

# Reaffirming Women's Sex-Based Rights 28-07-20

## Discrimination

There is no doubt that discrimination against women may be based in some circumstances on their perceived sex, and also that there are particular types of discrimination which females are exclusively subjected to through being born female.

Throughout the world women are exploited in a myriad of ways. Women form the majority of the world's poorest people and the number of women living in rural poverty has increased by 50% since 1975. Women work two-thirds of the world's working hours and produce half of the world's food, yet they earn only 10% of the world's income and own less than 1% of the world's property. Violence against women throughout the world and in all cultures prevails on an unimaginable scale, and women's access to justice is often paired with discriminatory obstacles.<sup>1</sup> With regard to health, education, marital rights, employment rights, parental rights, inheritance and property rights, women are relegated to the status of second class citizens. These forms of discrimination against women are incompatible with women's empowerment.

In order to address this inequality, it is essential that we can classify and measure the extent of it, the causes, and the efficacy of solutions applied. This can only be done if we begin from a basis of understanding what we mean by the word 'woman' - how is the category of women defined? Until fairly recently this question was uncontroversial. The category of women was sex based, and laws, policies, charters etc. were interpreted with this understanding. For example:

**Article 1 of the The Committee on the Elimination of Discrimination against Women (CEDAW )** adopted in 1979 by the UN General Assembly Committee defines discrimination against women to 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.”*<sup>2</sup>

Sex is defined by the United Nations as *“the physical and biological characteristics that distinguish males from females.”* (Gender Equality Glossary, UN Women)<sup>3</sup>

With regard to the UK, as recently as 2010 the Equality Act defined the terms 'man' and 'woman' as being grounded in biological sex, and the protected characteristic of 'sex' relies on the categories of 'man' and 'woman' as sex based categories.

### “11. Sex

*In relation to the protected characteristic of sex—*

- (a) a reference to a person who has a protected characteristic is a reference to a man or to a woman;*
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.”*<sup>4</sup>

Man and woman are both defined in s212(1),

*“man” means a male of any age;*

*“woman” means a female of any age.*<sup>5</sup>

1 [https://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination\\_women.aspx](https://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination_women.aspx)

2 <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

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

4 <https://www.legislation.gov.uk/ukpga/2010/15/section/11>

5 <https://www.legislation.gov.uk/ukpga/2010/15/section/212>

The comprehensive, deep rooted universal underpinning of recognised sex categories equivalent to 'man' and 'woman' have endured across time. It is unavoidable that altering the basis of the categories from an objective basis of sex to a subjective basis of gender identity would result in wide spread ramifications legally and socially.

It is the case that since 2004 people in the UK have been able to obtain a GRC that affords them the legal fiction of belonging to a member of the opposite sex class. It was calculated that the number of people who would seek to do so would be small

There are 2 roots to being legally recognised as a woman.

- 1.Through being born a member of the female sex class (an adult human female)
- 2.Through obtaining a GRC (a male who has transitioned to become a trans woman )

Now there is a concerted effort within the Green Party and elsewhere to push for Self ID, and a broadening of the criteria to not only include those who identify as women in the category of women, but also those who identify as gender variant, gender fluid etc.

Non-binary identities come into the picture here, though this is document is primarily focused on sex rather than gender identity.

Alongside the push for Self ID there seem to be number of prominent campaigners and groups making an effort to alter the meaning of the word 'female' to include trans women.<sup>6</sup> Other theories espoused are that sex is a social construct and that a person can change sex. These ideas are accompanied by attempts to erode, obscure and deny the reality that human beings are sexually dimorphic, and that trans women are born male, and that biological sex is immutable.

There are a number of trans women who do not believe that the physical alterations to their bodies removes them from the male sex category. Stating this as a fact however, has lead to accusations of transphobia and hatred. It is not deemed acceptable to acknowledge that trans women are male , even if they may not directly claim to be female<sup>7</sup>. This obviously has implications for a binary system of sex segregation.

Whilst it is the case that the meaning of words is always evolving, this erosion of meaning presents a problem with regard to defining and upholding the rights that women have on the basis of their sex as a protected characteristic under the equality act. If sex is socially constructed or something that can be changed at will, this has implications for the protections afforded to natal women.

