

回應性平處第 4 次國家報告（初稿）有關性別一詞的文字說明

顧燕翎

謝謝性平處的說明，以下分兩方面回應如下：

一、程序方面

1. 說明中對「各界書面意見」的回應，將對我的回應與媽媽盟及丁雪茵教授一併處理，以致造成我的誤讀，謝謝提醒，不過我的意見偏向程序正義，並未改變。亦即有關人身的約定俗成的名詞（性別）在政策或法律上若需變更，應有公平、公開的討論，廣納相關人士(stakeholders)及專家的意見，包括各級教師、家長、消歧公約國際審查委員、國家教育研究院雙語詞彙審議會等。至今我們缺乏開放的意見交流。
2. 性平處回應欄中所揭露之兩次研商會議之名單皆僅為與會專家中的少數人，應揭露完整的專家名單及其發言之會議紀錄，方能釐清理路，也才能了解消歧公約國際委員所指之概念和用法的錯誤—the inappropriate conceptual and practical use of the terms “sex” and “gender” in Taiwan—是否只是如性平處所認定的翻譯之誤。

二、內容方面

1. 「性別」、「多元性別」需要定義

性平處說明第二點「考量相關法規對於性別已有定義，例如性別平等教育法第 2 條…」，但該條雖重覆使用「性別」一詞，並未就「性別」和「多元性別」加以定義，這正是歧見之所在。重要名詞缺乏明確定義是問題的根本，並不只是中翻英的技術性問題。性別平等教育法第 2 條全文如下：

本法用詞定義如下：

一、性別平等教育：指以教育方式教導尊重多元性別差異，消除性別歧視，促進性別地位之實質平等。

二、學校：指公私立各級學校。

三、性侵害：指性侵害犯罪防治法所稱性侵害犯罪之行為。

四、性騷擾：指符合下列情形之一，且未達性侵害之程度者：

（一）以明示或暗示之方式，從事不受歡迎且具有性意味或性別歧視之言詞或行為，致影響他人之人格尊嚴、學習、或工作之機會或表現者。

（二）以性或性別有關之行為，作為自己或他人獲得、喪失或減損其學習或工作有關權益之條件者。

五、性霸凌：指透過語言、肢體或其他暴力，對於他人之性別特徵、性別特

質、性傾向或性別認同進行貶抑、攻擊或威脅之行為且非屬性騷擾者。

六、性別認同：指個人對自我歸屬性別的自我認知與接受。

七、校園性侵害、性騷擾或性霸凌事件：指性侵害、性騷擾或性霸凌事件之一方為學校校長、教師、職員、工友或學生，他方為學生者。

2. sex and gender 的翻譯

在不同語境中，sex 翻成中文可以是性、性別、生理／心理性別或是性活動、性行為；gender 因為是較新的名詞，通常譯為社會性別或性別。中翻英而言，性可以是 sex, sexuality, sexual；性別可以是 sex 或 gender；生理／心理性別是 sex；社會性別是 gender。因為文化的差異和語言的因時改變，我們需要考慮名詞翻譯或許不應強求簡單的一對一關係。有鑑於翻譯之複雜性，我於 2021 年 1 月 10 日向國家教育研究院雙語詞彙審議會正式要求審議 sex and gender 之中英對譯，該會也於年初首次會議（1 月 10 日）中提前審議此案，並就性平處發出的翻譯指示做出決議如下表。英文欄是性平處發給各部會的指示，審譯結論是該會做出的建議，可惜該會的建議在 1 月 22 日性平處召開的專家會議上未被採納。

然而性平處說明二、(一)3. 卻表示：並非所有中文「性別」一詞均翻譯為 gender 或均翻譯為 sex，需視內容脈絡判斷，那麼下表的英文欄內，性別便不應限於 gender，應加上 sex 才對。

| 編號 | 中文 | 英文 | 審議結論 |
|----|-----|--------------------|----------------------------------|
| 1 | 性別 | Gender | gender (心理性別/社會性別) sex (生理性別) |
| 2 | 性傾向 | Sexual orientation | sexual orientation |
| 3 | 性侵害 | Sexual assault | sexual assault |
| 4 | 性騷擾 | Sexual harassment | sexual harassment |
| 5 | 性霸凌 | Sexual bullying | sexual bullying |

| | | | |
|---|---|---|---|
| 6 | 性別認同 | Gender identity | gender identity |
| 7 | 性別特質 | Gender traits | sex trait(s)/characteristic(s) (生理) gender trait(s) /characteristic(s) (心理) |
| 8 | 性別歧視 | Gender discrimination | sex-based discrimination; sex discrimination (對生理性別的歧視) gender-based discrimination; gender discrimination (對心理/社會性別的歧視) |
| 9 | 任一性別 [1] 人數(代表)不得少於三分之一 | Neither gender should occupy less than one-third of the seats of the committee/commission | Members of each sex shall constitute no less than one-third of the membership of the committee/commission. |

國家教育研究院雙語詞彙審議會的英國籍大律師(barrister)對 sex and gender 的翻譯做了詳細的闡釋，卻沒有得到性平處重視，在 2021 年 1 月 22 日會議中反而受到性平會委員譏諷為不懂性別，我深感遺憾。以下為大律師的說明：

Barrister Whittle's comments

As the fruit of several hours of research, here are my preliminary comments re the 'sex' and 'gender' discussion:

First, it is notable that the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not use the term 'gender' at all. In Article 1, it defines 'discrimination' as "any distinction, exclusion or restriction made on the basis of sex ..." In Article 5, it calls for the elimination of prejudices and practices "which are based on the idea of the superiority or inferiority of either of the sexes ..." All of its other provisions refer to 'men' and 'women', avoiding the use of 'sex', 'sexes' and 'gender'.

