



Red Flag Alert on Anti-trans and intersex Rights in the UK

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The Lemkin Institute for Genocide Prevention and Human Security would like to bring attention to and condemn recent judicial and governmental developments in the United Kingdom, which attempt to harm transgender and intersex people in the UK by stripping them of privacy and segregating them as ‘others.’ The Lemkin Institute believes these moves are part of a broader process of erasure. It is not only government action but also the media narrative that has fuelled hostility to and debate about the humanity of trans and intersex people while ignoring their voices. We see evidence of genocidal intent and actions targeting these communities.

In April this year, the United Kingdom’s Supreme Court (UKSC) delivered a judgment declaring that, for the purposes of the *Equality Act (2010)*, “sex” refers to “biological sex,” which it did not define clearly. The *Equality Act (2010)* provides protection against discrimination on a variety of grounds in public spaces. This ruling at the UK’s highest court means that individuals are now protected from discrimination on the basis of their assigned at birth sex, regardless of how that corresponds to their gender identity, lived gender, or sex characteristics. The decision is the result of a court challenge brought by the gender critical group For Women Scotland, which is financially backed by author J.K. Rowling and characterises itself as “feminist.”¹ The UKSC decision creates dual legal categories for people who have gender recognition certificates, making them one sex for the purpose of the *Equality Act (2010)* and another for all other legal purposes, stripping people with Gender Recognition Certificates (GRCs) of crucial protections and privacy.

Despite the UKSC’s assurances in their reasoning that the decision in *For Women Scotland Ltd v The Scottish Ministers* would not be disadvantageous to trans individuals or strip them of any

¹ We urge our readers to refrain from streaming the new Harry Potter series on official channels. J.K. Rowling has pledged to donate her royalties from the series to fund anti-trans activism.

“important protections,” the practical repercussions for trans and intersex individuals are clear and serious. Since the ruling, “birth sex,” “biological sex,” and “natal sex” have all been used interchangeably, ignoring the multiple relevant components of biological sex and the existence of intersex people. Analysts immediately warned that the decision could be used to render single sex spaces off limits for trans people, including hospital wards, sports, and domestic violence shelters. For a group especially vulnerable to domestic violence, exclusion from specialised shelters is nothing short of cruel and could, in some cases, prove a death sentence. Transgender and intersex people may find themselves excluded not only from spaces of their current sex but also from spaces for their sex assigned at birth. Trans men would find themselves excluded from both male spaces on the basis of their assigned sex at birth, and female spaces if they are deemed to look too much like men.

In the two months since the UKSC’s decision, the situation has only worsened for the trans and intersex communities in the UK. For example the proposed NC21 amendment would have all public institutions record people by their sex assigned at birth and only include gender identity alongside this if they have a GRC, stripping transitioned people of privacy. Although this particular amendment was defeated, the Government has stated its desire to comply with the recommendations of the Sullivan review at a future date, which would require public institutions to collect someone’s sex assigned at birth, leading to forced outing of transitioned people. This attempt to forcibly out transitioned people in public life is not limited to documentation. Head of the UK’s Equality and Human Rights Commission (EHRC) Baroness Falkner recently stated in the annual meeting with the Women and Equalities Committee that neither she nor the UKSC believe that transitioned people have a right to privacy around their gender reassignment. This goes against the established norm in the European Court of Human Rights.

This is just one example of the EHRC’s attempts to roll back intersex and transgender rights. The EHRC has, in the past few years, seemed to become a lobby group for erasing the rights of intersex and trans people on the basis of gender critical views. This has been explicitly confirmed by leader of the UK’s Official Opposition Kemi Badenoch. Following the UKSC Ruling, the EHRC erased decades of established practice protecting transgender and intersex people by taking a restrictive interpretation of the ruling in their interim guidance and refusing to consider the welfare of intersex or transgender people. The guidance dictates that anyone who is not binarily male or female is excluded from single sex spaces, ranging from public toilets to groups such as a single-gender choir. This interim guidance has been noted by the Good Law Project to be either wrong in law or a breach of human rights. Whilst the EHRC’s interim guidance is not yet law, it has already led to many organisations changing policies to exclude all transitioned people from spaces of their lived gender and many from the spaces of their sex assigned at birth as well.

Again, intersex people are left ignored. For example, it is not clear how this guidance would apply to an intersex woman who was originally recorded as male at birth and had her birth certificate amended to female. When asked if intersex people had been considered in this guidance, Baroness Falkner responded that intersex people had not been considered as they are not included in the *Equality Act (2010)*. Baroness Falkner is not alone in her lack of consideration for intersex people in the UK. The UK scored a 0.0 for intersex bodily integrity on the Rainbow Map. Notably, in the United Kingdom, genital mutilation of intersex babies is still legal. If one compares this lack of protection for intersex infants to the efforts against Female Genital Mutilation in the United Kingdom, the overt interphobia of the United Kingdom's Government and judiciary becomes clear.

