-2023.pdf>

¹⁷ <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article52>

Articles 2 & 3 – The right to non-discrimination and the equal rights of men and women.

Art 2 (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Art 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Policies designed to address discrimination rely on robust and verifiable data. The UN defines discrimination as any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin, or other status. Discrimination may be an isolated event affecting one person or a group of persons similarly situated or may manifest itself through harassment or abuse of authority.

Interference with data collection has significant implications for meeting the conditions of Article 2 (2). The State's adoption of gender self ID impacts the collection of reliable data. Sex, self-declared gender identity and gender expression are being conflated and this may result in a distortion and impoverishment of our understanding of social and medical phenomena¹⁸. Sexmatters.org describes sex as 'a powerful predictor of almost every dimension of social life including education, employment, crime, physical and mental health. It is difficult to think of an area of life where sex is not an important dimension for analysis'¹⁹

During the 2022 census collection, in an unprecedented departure from the historical method of counting how many males and females are in the State, the Irish Central Statistics Office advised trans identified people to select BOTH Male and Female on their forms. The CSO stated they would randomly assign a sex to those individuals. This decision undermines the collection of reliable sex disaggregated data that is required to monitor sex specific experiences including pay gaps, levels of representation in public life, inequality in childcare, social care, housing and health.

The State has discriminated against females by removing the words woman and female from public information campaigns. Campaigns addressing female health including cervical cancer and menopause have removed or minimised the use of the word woman in information literature and online. This has negative impacts on migrant women whose first language is not English and on women who are not literate in medical/anatomical language. A similar erasure of male sex-based language in health campaigns has not occurred. This is a clear example of unfair treatment or arbitrary distinction based on a person's sex.

¹⁸ <https://sex-matters.org/wp-content/uploads/2023/10/Data-matters.pdf>

¹⁹ <https://sex-matters.org/where-sex-matters/data-and-statistics/>

The State attempted to remove sex specific language from maternity legislation. The general scheme of the Work Life Balance and Miscellaneous Provisions Bill 2022 sought under heading 11 to remove the words “she” and “her” and under heading 12 to delete the word “woman” entirely from our maternity protection legislation. A similar erasure of male sex specific language in legislation has not occurred.

Articles 10 & 13 – Family and Education

Article 10(1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Article 13 (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The negative impact of gender self ID on the State’s ability to uphold the principles of Articles 10 and 13 is evident from developments in the Irish education system. The revised secondary Social Personal and Health Education (SPHE) curriculum²⁰ has embedded gender identity into teaching. This has been achieved by merging Religious and Social Education with SPHE into one mandatory subject. It will be logistically impossible to remove students who do not believe in gender identity from classes because the theory will be ‘baked into’ every lesson and possibly every subject. This course of action is recommended in Section 9 of the interim toolkit²¹ that supports the delivery of the curriculum. It asks teachers to ‘Ensure that gender identity and gender expression are incorporated across the curriculum’. The mandatory nature of this subject will make it difficult for the state to vindicate the rights of parents as set out in Articles 42.1 and 42.2 of the constitution.

Article 42.1 of the Constitution obliges the state to respect the rights of parents in relation to the religious, moral, and social education of their children.

Article 42.4 of the Constitution obliges the state to have due regard to the rights of parents in relation to religious and moral formation of their children.

Teaching gender identity as fact in schools rather than as a belief runs contrary to the principles of Article 10. This article recognises the primacy of the family in relation to the education of children. Article 13 seeks to ensure dignity and respect for fundamental

²⁰ [SPHE Curriculum Junior Cycle](#)

²¹ <https://www.ul.ie/gender-identity-school-resources/section-9-curriculum>

freedoms in education. This cannot be achieved if students must participate in what are effectively 'faith formation' classes contrary to the belief of the student and their family.

Questions.

The Countess CLG recommends that the Pre-Sessional Working Group of the Committee ask the State;

1. To support the amendment to the Gender Recognition Act that would prevent males in possession of a gender recognition certificate being housed in the female prison estate.
2. To protect from discrimination those who believe that biological sex is real, important, immutable and is not to be conflated with gender identity. This can be achieved by the addition of 'belief' to the list of protected characteristics in the Equal Status Acts 2000–2018 and the Employment Equality Acts 1998–2015
3. To assess the risks and impacts of the gender self ID on the rights of females and child safeguarding.
4. To define the words 'sex' and 'gender' in legislation.
5. To record both biological and legal sex in all public and medical records.
6. To ensure the public service meets its obligations under the Public Sector Duty of Care²² and ensure the public service does not operate a 'hierarchy of rights' that holds one protected characteristic in higher regard than another.
7. To cease teaching gender identity as fact within the national curriculum.

²² [Public Sector Duty of Care](#)