

Gender Recognition Reform (Scotland) Bill – UN involvement

1. Victor Madrigal-Borloz, UN Special Expert on protection against violence and discrimination based on sexual orientation and gender identity, [gave evidence](#) to the Equalities Committee during Stage 1 of the Gender Recognition Reform (Scotland) Bill on 21 June 2022.
2. He supported the Bill's reforms as bringing Scotland closer to international best practice. The [Stage 1 Report](#) summarises his evidence: "he set out international standards which recommended that States provide access to legal gender recognition, based on self-determination, that it is based on a simple administrative process, is not connected to medical interventions, includes recognition of non-binary identities, and ensures minors have access to recognition of their gender identity".
3. On 23 November, after Stage 2 of the Bill, [a letter](#) from Reem Alsalem, UN Special Rapporteur on violence against women its causes and consequences, to UK Ministers, was made public and received widespread coverage (SG received the letter the previous evening). Ms Alsalem expressed concern about potential impact of the Bill on women, after being contacted by groups opposed to reform.
4. Shona Robison, Cabinet Secretary for Social Justice, Local Government and Housing, provided a [detailed response](#) to the issues raised in Ms Alsalem's letter, which was published by the Equalities Committee.
5. Ms Robison offered to meet with Ms Alsalem, and suggested a joint meeting with Mr Madrigal-Borloz given his earlier involvement. Ms Alsalem agreed to a meeting but preferred separate meetings. These meetings took place on 8 and 9 December.
6. In the meeting Mr Madrigal-Borloz reiterated his support for the reforms, suggested that he didn't wish to make this a contest between mandates, and said he had therefore chosen to use the Special Procedures letter mechanism to restate the International Framework, provide a detailed survey of other countries who had adopted self-determination, and address narratives of self-exclusion. See **Annex** for full minute of meeting.
7. Mr Madrigal Borloz then [wrote](#) to the UK Government on 13 December (published 16 December), providing a detailed summary of his own work researching systems of gender recognition around the world, and describing a clear international human rights consensus in favour of simple, administrative processes without requiring medical evidence. He observed that over 350 million people around the world already live in countries and regions that operate this type of process, with no evidence of widespread harm.
8. Following these interventions, the Equalities Committee arranged an [additional evidence session](#) and invited both Ms Alsalem and Mr Madrigal-Borloz to give evidence, which they did on 19 December (the day before Stage 3 began). Ms Roddick also took part in this session.

Annex

Meeting between the Cabinet Secretary for Social Justice, Housing & Local Government and the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity– 9 December 2022

Present

Shona Robison, Cabinet Secretary for Social Justice, Housing & Local Government
[redacted] Gender Recognition Unit
[redacted] Scottish Government Gender Recognition Unit
Jeanette Campbell, Scottish Government Special Advisor

Victor Madrigal-Borloz, UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

[redacted], [redacted], UN and Other International Organisations (Geneva)

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SR opened the meeting by welcoming the evidence that VMB had given to the Scottish Parliament at Stage 1 of the Bill. She noted the recent intervention from Reem Alsalem, and noted her response which was now publicly available, and that she had met with Ms Alsalem the previous day. She raised her concerns around the media representation that Ms Alsalem's views represented the UN position, and that Scottish organisations such as the Scottish Human Rights Commission had not been consulted on this intervention.

VMB suggested that he could usefully provide some background on to Special Procedures and the work of the Special Rapporteurs, following which he would provide a restatement on his own position.

VMB indicated that each Special Rapporteur designated their own mandate, and that each represented a statement of intent that area of their mandate is of concern. VMB noted that with regard to his own mandate, the topic of gender identity fell firmly within it, and that it was rooted in the idea of self-determination. He noted that mandate holders should typically share letters where they cut across other mandates, and that this had not happened on this occasion and that the letter from Ms Alsalem did not represent the consensus view of the UN on this matter.

VMB noted that the Commissioner for Human Rights of the Council of Europe had published her report following her visit to the UK, and would be drawing attention to the increasingly harsh political and public discourse about the position of trans people. The Commissioner would also be reiterating that the Council of Europe has called on member states to "*develop quick, transparent and accessible procedures, based on self-determination*".

VMB suggested that he didn't wish to make this a contest between mandates, so had chosen to use the Special Procedures letter mechanism to restate the

International Framework, provide a detailed survey of other countries who had adopted self-determination, and address the narratives of self-exclusion. He noted that his planned letter will be delivered to the UK's mission in Geneva on Monday morning, and that it would be made public around 48 hours later.

VMB reiterated that the UN position is for self-determination and that this position was backed by sources of evidence and international law. He suggested that arguments that seek to exclude individuals are authoritarian and anti-democratic, and that in his view concerns that men will misuse a self-determination system are unfounded.

VMB indicated he was concerned about the growing dynamic, both in the UK and Internationally, of using the trans community as a scapegoat. He noted he will be visiting the UK in May next 2023.

VMB noted that currently 275 million people live in jurisdictions that had introduced self-determination, and that whilst there was still a long way to go, this represented a sizeable population from which no cases of abuse of self-determination had been forthcoming.

SR agreed about the difficult political environment and discourse, and noted that she and her colleagues in the Scottish Parliament had come under increased pressure in recent weeks to stop the Bill progressing. She noted the recent intervention of the UK Government, which had taken 2 months to respond to a request to discuss and had taken to last minute ahead of final stage of the Bill.

SR noted that she thought it was strange that Ms Alsalem had only met with people who had approached her, and as such appeared to be looking only at one side of the debate. She drew comparison with her own meetings with people on both sides of the debate and her attempts to find consensus where possible.

SR noted that she felt **VMB's** intervention would be helpful both in refuting the reporting that Ms Alsalem's view is the official UN position and in providing comfort to members of the Scottish Parliament who had been concerned at her intervention. She noted that it would be important to make sure that the contents of this letter reached all 129 members to ensure that those not close to the detail of the Bill can get a better understanding of the issues .

[redacted] outlined the difficulty in Scotland given the divergence of views between the SHRC who are the responsible human rights body for Scotland, and EHRC who have a role UK-wide in terms of equalities legislation, and specifically the Equality Act 2010.

VMB noted that he had undertaken a year-long consultation process, and had received over 600 individual submissions. He noted that he was satisfied in the conclusions of his report, and is aware this issue is plagued with emotion and used for political purposes that have very little to do with human rights. He noted concerns about the level of hate speech contained within some of the submissions he received, and the length of time it was taking to ensure that anything published was not defamatory.

VMB noted that whilst he will not be seeking to proactively promote his intervention, he would be available for interviews if he was approached.

SR noted that the inclusion of international comparators of jurisdictions who have implemented a self-declaration based approach will be very helpful in addressing hypothetical concerns that are being raised about what might happen in Scotland.

[redacted] noted that Ms Alsalem had raised the issue of scrutiny of applicants in her intervention, and that we are unclear what that means.

VMB noted that the idea that self-declaration is somehow dangerous to women is very pernicious, and this is not a zero sum game. He noted he hoped that it would be possible to create a dynamic where this is not a squabble between mandates, and that his advice will be that consensus exists, and that consensus is in favour of self-identification.

SR noted that there had been insidious suggestions made against frontline women's services in Scotland that are trans-inclusive, and that she was grateful to them for have stood by their principles and put their head above the parapet in this debate.

SR extended invitation to Scotland to **VMB** on his visit to the UK next year. **VMB** thanked **SR** for the meeting. **SR** thanked **VMB** for his time and assistance.