Intersex surgeries are but one part of a documented public health crisis that strips bodily autonomy from people who fall outside of the sex and gender binary. The UK's Government commissioned "Cass Report" on gender-affirming care for transgender youth has not been peer reviewed and is, in fact, internationally criticised as methodologically flawed. Yet, it remains the basis upon which the government has now permanently banned puberty blockers for transgender youth despite evidence of the harm it is causing to transgender youth. Guardians who wish to provide gender-affirming care that has been found to have 'positive mental health and psychosocial functioning outcomes' are forced to take their children out of the country and are at risk of scrutiny by social care services and even legal action.

For adults too, gender affirming care in the United Kingdom is in crisis. Transgender adults face incredibly long wait times for such care, sometimes waiting years for an initial appointment. Government calls from both the UK's previous Conservative and current Labour government have advocated for transgender people to be barred from single sex wards, which has, in at least one instance, led to the death of a transgender woman whose life-saving cancer treatment was fatally delayed because clinicians were unable to agree on where to place her. The EHRC guidance, coupled with the recent Supreme Court ruling, could make such instances the norm.

Although the EHRC is currently holding consultations on the full version of the guidance, people cannot formally provide feedback on the risks to intersex and transgender people. The consultation is set up to only allow feedback on whether the guidance is 'clear, not on the content.' Additionally, the consultation will be done in as short of a time period as possible, vastly shorter than normal consultation times.

If the guidance does become law, it would make transition impossible in the UK. Life as a transitioned person would become unbearable. Those who have transitioned will be forced to choose between being someone who is either excluded from society or who lives a criminalised life shrouded in secrecy. If the law in the UK makes people living beyond sex and gender

binaries second-class citizens, it will also lay the groundwork for increased genital mutilation of intersex infants and conversion therapy of transgender people.

This escalation of anti-trans actions has done nothing to appease For Women Scotland, who are contemplating additional legal action against the Scottish government to ensure further erasure of trans people from public life. One representative of the group underscored the need to place trans women in male prisons, ostensibly for the safety of women prisoners. This would subject trans prisoners to discrimination and violence. In the United States, where many trans women have already been moved to male prisons, they face solitary confinement for their ‘safety’ and often suffer sexual abuse at the hands of guards. Despite the efforts of gender-critical groups to manipulate facts, there is no evidence of any danger posed by trans women to the safety of cis women prisoners.

All of the actions described above fit neatly into the 9th Pattern of Genocide: “Denial and/or Prevention of Identity.” As we have repeatedly stated over the years, genocide does not only manifest in the killing of an entire group. In the case of trans and intersex people, genocide is often perpetrated by making it impossible for individuals to exist as their true selves. The erasure of a group from public life is a step towards an attempt to erase that group’s existence, which is the very definition of genocide. The UKSC’s decision puts trans and intersex people at peril by forcing them to either out themselves or break the law, both of which run the risk of violent backlash. To explicitly confirm this, gratitude was extended in the UKSC ruling Ben Cooper KC, acting on behalf of Sex Matters. The latter is an explicitly anti-trans lobbying group that has since written to the NHS claiming that transitioning “becomes a major, permanent social problem for those (transgender) young people” – a claim that flies in the face of all serious research on transgender youth.

In releasing this statement, we join the voices of other groups and organisations such as Human Rights Watch, the United Nations, and over 750 historians, as well as hundreds of concerned individuals who mass lobbied the British Parliament to raise the alarm on the slow commencement of a genocidal process threatening intersex and transgender people in the United Kingdom. In the current climate of rising hate against this vulnerable portion of the global population, the Lemkin Institute urges courts and governments to refrain from heeding the fearmongering of so-called “feminist” groups who seek to harm trans individuals in the name of “women’s rights.” As we have previously affirmed, trans individuals pose exactly zero threat to the safety of cis women. Moreover, the existence of the trans and intersex community is not a new phenomenon. This hostile environment is a subtle, pernicious and clear attempt to eradicate transgender and intersex people from British life because their existence causes ideological discomfort to some. The anti-trans movement is a movement based solely on ignorance and bigotry, whether it is cloaked in religion or “feminism” or any other doctrinal or ideological belief system.

No denial or omission in law can erase the concrete reality that trans and intersex people have always and will always exist. Attempts to erase them as a class constitutes an intent to commit genocide.