

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences

By email

29<sup>th</sup> November 2022

Dear Ms Alsalem,

We are writing to you regarding your recent intervention of November 23<sup>rd</sup> regarding Scotland's Gender Recognition Reform Bill (The Bill).

We were surprised and disappointed that your letter was issued without consultation with human rights groups or specialist violence against women organisations in Scotland.

The GRR Bill has proceeded so far with the backing of the Scottish women's sector and equalities and human rights organisations including Scotland's National Human Rights Institution, the Scottish Human Rights Commission. This support for the Bill and its aims stands after many years of consultation including two formal public consultations by the Scottish Government. The Bill has proceeded through the usual legislative process in the Scottish Parliament which has allowed a wide range of individuals and groups to feed into the process at length.

Your intervention rightly highlights failings in the current system of obtaining legal gender recognition (LGR) for trans people in Scotland and the UK, and the basis in international human rights standards for a system of self identification to replace medicalised processes. You also correctly point to the need to do more to include access for non-binary people in progressive reforms for LGR.

Equality Act provisions regarding access to single sex spaces for women and girls will not be altered by the Bill. The Equality Act is legislation reserved to the UK Westminster parliament. **As such the Bill does not make changes to the 2010 Equality Act**, which includes a number of exceptions that allow for provision of single sex spaces and for exclusion of individuals when this is a proportionate means of achieving a legitimate aim.

As many of the signatories to this letter have raised in previous briefings, there is a solid basis in international human rights standards to support the aims and principles of the Bill. International legal standards and best practice is moving towards the promotion of accessible procedures for Legal Gender Recognition (LGR), providing respectful processes for transgender people. Rulings of the European Court of Human Rights (ECtHR) reflect this, often finding that rigid LGR processes leave individuals at risk of their rights as enshrined by the European Convention on Human Rights being violated. The Yogyakarta Principles were created by international human rights experts as a guide for United Nations member states on the application of international legal human rights standards to sexual orientation and gender identity. Principle 31 states that everyone, regardless of their sex, gender, sexual orientation, gender identity or sex characteristics, has the right to legal recognition and access to identity documents that are true to their self. It calls on member states to ensure

access to a quick, transparent and accessible mechanism to change names and gender identity. During his evidence session to the Scottish Parliament's Equalities, Human Rights and Civil Justice Committee in June 2022, Victor Madrigal-Borloz, the United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity also emphasized the existing body of international human rights law in support of the Bill.

In your intervention you highlight that the Yogyakarta Principles are not legally binding and instead point to ECtHR which you argue, in the area of LGR allows for more flexibility in standards. ECtHR rulings represent a floor and not a ceiling on rights. In many areas international standards and best practice go further than the ECHR, not least on issues relating to violence against women and girls. To argue against progressive realisation of rights is not a precedent we wish to set in Scotland, nor is it compatible with the direction of travel on incorporation of stronger rights standards in Scots law.

You also refer to a need for more clarity in the Bill regarding what the process of obtaining a GRC will entail and what scrutiny will exist to ensure that process is not abused. We would reiterate that the Bill has already been subject to lengthy consultation processes spanning years during which these issues were discussed in detail. As you will be aware it was recently passed by the Scottish Parliament's Equalities, Human Rights and Civil Justice (EHRCJ) Committee at stage two, a process which saw the committee spend two sessions reviewing over 150 amendments and taking further evidence. This followed its stage one considerations across two months earlier this year involving eight public evidence sessions.

The GRR Bill sets out who can apply for a GRC, how to make an application and on what grounds an application is to be granted. It also provides for appeals or reviews of decisions as well as revocations for GRCs and offences in relation to false statutory declarations. As the UN Independent Expert referred to in his evidence to the EHRCJ committee, international human rights law provides for a process of LGR which is accessible and based on a simple administrative procedure. We agree with the EHRCJ committee which concluded after its stage one scrutiny that the legal status of a statutory declaration (a witnessed, legal oath), the gravity with which such declarations are made, and the fact that making a false statutory declaration is an offence, together create a robust process for accessing a GRC that is in line with international human rights best practice.

We note your concerns relating to access to single sex spaces for women and girls and their viability. The Bill as amended at stage two correctly states that nothing within it can modify the Equality Act which is reserved legislation. The Equality Act allows for provision of single sex spaces and certain exclusions when proportionate to achieve a legitimate aim. Organisations are legally obliged to take into account the Equality Act and relevant guidance when delivering their services, and nothing will change by the passing of the Bill with regards to that. Evidence was provided to the EHRCJ regarding the individualised risk assessment approach applied by service providers in Scotland, such as the Scottish Prison Service, who confirmed that possession or otherwise of a GRC is not determinative of allocation, but only one factor considered in the overall risk assessment.

Your letter mentions the specific example of support services for women who have experienced sexual violence. Most rape crisis services in Scotland provide lifesaving support for women, men and non-binary people. All specialist violence against women and girls organisations have robust safeguarding procedures in place which include risk assessment at the point of service delivery. There is no rape crisis service in Scotland that requires a gender recognition certificate. Where services are available to women only, women are not required to provide 'proof' of their sex. All rape crisis services in Scotland are inclusive of transwomen and have been for 15 years. In those 15 years, there has not been a single incident of anyone abusing this.

We see the paths to equality and the realisation of human rights for women and trans people as being deeply interconnected and dependant on shared efforts to dismantle systems of discrimination.

Yours,

Cat Murphy, Executive Director, Engender

Emma Hutton, CEO JustRight Scotland

Katy Mathieson, Scottish Women's Rights Centre

Marsha Scott, Chief Executive, Scottish Women's Aid

Naomi McAuliffe, Director, Amnesty International Scotland

Sandy Brindley, Chief Executive, Rape Crisis Scotland

Cc: Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government

EHRCJ Committee