General Recommendation No. 28 of CEDAW's Committee on the Elimination of Discrimination against Woman repeatedly refers to the elimination of all forms of discrimination against women "on the basis of sex and gender" – thus stressing the distinction between 'sex' and 'gender' in this context. This distinction is highlighted by the call on states to take steps to achieve "sex non-discrimination and gender equality in practice" – i.e., no discrimination on the basis of biological sex, and equality in respect of gender identity. To clarify this distinction, the report states as follows:

*Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. **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 and in the distribution of power and rights favouring men and disadvantaging women.***

This subject was helpfully examined by the European Network of Legal Experts in Gender Equality and Non-discrimination, whose report titled Gender Equality Law in Europe was published

by the European Commission in January 2019. On page 10 of this report, under the subheading of "Sex/gender/transgender", it states:

EU law does not provide definitions of the concepts of 'sex', 'gender' and 'transgender', and does not distinguish clearly between sex and gender. Similarly, very few countries define the concepts of 'sex', 'gender' and/or 'transgender' in their legislation. Finland, Montenegro, Romania, Serbia, and Sweden are exceptions. In the Finnish Act on Equality Between Men and Women, a new subsection defines what is meant by gender identity and expression of gender. Article 10 of the Serbian Gender Equality Act defines both sex and gender: 'sex' relates to biological features of a person, while 'gender' means socially established roles, position and status of women and men in public and private lives from which, due to social, cultural and historic differences, discrimination ensues on the basis of biologically belonging to a sex. Romania recently (2015) introduced definitions of sex and gender, as well as 'gender stereotypes' in its Gender Equality Law, whereby gender is understood to mean the combination of roles, behaviours, features and activities that society considers to be appropriate for women and men. In Sweden, the Discrimination Act defines sex as the fact "that someone is a woman or a man." Maltese law includes definitions of 'gender expression' and 'gender identity'.

In light of these authorities, I would suggest:

1. Strictly speaking, 性別 should be translated as 'sex' rather than 'gender', even though both terms are commonly used interchangeably in English-speaking countries, with 'gender' having perhaps already become more commonly used than 'sex' for indicating whether one is male or female. [Note: According to Wikipedia, the use of 'gender' in place of 'sex' as a biological classification can be traced to the 1980s, officially adopted in 1993 when the US Food and Drug Administration started to use 'gender' instead of 'sex'; however, in 2011, the FDA reversed its position and began using 'sex' as the biological classification and 'gender' as "a person's self representation as male or female, or how that

person is responded to by social institutions based on the individual's gender presentation.”]

2. To cover the situation of those whose biological sex is not definitively male or female, or who do not identify with their birth sex, or who are undergoing or have undergone transition, 性別認同 should be translated as ‘gender identity’, since the identification is more with the construct of gender than with the biological fact of sex. This also allows for identification as gender neutral.

3. I’d say that 性別特質 might be translated as either ‘sex trait(s)’ or ‘gender trait(s)’ since it could refer to trait(s) of either biological sex or gender construct.

4. 性別歧視 might be translated as both ‘sex discrimination’ and ‘gender discrimination’ (or ‘sex-based discrimination’ and ‘gender-based discrimination’, as used in the above-cited General Recommendation No. 28).

5. 性傾向, 性侵害, 性騷擾 and 性霸凌 are appropriately translated, respectively, as ‘sexual orientation’, ‘sexual assault’, ‘sexual harassment’ and ‘sexual bullying’, since they refer to sexual behavior rather than maleness versus femaleness.

6. 任一性別人數（代表）不得少於三分之一 should be translated as “Members of each sex shall occupy no less than one third of the seats of the committee/commission” or “Members of each sex shall constitute no less than one-third of the membership of the committee/commission.” (Note: In laws and regulations, 應 and 不得 should be translated respectively as ‘shall’ and ‘shall not’ rather than ‘should’ or ‘should not’, since they are prescriptive rather than suggestive.)

3. 消歧公約全文只用 **sex**，意即性別，在之後的 **General recommendation**、聯合國文件以及我國的第三次審查會中一再提到的 **sex and gender**，仔細分辨應是指生理性別和社會／心理性別，而非“性與性別”(尤其當二者並用時)。早年聯合國官方的中文翻譯可能並不精確，當時婦女研究尚在起步階段，中文譯者對此專業掌握可能不足，若我們處處執著於必須使用“性與性別”來表示 **sex and gender**，可能造成更多混淆，亂上加亂。

4. 「多元性別」

性平處說明(三)1.稱，「多元性別」為男同性戀、女同性戀、雙性戀、跨性別者…之總稱，與英文 LGBTI 概念相同。但 LGBTQI…之中每一類別有其特殊屬性，有的以性別認同來區分，有的以性傾向來區分，是不同的、獨立的群體平行存在的概念，與「多元性別」表達的總體性不盡相同。

再者，在當前的世界，男女仍是主要和占絕大多數的性別分類，是以性平處每年編印的《性別圖像》和性別統計全部都是採用男女分類，也依舊使用「男」、「女」和「兩性」等文字。所以性別是指男女，多元性別是指 LGBTQI…？

請透過嚴謹的立法程序對重要名詞加以定義和使用，以便人民理解並遵從，這樣也才能回應國際消歧委員對第三次國家報告的評論和建議。