

The Yogyakarta Principles & the Women's Human Rights Campaign

The Women's Human Rights Campaign (WHRC) arose from the use and misuse of the Yogyakarta Principles (YP) by misogynistic, self-serving supporters of the trans lobby. The Principles attempt "to make sex a defunct legal category ... (as) we are moving towards a society where sex does not exist"¹, especially for women and girls, and to destroy the gains made in past decades by the feminist movement. The YP document is designed to replace sex, which is a scientific, biological fact, with 'gender identity', which is a socially constructed fiction, based largely on postmodernist rhetoric and identity politics.

The YP project is largely coordinated by Allied Rainbow Communities, or ARC International (ARC), an NGO based in Canada. In her video analysis of the YP, feminist Anna Zobnina notes that ARC is basically a lobby group, not an internationally representative organisation.²

The WHRC Declaration on Women's Sex-Based Rights has been signed, as of 26 August 2020, by 11,615 individuals and 238 organisations across 119 countries. Unlike ARC, all supporters of the WHRC are listed on its Declaration page. ARC does not provide any membership details but says it received \$407,000 from 'membership and donations' in 2016 – according to the most recent audited reports posted on its website³. It also received \$275,000 from 'foundations' and \$71,000 from the Norwegian Foreign Ministry in 2016⁴.

The WHRC Facebook site has 3,893 likes; the ARC page has 2,416. The WHRC has representatives across at least 25 countries and was established eighteen months ago. The ARC was established seventeen years ago.

ARC played a key role in establishing the YP. As stated on its website –

We initiated the project, convened a coalition of NGOs to implement it, facilitated meetings of the coalition, worked closely on the preparations for and conduct of the experts' meeting, worked with partners to successfully launch the Principles, prepared backgrounders and advocacy materials to support regional launch initiatives, developed a website, track the ongoing use of the Principles, are participating in the development of an activists' guide, and conduct ongoing training and support for organizations using the Principles.

Despite its apparently credible status, however, it is important to note – as student-at-law NSW, Katherine Deves, has done - that -

The Principles were acknowledged by the Senate Legal and Constitutional Affairs Committee as having no statutory power in Australia, even though there were calls to include them as "relevant international instruments" by the Human Rights Law Centre:

[T]he Yogyakarta Principles have no legal force either internationally or within Australia. They were developed by a group of human rights experts, rather than being an agreement between States"⁵.

Unlike the YP, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted by the United Nations (in 1979) and has been ratified by 189 states (the USA being one notable exception). The YP were published in November 2006 following an international meeting of civil rights groups in Yogyakarta, Indonesia. The document created by this group, first published in late 2006, related to sexual orientation and gender identity⁶ (although Anna Zobnina argues that gender identity was not part of the original document. She also notes that, ‘gender’ does not exist as a concept in many cultures, only sex⁷).

The original Principles were supplemented in 2017 - the Yogyakarta Principles Plus 10. The Plus 10 principles added the attributes of gender expression, sex characteristics⁸, sexual orientation and ‘gender identity’ to the document. The Principles now promote a series of rights associated with these attributes at the expense of the rights of girls and women, and, in effect, seek to supplant those rights.

At the YP Plus 10 meeting in 2017, only 33 people were signatories to the additional principles⁹.

The Principles have never been accepted by the United Nations and attempts to make gender identity and sexual orientation new categories of non-discrimination have been repeatedly rejected by the General Assembly, the UN Human Rights Council and other UN bodies. In fact, the majority of members of the United Nations General Assembly opposed any reference to the YP as they are seen as being contradictory to the position of the UN Human Rights Council.¹⁰

So, why have the YP become so important in general human rights discourse? Their prominence is a classic case of ‘regulatory capture’, on a grand scale. To explore this phenomenon would take a separate and extensive paper, beyond the constraints of this letter. I will, however, endeavour to outline the main issues with the YP.

In the YP ‘gender identity’¹¹ is defined as –

Understanding ‘gender identity’ to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender. Including dress, speech and mannerisms.¹²

As noted by Tina Minkowitz, “gender itself is not defined, but is situated in relation to ‘sex assigned at birth’, with which a person’s internal experience of gender may or may not correspond” and the reference to ‘sex’ is only to indicate that it does not refer to personality traits. ‘Sex’ is not defined either.¹³

Also, by linking gender to personal expressions, dress, mannerisms and speech –

YP implicitly accepts a concept of gender as equivalent to stereotypes. When beliefs about mannerisms, dress and speech appropriate to one sex or the other are abstracted and made to serve as a ground for personal identity, they are shielded from challenge.¹⁴

The notion that an innate feeling can lead to a change in an individual's sex status at birth, with the corresponding legal entitlements and access to spaces and places reserved for girls and women (including their sports), is a violation of the protections established over decades for female people, beginning with CEDAW. As Minkowitz further notes, "It is not gender identity that is being protected, but the substitution of internal identity for recorded sex, upon the request of any person"¹⁵. The legitimisation of this process is simply creating new forms of discrimination against girls and women and is in conflict with CEDAW. This is not to say that transgender people should not be protected, but replacing sex with 'gender identity' not only erases sex as a category and girls and women as a class distinct from that of boys and men, but also erases girls' and women's human rights.

