

For the urgent attention of:

Ambassador Federico Villegas, President United Nations Human Rights Council 2022
Ambassador Vaclav Balek, President-elect United Nations Human Rights Council 2023
Volker Türk, United Nations High Commissioner for Human Rights

Sent by email to: ohchr-registry@un.org

18 Dec 2022

Dear Ambassadors Villegas and Balek, and Commissioner Türk,

We are writing to draw your attention to the letter of 18 November 2022, sent to the UK Government by Ms Reem Alsalem, United Nations Special Rapporteur on Violence Against Women and Girls (VAWAG), setting out her grave concerns relating to the Gender Recognition Reform (Scotland) Bill. We were relieved to read this letter and endorse Special Rapporteur Alsalem's concerns and the methodical way in which she has raised them.

This is the first time a UN Special Rapporteur has stood up for the rights of women, girls and LGB people who will all be affected in a negative way by the proposed new legislation in Scotland. Until now, it is a sad and uncomfortable truth that our concerns have been ignored or brushed off by other senior UN – and Council of Europe – officials.

In fact, this dismissal has been repeated this week, with an inaccurate statement by Victor Madrigal-Borloz, published in *The Scotsman*:

<https://www.scotsman.com/news/opinion/columnists/scotland-should-not-deny-trans-womens-human-rights-because-of-predatory-men-victor-madrigal-borloz-3954832>.

The UN Independent Expert on Sexual Orientation and Gender Identity said the Bill gives no new rights and that there have been no problems where similar legislation has been introduced elsewhere. These assertions are both false. We refer you to a useful analysis of the Independent Expert's opinion tweeted on 16 December by Joanna Cherry KC MP, which dismantles the basis of his arguments. It is important not to be misled by Mr Madrigal-Borloz, who has an unfortunate track record of presenting his personal views as if they were either the view of the United Nations or indisputable legal facts. Ms Cherry states:

*“This is **not** a legal opinion on the domestic law of Scotland. The case law of the ECHR does not mandate self-identification. This ‘legal opinion’ contains no analysis of the potential conflict between the proposed system of self-identification and the Equality Act and, in particular, of how self ID could undermine the sex based rights of women & same sex attracted people. Mr Madrigal-Borloz position reflects his mandate albeit his focus seems to be almost solely on the T not the LGB. When it comes to the rights of women & girls, we should defer to Reem Alsalem whose mandate is violence against women & girls.”*

<https://twitter.com/joannaccherry/status/1603663369428664326?s=20&t=ml2u603PGiP5l5AxJrwOQ>.

It is worth noting that as well as being a senior lawyer and Chair of Westminster's Joint Committee on Human Rights, Joanna Cherry is a member of the SNP, the current party of government in Scotland, in which it is fair to say there is significant division of opinion on the policy of self-identification. Many politicians, especially women, are afraid to speak out because of the abuse that follows. Joanna has received rape and death threats which have yet to be condemned by her party leadership.

We would also point to Mr Madrigal-Borloz's statement – which he makes with regularity - that there is no evidence of any harm done where self-identification has been introduced. In *The Scotsman* this week he said:

“in the 13 countries and dozens of regions that already have self-identification – whose populations together add up to some 350 million people – there are no administrative or judicial findings that validate the idea that the risk of abuse is a material one.”

What he fails to mention is that it is of course impossible to report abuse on women in prisons, hospitals, refuges and so on by men who have “changed gender”, because for legal and reporting purposes these men are now women. Mr Madrigal-Borloz seems uninterested in the complexities of the situation – the lack of collection of data based on sex, the absence of impact assessments either before or after legislation has been passed, the impossibility of accurately recording violent incidents, and the enormous issue of women self-excluding from services intended for their exclusive use for fear of men being present. Neither does he consider girls at school, who are also vulnerable to sexual violence and harassment by boys in toilets and changing rooms – which will now be open to any boy of 16 or over who decides to “change gender”. We reiterate that women are at their most vulnerable in schools, hospitals, in care, in prison and in refuges. These places should be the focus of risk assessments and safeguarding.

We would like to point out that Mr Madrigal-Borloz is very far from impartial and seems unaware of the “**Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council**”, which states in paragraph g) that the “methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.” He is well-known as an evangelist for gender identity ideology and frequently appears alongside other campaigners, while rejecting the opinions of LGB groups and individuals with different points of view.

Even more extraordinary then, that the UN issued a press release on 16 December, praising Mr Madrigal-Borloz's opinion while ignoring Ms Alsalem's intervention altogether. How is this balanced, impartial or responsible?

