



Letter to Permanent Representatives concerning gender ideology in a treaty on crimes against humanity proposed by the International Law Commission

October 8, 2019

URGENT: 6th Committee, Gender Ideology

Excellency,

The International Law Commission has asked the General Assembly to discard the definition of gender as “male and female” in international law. This would open the door to 100+ “genders” and further dilute respect for authentic human rights. It will have negative implications for parental rights, medical ethics, and the protection of the family.

Article 7, paragraph 3, of the 1998 Rome Statute of the International Criminal Court (UN Document A/CONF.183/9) famously defined “gender” as referring to the “the two sexes, male and female, within the context of society.” This definition was hard-fought over many months of difficult and tense negotiations. States expressly excluded “any meaning different from the above” before the treaty could be adopted.

The International Law Commission wants to discard this definition in a new draft treaty on the prosecution of crimes against humanity. It gives an elaborate justification for this in its report to the General Assembly (UN Document No. A/74/10, see attached relevant sections). It notes how the prosecutor of the International Criminal Court, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and other UN entities, already interpret gender as “socially constructed” and say that it includes “sexual orientation” and “gender identity.”

Excellency,

The legal effect of discarding the Rome Statute’s definition of gender will be to enshrine gender as a social construct in international law and elevate “sexual orientation” and “gender identity” to protected categories of international law. It wouldn’t merely leave the definition of gender open to each country to define in national legislation, as some might believe.

Because of the elaborate rationale in the report of the International Law Commission, dropping the traditional definition of gender in the new treaty will essentially define gender as a social construct, with all this implies, including UN agencies recognizing 100+ genders and pressuring countries to do so as a human rights imperative.

What the International Law Commission is doing is not legitimate and should not receive the approval of the General Assembly.

- **Most countries do not consider gender a social construct, but a biological reality with legal implications.** Through 2019, only seven countries allow gender change based on self-identification alone, according to the pro-LGBT group [Amnesty International](#). Most of the 40 or so countries where individuals are allowed to legally assume a transgender identity require a psychiatric determination of gender dysphoria or a surgical operation to mutate the sexual physiognomy of an individual. Some even require individuals to divorce their spouses and do not allow individuals with children to change their gender.
- **The process the International Law Commission used to make this change gives the impression of impropriety and of being the result of undue influence.** The commission only began to revisit the definition of gender after LGBT organizations lobbied the commission to drop the definition of gender as “male and female.”
- **Countries in favor of the Rome statute’s definition of gender as “male and female” have never been given the opportunity to object to the change.** The International Law Commission told the General Assembly that it would not change any of the definitions from the Rome Statute when it started its work on the new treaty in 2015, and has repeatedly maintained this position, even in the last session of the General Assembly. This was still the premise of the consultations carried out by the International Law Commission on the new treaty since last year.
- **The ICC prosecutor, the UN’s SOGI expert, and other sources cited by the International Law Commission for changing the definition of gender, do not have any binding authority to change the definition of gender in the Rome statute.** It is disingenuous of the commission to cite UN entities who deliberately misinterpret binding international law in their non-binding opinions as if they were authoritative.

The sixth committee of the General Assembly is scheduled to review the report of the International Law Commission between October 28 and November 6. We urge you to voice these concerns and discuss them with your capital.

We stand by ready to assist you in any way. Please contact our legal expert Stefano Gennarini with any questions (stefano@c-fam.org). Thank you for your collaboration.

Sincerely,



Mr. Austin Ruse
President