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Revisiting Gender-Neutral Policy From a Trans Perspective: A look at Northern Ireland

Key messages:

- Gender-neutral policy can depoliticize gender and marginalize trans people.
- Intersectional and gender aware politics resist reproducing the gender binary when promoting gender equality

Although the name suggests the contrary, there is nothing neutral for women and gender minorities about the introduction of a gender-neutral policy. In our case study of civil society organizations working in the women's sector in Northern Ireland we consider the limitations and pitfalls of gender-neutral policy. We illustrate that too often claims of gender neutrality leads to a doubling down on the enforcement of the gender binary with a detrimental impact of members of the LGBTQ (lesbian, gay, bisexual, transgender and queer) community, especially trans women. As a way forward we prioritize insights from the trans community regarding the value of intersectional, coalitional approaches to gender aware policymaking.

Gender-neutral policy is often presented in European politics as a non-sexist or gender-blind approach that is more inclusive to those previously marginalized. However, when civil servants introduce gender-neutral policy in initiatives to ensure gender equality without a feminist understanding of power, privilege, and patriarchy it can have damaging consequences. Many LGB (lesbian, gay, bisexual), feminist and trans advocates are generally skeptical of gender-neutral policy reducing gender to male/female categories while explicitly denying the inclusion of trans and nonbinary people. In many instances gender-neutral approaches further depoliticize and disenfranchise civil society organizations rather than working intersectionally as advocated by Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

NI lags behind both Great Britain and Ireland in policy areas relating to gender-based violence, gender identity, and state-provided childcare. The implementation of Section 75¹ of the Northern Ireland Act was intended to enforce the equality provision of the peace deal. In reality, it has resulted in depoliticising equality by treating women and men as the same, and failed to be trans inclusive. The 2020 Gender Equality Strategy Expert Advisory Panel Report identified gender-neutral policy as ‘a significant barrier to women’s equality’. One of the key recommendations from the report was a need for training to ensure Government departments understand the difference between gender equality and gender neutrality. The report calls for an intersectional approach and further research about the healthcare needs of the LGBTQI community in NI, specifically regarding gender-affirming healthcare services.

In some instances, trans advocates have pushed for gender-neutral approaches. For example, advocates argue for gender-neutral (or all-gender) toilets and more inclusive language about who accesses abortion services such as ‘people who access abortions’ instead of only ‘women who access abortions.’ However, in the case of gender-neutral policy in NI, these are not the types of policy initiatives championed. Equality provisions in the NI Act have translated to gender neutrality rather than gender sensitive and intersectional policymaking. Without being intersectional, gender-neutral legislation disadvantages and excludes trans people and gender minorities.

¹ Section 75 of the Northern Ireland Act 1998 includes an ‘Equality of Opportunity duty, which requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.’

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>

Campaigning and lobbying groups in the women's sector in NI work to serve various marginalized groups in a non-hierarchical way, aiming to meet everyone's needs. For example, rather than a policy approach that is either for women or gender neutral, the Women's Policy Group follows a 'both and' framework creating a policy environment which is responsive to various demands that are viewed as equal. Transgender NI, a human rights and community organisation for trans and gender diverse people in NI, has increasingly fed into the work of the Women's Policy Group, with sections of the Feminist Recovery Plan and the Women's Manifesto explicitly outlining the needs of trans women. Additionally, the response from Alliance for Choice, a group who campaigns for abortion rights, to the NI consultation on abortion legislation included insights from focus groups with Transgender NI.

More broadly, trans activists argue it is essential to eradicate the barriers requiring legal genders enshrines in law, especially in terms of accessing direct services. Some activists suggest abolishing legal gender, especially on key documents such as a driver's license or passport. The introduction by some countries of the X passport marker is one approach for introducing a third gender-neutral option other than male or female. Alternative framings to 'gender-neutral' such as 'women and gender-minorities' offer a more inclusive path forward, while acknowledging the original intent of the paradigm shift in gender-focused policy. Policy makers might also consider keeping the word 'women' rather than replacing it with 'gender' and being clear that trans women are included in the policy with a specific committee for gender minorities and nonbinary people.

This year the NI executive is continuing consultations about gender policy, including updating on the Gender Recognition Act of 2004. We argue that gender-neutral policy must be reconsidered to better meet the needs of the people who need gender-based protection the most:

women's organizations, LGBTQ organizations and especially trans organizations. With more European governments implementing a gender-neutral policy, there is a need for intersectional and feminist guiding principles for these policies. Furthermore, even with the introduction of gender-neutral approaches, it is still important to continue to gather gender-disaggregated data about how people access services. Given how the policies disproportionately impact queer and trans communities, we urge governments to continue to prioritize developing policy on gender informed by women's organizations in collaboration with LGBT organizations.

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Conflicts of interest statement:

The Authors declare that there is no conflict of interest' if there are none.

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