<https://www.ohchr.org/en/press-releases/2022/12/un-expert-gender-identity-calls-scottish-parliament-adopt-gender-recognition>

Perhaps those of us who have been campaigning in this area for years should by now be inured to the vitriol of those who oppose rights for women and LGB people, or deem them to be trivial or outdated. It was nonetheless shocking to see the treatment meted out to Special Rapporteur Alsalem on social media by supporters of the Bill in response to her measured and carefully argued letter. We think it shameful that she had to experience this, and we will continue to offer her our firm support.

We are pleased that Ms Alsalem also received a large number of positive responses – including from LGB and trans people who do not feel represented by Mr Madrigal-Borloz. Over the last few years many LGB people have raised concerns with the Independent Expert, but he will not countenance other views and has rejected submissions to his “consultations” if they are not in line with his particular TQIA+ ideology. We understand that LGB groups are preparing a formal complaint to the UN leadership about the biased behaviour and reporting of Mr Madrigal-Borloz.

The negative reaction to Ms Alsalem personally and to her letter is out of all proportion. Her letter was carefully balanced and simply called for precisely what has already been requested by the Equality and Human Rights Commission – time to consider all the complexities of the proposed legislation. Ms Alsalem’s letter added the international context and should be welcomed by all those interested in international human rights. We agree with both Ms Alsalem and the EHRC – there remains too much uncertainty and confusion for the Scottish Parliament to legislate responsibly. Unless the government takes sufficient time to address these areas of confusion, the legislation will be an unworkable mess.

The legal concept of sex

Ms Alsalem states:

“it is my understanding that the new Government of the UK intends to specifically define ‘sex’ for the purposes of this Act (Equality Act 2010) and other legislation. Such specification should be given prior to the finalization of the amendments to the GRA”.

We believe this point reflects a newspaper report that Prime Minister Rishi Sunak intends to take steps to clarify the meaning of sex in the Equality Act (Telegraph, 27 October 2022). We hope that he follows through on this. While the meaning of sex is well established in common law (it is binary and immutable and relates to reproductive biology), what is not clear is whether the Gender Recognition Act 2004 redefined the meaning of sex in relation to sex – and hence also sexual orientation – discrimination protections in the Equality Act.

On 13 December, Lady Haldane handed down a judgment in response to the Petition of For Women Scotland Limited for a Judicial Review. Lady Haldane concluded that:

“... the terms of section 9 of the 2004 Act [i.e. the Gender Recognition Act] which states that the effect of a full GRC being issued is that the person’s gender becomes ‘for all purposes’ the acquired gender.”

This judgment may be appealed, or the UK government may take legislative action (which the Gender Recognition Act explicitly provides for) to clarify whether biological sex remains a protected characteristic for the purposes of equality law.

The letter from Special Rapporteur Alsalem accurately highlights the complexities of the relevant Acts (the Equality Act and the Gender Recognition Act) and how they relate to each other. In order to assess the potential impact of the Gender Recognition Reform (Scotland) Bill it is important to know whether it will give a wider group of males the protected characteristic of being deemed to be female for the purposes of the Equality Act.

The Cass Review - <https://cass.independent-review.uk>

In the UK, public concern about the treatment of “gender non-conforming” children has been growing over the years. This resulted in the appointment of paediatrician Dr Hilary Cass, who is leading an independent review of gender identity services for children and young people.

The interim report was shocking – it found current services to be unsafe and unsustainable. Children with many comorbidities were being diagnosed with gender dysphoria while other issues were ignored. Dr Cass highlighted the urgent need for fundamental reforms in the way these young people are treated to include proper accompanying psychological support. The interim findings have resulted in the closure of the Gender Identity Development Services clinic at the Tavistock from February 2023, to be replaced by multi-disciplinary regional clinics.

Dr Hilary Cass has said that “social transition” is not a neutral act but an active intervention. This point is not widely understood. It must be carefully considered by MSPs in terms of the proposed age limit being reduced to 16. We do not believe all MSPs are aware that “social transition” places children on a track to hormone treatment and possible surgery.

It is clear that “gender non-conforming” girls and boys are those most likely to believe that they are “trans” and it is also a fact that 74% of children and young people presenting at gender clinics are girls. Of these children the majority are gay, lesbian or bisexual, which led clinicians at the Tavistock to say as a dark joke – “soon there will be no gay kids left”. This is an unfolding medical scandal which must be considered by those who would encourage teenagers to think that “changing sex” is both possible and beneficial. We are hearing more and more stories from detransitioners who felt utterly misled and let down by the clinicians at the Tavistock GIDS, and we urge the committee considering the reforms to hear the evidence of these individuals directly.