*Women should be understood as political actors whose self-determination as a fundamental right and principle necessary for equality of the sexes pre-exists any recognition women have achieved in patriarchal legal systems.*¹⁶

A significant, and currently relevant, example of the consequences of these changes is given by Minkowitz, as follows –

- (women have) little reason to expect their rights will be protected, in (a) law and policy environment that treats their discussion of sex and gender as tantamount to hate speech¹⁷.

The suppression of freedom of speech – by de-platforming, as I have discussed elsewhere in the Tasmanian context – is a violation of human rights and is also in opposition to Principle 26 of the YP, which argues for fostering dialogue and mutual respect between various cultural groups that hold different views on sexual orientation and gender identity¹⁸.

On the matter of 'sex' and 'gender', the CEDAW Committee's General Recommendation 28 states that –

The term "sex" here refers to biological differences between men and women. The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men in the distribution of rights favouring men and disadvantaging women.

The hierarchical relationship and power inequality between men and women is emphasised in this Recommendation and "contrasts with a view that gender identity can reverse an individual's positionality by mere operation of self-declaration"¹⁹. In other words, changing one's gender does not change an individual's social positioning. Gender identity advocates are naïve to think this is possible; the ideological nature of their claims renders them as fictional as the postmodernist thinking upon which they are based^{20 21}.

The YP and YP Plus 10 are often misused in parliamentary debates, as demonstrated recently in the Tasmanian parliament. In the House of Assembly on 20 November 2018 (page 103 of Hansard for that day), the Leader of the Greens, Cassy O'Connor, refers to the YP Plus 10 as being "very clear about the application of the UN Human

Rights Conventions to LGBTI people” – but the YP and its extension ‘Plus 10’ is not a UN Convention of any type.

In the Legislative Council on 4 April 2019 (page 10 of Hansard for that day), Rob Valentine MLC quotes a submission from the Australian Lawyers for Human Rights²² as saying that the YP Plus 10 affirms “binding legal standards with which all states must comply” – which, as reiterated earlier, is not within the capacity of the YP as it is not a UN Convention. In fact, the attempt to make the YP part of UN protocols was soundly rejected²³.

In conclusion, there are six fundamental criticisms of the YP and the ‘Plus 10’ extensions -

- 1) They were constructed by unelected, unrepresentative civil groups and individuals;
- 2) They have never been adopted by the United Nations;
- 3) They have no legal force either internationally or within Australia and were rejected by the Commonwealth legislature;
- 4) The YP+10 principles were signed by just 33 people;
- 5) They are often quoted misleadingly by members of parliament and trans lobby groups as though they had been adopted by UN resolution; and
- 6) Their full implementation, both in law and within state organisations, would effectively make ‘sex’ a defunct legal category, replacing it by the ambiguous category of ‘gender’.

Geoff Holloway (Dr.)
Hobart.

1 September 2020

¹ <https://www.youtube.com/watch?v=jk0ga6PX2Kc> - slide 21.21 seconds in, Anna Zobnina, webinar, 8 August 2020

² <https://www.youtube.com/watch?v=jk0ga6PX2Kc> Anna Zobnina, webinar, 8 August 2020

³ I checked with a Canadian contact about the Incorporation rules in Canada – it is not necessary to publicize audited financial statements but it is necessary to provide a copy to all members of the corporate body. The ARC site does not show how one becomes a member.

⁴ Not surprising as Norway has nominated men since then as representatives on women’s-only groups in the EU.

⁵ Responses to questions on notice provided by Attorney-General’s Department on 21 May 2013 page 8 in the Senate Legal and Constitutional Affairs Legislation Committee Report on Sex Discrimination Amendment (SOGIIS) Bill 2013 [Provisions] Commonwealth of Australia, June 2013 . pt. 3.41

⁶ <https://www.youtube.com/watch?v=-pHBnmtqpRc> Tina Minkowitz, webinar, 8 August 2020

⁷ <https://www.youtube.com/watch?v=jk0ga6PX2Kc> Anna Zobnina, webinar, 8 August 2020

⁸ *ibid.*

⁹ <http://yogyakartaprinciples.org/signatories-yp10/>

¹⁰ https://en.wikipedia.org/wiki/Yogyakarta_Principles - under subheading Reception.

¹¹ In the EU the European Commission uses the words ‘gender’ and ‘gender identity’ interchangeably - Anna Zobnina, webinar, 8 August 2020

¹² Yogyakarta Principles, Preamble <https://yogyakartaprinciples.org/preamble/>

¹³ Tina Minkowitz, *Female Autonomy vs Gender Identity*, University of Oslo, page 11, December 2016

¹⁴ *ibid.*, page 15

¹⁵ *ibid.*, pages 20-21

¹⁶ *ibid.*, page 23

¹⁷ *ibid.*, page 25

¹⁸ Minkowitz, page 25

¹⁹ *ibid.*, page 35

²⁰ Much of this thinking is based on Michel Foucault, a self-confessed paedophile - https://www.conservapedia.com/Michel_Foucault

²¹ For a quick sketch on the nature of postmodernism see https://www.dailymotion.com/video/x2oh8ia?fbclid=IwAR0IVVwLUVreYuNEmRGTJYFwNv4Wc_Iq38sh3B48x6n4J4LLEKqMACOPHTU

²² <https://alhr.org.au/tasmanian-lgbti-law-reform/>

²³ https://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/65/SR.29