There is ample evidence that the word woman his losing any coherent meaning among the Green Party leadership. When asked the simple question 'what is a woman ? during the Yorkshire and Humberside Deputy Leadership Hustings, four of the candidates; Amelia Womack, Tom Pashby, Cleo Lake, and Nick Humberstone, were unable to give a succinct answer.<sup>8</sup> Only Andrea Carey Fuller gave a straight reply.<sup>9</sup>

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6 <https://twitter.com/slightlyatsea/status/1270332296583880705>

7 [https://twitter.com/Ladyboi\\_Ace/status/1270092629472980993](https://twitter.com/Ladyboi_Ace/status/1270092629472980993)

8 <https://www.youtube.com/watch?v=bKaQRTdcds0>

9 <https://www.womenarehuman.com/green-party-row-over-question-of-what-is-a-woman/>

# Data Gathering

If anyone can self-ID as not only a woman, but as female, it makes it impossible to gather accurate statistics and data about natal women and the progress that is or is not being made towards their equality.

As an example, The Committee on the Elimination of Discrimination against Women (CEDAW )recognises the importance of gathering sex segregated data and compiling statistics relating to the prevalence of different forms of violence against women.

“Sex-disaggregated data is data that is cross-classified by sex, presenting information separately for men and women, boys and girls. Sex-disaggregated data reflect roles, real situations, general conditions of women and men, girls and boys in every aspect of society. ... When data is not disaggregated by sex, it is more difficult to identify real and potential inequalities.” (UN Women, Gender Equality Glossary).<sup>10</sup>

The conflation of sex with ‘gender identity’ leads to the collection of data on violence against women and girls which is inaccurate and misleading because it identifies perpetrators of violence on the basis of their ‘gender identity’ rather than their sex. This creates a significant impediment to the development of effective laws, policies, strategies and actions aimed at the elimination of violence against women and girls.

## The Use of sex and gender in The Green Party

The Green Party is patently aware that the protected characteristic of 'sex' in the Equality Act 2010 relies on the ability to distinguish between 'male and female In fact the parties own employment practices insist on it - as an identity anyway . The page where jobs are advertised states: ' The Green Party prides itself on being an Equal Opportunity employer and particularly welcomes applications from those who identify under one of the protected characteristics under the Equality Act 2010.' Sex is on of the protected characteristics.<sup>11</sup>

**The Green party policies them selves provide a snapshot of the enforced confusion the muddling of categories and language has.**

### Green party policies: Maternity Services

(Thank you to Caroline Russell for bringing these to my attention)

*HE501 All women should be entitled to the highest standards of care during pregnancy and birth, and post-natally. These standards will be maintained for all regardless of sexual orientation, gender identity, level of income, black and ethnic minority background, age or disability. We will ensure that women are given the information they need to make appropriate choices about how they wish to give birth, and that a full range of options, including home birth and a range of styles of hospital delivery, is made available to all women.*

The policy suggests women can have a different gender identity and be pregnant, thereby suggesting that trans men are women

*H509 In the UK women, who want to breastfeed often feel unsupported and most stop before they wanted to. Around a quarter of women feel unable to breastfeed for various reasons.*

Here, men who want to breastfeed are erased. The gendered language in HE 501 -511 is exclusionary and not in keeping with the Green Party policy which asserts that men can be pregnant.<sup>12</sup>

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<sup>10</sup> <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-full-text/>

<sup>11</sup> <https://www.greenparty.org.uk/jobs>

<sup>12</sup> <https://policy.greenparty.org.uk/he.html>

In comparison within policies **HE 700 - 706**<sup>13</sup> which concern abortion, the gendered language has been expunged and the term 'pregnant people' has been inserted. However, despite referring to pregnant persons, the sex selection of abortions is still noted. As are single sex wards in hospitals.

The broader Green perspective recognises that everyone needs both individual and collective rights, and that a balance must be maintained between them.

## Policy on Rights & Responsibilities<sup>14</sup>

The rights and responsibilities chapter acknowledges that there are practical and fundamental difficulties in allowing individuals to act exactly as they please without regard to the well being of others, and that when people with power claim rights for themselves, those with less power find their rights denied.