It is essential that the safeguarding of children should take priority in a discussion as serious as enabling 16-year-olds to “change sex” and we would hope that the Scottish Government

will invite Dr Cass to give evidence to the committee and assist with her vital expertise before any legislative changes are made.

Real-life consequences of the proposed reforms

Removing biological sex as a concept in law, and allowing an uncontrolled group of people to shift between the different categories of legal sex, will have far-reaching consequences, particularly for women and girls and for LGB people.

Those most vulnerable to the effects of the proposed reforms are girls and women in prison and in refuges. These women and girls are already traumatised and need the best possible professional care – provided by someone of the same sex. They do not need to “reframe their trauma” as was recommended by the male CEO of Edinburgh Rape Crisis Centre, Mridul Wadhwa.

Protections of the rights of gay men and lesbians are also challenged when the definition of sexual orientation is changed, so men can redefine as “lesbians” and access lesbians’ spaces, groups and services.

Should the reforms go through, any 16-year-old boy or man will be able to easily obtain a GRC and state that he is a lesbian who has the legal right to use lesbian services and spaces. This is nothing less than state-sponsored homophobia and we oppose it.

Different points of view

Special Rapporteur Alsalem has been attacked simply because she has provided a detailed analysis of all the areas that may be affected by the proposed legislation. She has placed the Bill in an international human rights context and emphasised that:

“It is important to underline that trans persons are entitled to live a life that is free from discrimination, harassment and to have their human rights safeguarded.”

We fully agree with this assertion, but we have strong disagreements with the approach taken by the Scottish Government, which has excluded or trivialised the views of those who oppose the Bill.

In *The Times* this week we read that two-thirds of Scottish voters oppose the proposed reforms - <https://www.thetimes.co.uk/article/two-thirds-of-voters-oppose-snps-gender-reform-plans-d8wh3wh9w>

It is time for the First Minister and others at Holyrood to listen respectfully to Ms Alsalem’s comprehensive and thoughtful analysis of the Bill – and to the views of the Scottish people.

Final remarks

We are pleased that the Equalities, Human Rights and Civil Justice Committee has invited Ms Alsalem to give evidence so that she can articulate the important international human rights context of her letter and answer questions.

We understand that both Ms Alsalem and Mr Madrigal-Borloz will be addressing the Committee on Monday afternoon. They will be offering different points of view, each with a mandate based on human rights. We hope you will be making statements on Twitter on both interventions, and underlining the importance of listening to the views of the world expert on the human rights of women and girls.

We are truly grateful to Special Rapporteur Alsalem for her courage in standing up – amid a climate that is hostile to the rights of women and girls and LGB people – to point out clearly that the proposed reforms are deeply flawed, based on a complete failure to appreciate the dangers implicit in the Bill, and a lack of care for the rights of women, girls and LGB people.

We respectfully ask that the President and the Council ensure that she is able to carry out her work impartially and independently without harassment, attacks, or threats – which she has received in an effort to deter her from expressing her views. The attacks on Ms Alsalem mirror the attacks directed at all women and LGB people who argue for the need to ensure that sex-based characteristics and spaces need to be maintained, and that making this argument does not automatically mean one is transphobic, which Ms Alsalem clearly is not. This would go a long way towards protecting her from further vilification, which is of course completely unwarranted. We look forward to hearing from you at your earliest convenience.

Kind regards

Kate Harris, LGB Alliance
Karen Ingala Smith, Nia
Ruth Dineen, Merched Cymru
Karen Varley, Conservatives for Women
Ann Sinnott, Authentic Equity Alliance
Heather Binning, Women's Rights Network
Tish Naughton, Researcher
Bronwen Evans, Lesbian Labour Cymru
Kate Coleman, Keep Prisons Single Sex
Stephanie Davies-Arai BEM, Transgender Trend
Dr Zoe Hollowood, Liberal Voice for Women
Ceri Williams, Labour Women's Declaration
Dr Nicola Williams, Fair Play for Women
Paula Boulton, Lesbian Labour
Sarah Tanburn, LGB Alliance Cymru
Trina Budge, For Women Scotland
Dr Lynn Harne, Lesbian Rights Alliance
Maya Forstater, Sex Matters