As has been outlined previously, collectively women have far fewer rights and far less power than men, and so we have a situation where males who wish to be regarded as not only women, but as female make it more difficult for women to act collectively to advance their own rights. Places reserved for females are taken by males, achievements that are designated for females are being awarded to males and so on.

**RR200** *A Green view of rights acknowledges the interconnectedness of all things.* In this case it should be recognised that altering the rights of one sector of society will have an effect on another sector of society. If RR200 is considered, it must follow that counting and categorising males as women or even female, and making policy on the basis of gender identity rather than on sex will have an effect on the outcomes for females.

**RR203** *In a world where resources are finite, whether they be spatial, physical or biological, there can be no absolute right either to a particular level of resources or to act in a way which denies equitable rights to others or to the life support system. In any cases of doubt, then the precautionary principle must apply.*

**RR203** recognises that the physical world has limits and that it exists as a material reality outside of our interpretation of it, and that the dimorphic nature of biological sex exists as an objective reality. There are physical differences between males and females, and these physical biological differences matter in the sense that they are at the root of the oppression of females. Women are oppressed because of their sex, and that oppression has resulted in women not being equal - as outlined above. If females as a group suffer from inequality through the fact of being members of the female sex class, obscuring of 'females' as a distinct category separate from 'males' increases the likelihood of inequality and prevents it from being addressed.

We are often told that there is no proof that allowing males to be considered as female will effect women, but we are already seeing instances where it is having an impact. In prisons, and in sports for example, and it is reasonable to predict that this impact may be further magnified as the ability to retain sex segregated categories is eroded.

If gender categories continue to replace sex based categories, and the precautionary principle is really to be applied, then the onus is on those who want the criteria of the categories of male/female/man /woman to be altered to prove that this will not lead to further inequity for females. This should be done prior to campaigning for self ID.

**RR207** places the onus on people to ensure the absence of discrimination on the basis of sex, gender, gender reassignment, sexual orientation. In order for that to be possible, the distinct differences between these criteria and an understanding of how they interact with each other has to be recognised, considered and monitored otherwise it is impossible to ensure the absence of discrimination that RR207 calls for.

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<sup>13</sup> <https://policy.greenparty.org.uk/he.html>

<sup>14</sup> <https://policy.greenparty.org.uk/rr.html>

**RR205 People thus have both the right and the responsibility to pursue such personal fulfilment as will enable them to function both as individuals and as fully responsible and integrated parts of society and the life support system**

RR205 and 206 emphasise the rights of people to pursue personal fulfilment, however the extent of these rights must be integrated with the rights of others and with society as a whole. Altering the basis of the way in which members of society are categorised from objective sex to subjective gender identity without taking into account the effect that will have on females who are already disadvantaged on the basis of their sex is already having an impact on females.

For example, the conflation of sex and gender undermines the ability of lesbians to define their sexual orientation on the basis of sex rather than gender, and to assemble and associate on the basis of their common sexual orientation This scuppering of lesbian rights goes against philosophical basis namely:

***“We see that Individual human rights include the freedom to combine with others in common endeavours in representative institutions such as trade unions and community groups***

It is important that everyone is able to assert and defend their individual rights and can act collectively with others to assert and defend their common rights. And so women should be able to do this in meetings and online without their spaces being abruptly closed , as happened to the r/GenderCritical forum, with the loss for its 65,000 subscribers of seven years of content. On 29/06/20<sup>15</sup>

**While leaving the porn sites untouched!**

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<sup>15</sup> [https://4w.pub/reddit-bans-feminist-sub-r-gendercritical/#:~:text=R%20adical%20feminist%20subreddit%20r%2FGenderCritical%20was%20banned%20on,banning%20%2C000%20subreddits%2C%20also%20including%20r%2Fthe\\_donald%20and%20r%2FChapoTrapHouse.](https://4w.pub/reddit-bans-feminist-sub-r-gendercritical/#:~:text=R%20adical%20feminist%20subreddit%20r%2FGenderCritical%20was%20banned%20on,banning%20%2C000%20subreddits%2C%20also%20including%20r%2Fthe_donald%20and%20r%2FChapoTrapHouse.)