

21 September 2026

By email from: info@forwomen.scot
to: EHCJ.committee@parliament.scot

Dear Ms Hagmann & Members of the Equalities, Human Rights and Civil Justice Committee,

We are writing regarding the following comments made by a witness during the Committee session on 17 September about the the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW):

“The CEDAW Convention was written in 1979, as the convener laid out, and it is **qualified** through a series of general recommendations, which have evolved over the last 47 years. I'm the same age as the CEDAW Convention, so I know that specifically, didn't need to do any maths there. So the CEDAW Convention, **what the actual articles, what the wording of the CEDAW Convention means, has evolved over time, and it is articulated through general recommendations.** There is a huge amount of work that has been done by the CEDAW committee over the decades on issues around gender, gender stereotypes, norms, and standards. The CEDAW Convention has very clear commitments for governments in combating gender stereotypes and norms. So **the concept of gender is very firmly articulated** by the CEDAW committee in all of its work, and **they have also recognised the rights of transwomen in their general recommendations.** Now, it will be for the Scottish government and for the Parliament to determine what language goes into a human rights bill, **whether it will just be a straight reading of the language in the CEDAW Convention, or whether they will seek to honour the spirit of what the CEDAW Committee has articulated over decades that convention to mean.**” (emphasis added)

[Parliament TV](#) (at 10:20:30): Equalities, Human Rights and Civil Justice Committee, 17 September 2026

These comments misunderstand and confuse the Convention as ratified by 189 States and the non-binding commentary later issued by the monitoring committee. An erroneous claim about who counts as a woman is given without any context of how it is used in general recommendations, or of recent UK and Scottish case law. We wish to clarify as follows:

1. CEDAW's wording has not “evolved”. The treaty text is still sex-based.

The [Convention](#) was ratified by the UK in 1986 and its operative definition has not been rewritten or amended. Article 1 defines discrimination against women as any distinction, exclusion or restriction “made on the basis of sex” which impairs women’s enjoyment of rights “on a basis of equality of men and women”. The Convention repeatedly refers to women and men as the two sexes, to maternity, pregnancy, and to “either of the sexes”.

Article 5 requires States to modify social and cultural patterns so as to eliminate practices based on “the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

Gender stereotypes in CEDAW are the social meanings imposed on the two sexes. They are not a replacement category for sex, and they are not a warrant for treating male people as female. UN Women itself still [describes](#) CEDAW as providing a definition of sex-based discrimination and [defines](#) sex as the “physical and biological characteristics that distinguish males and females”.

A monitoring committee cannot, by issuing later papers or recommendations, change the ordinary meaning of a multilateral treaty. Under the Vienna Convention on the Law of Treaties, a treaty is interpreted in good faith according to the ordinary meaning of its terms in context and in light of its object and purpose. Changes to the Convention would require the agreement of State parties and a formal amendment under Article 26 (or a new protocol).

2. General Recommendations do not “qualify” CEDAW into a different convention.

General Recommendations are guidance from the Committee. They are useful as commentary. They are not the Convention. They are not binding on States parties and the UK Supreme Court has stated: “as a matter of international law, the authority of their recommendations is slight” (§35, [A and B v Secretary of State for Health \[2017\] UKSC 41](#)).

The Committee was created to monitor implementation of the treaty that States ratified. It was not given power to enlarge the class of rights-holders from women to “anyone who identifies as a woman”. If the meaning of “women” in CEDAW could be changed by committee output, then 189 States would have ratified one instrument and later found themselves bound to another. That is not how treaty law works.

So the choice posed at the end of the comments, between a “straight reading” of CEDAW versus honouring the “spirit” of decades of Committee articulation, is not a neutral drafting preference. It is a proposal to legislate a false reading of the Committee’s later commentary as if it were the treaty. That would be incorporation of advocacy or activism, not incorporation of CEDAW.

3. “Gender” in the Committee’s own analysis is not “gender identity”.

Where the CEDAW Committee has explained “gender”, it has treated it as the social construction of roles around biological sex. [General Recommendation 33](#) (at §7) is explicit: discrimination may be directed against women on the basis of their sex and gender, where gender refers to “socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society onto biological differences”.

That is the opposite of the claim now being advanced by the witness’s comments. CEDAW’s purpose under Article 5 is to dismantle the idea that women are defined by femininity, domesticity or other stereotypes. It is not to treat adoption of those stereotypes by males as the legal test for being a woman. If “woman” becomes a “gender identity”, the Convention’s core comparison, ie. equality of women with men, becomes incoherent.

4. Mentions of “transgender women” do not redefine the rights-holder.

The comments assert that the CEDAW Committee has “recognised the rights of transwomen in their general recommendations” as if that settled the meaning of “women” in the Convention. It does not.

References to “transgender” or “transgender woman” appear in several General Recommendations (eg. §8, [GR 33 on access to justice](#) and §12, [GR 35 on gender-based violence](#)). They list “lesbian, bisexual or transgender woman or intersex person” in the context of intersectionality, and among factors that can compound discrimination experienced by women. This treats transgender status as an additional axis affecting some biological women; it does not redefine the protected class to include biological males who identify as women, nor does it require States to treat males as females for the purposes of single-sex provision, data collection, sports, prisons or maternity rights.

A [legal analysis](#) submitted to the Committee’s own later work on stereotypes by Dr Claire Methven O’Brien (SHRC Commissioner) made the point directly: references to gender in interpretive materials do not bring “gender identity” discrimination against biological males within CEDAW’s purview, and treating males as females would cut against the Convention’s object of securing women’s equality with men.

No General Recommendation contains a clear, binding statement that “transwomen are women” under CEDAW or that sex-based rights must yield to “gender identity”. Recent drafts and discussions (including material around GR 41 on stereotypes) continue to ground the analysis in the sex binary and stereotyped roles of men and women. Claims that the Committee has “recognised the rights of transwomen” in a way that expands the Convention’s subject matter therefore rely on selective reading and advocacy gloss rather than the text or the Committee’s consistent practice.

5. Honouring the “spirit” of Committee commentary would undermine CEDAW, not implement it.

The UK Supreme Court has held that “sex”, “man” and “woman” in the Equality Act 2010 mean biological sex. Successive responses to periodic reviews by Labour (at [§5](#)) and Conservative (at [§3](#)) UK Governments have refused to incorporate CEDAW into domestic law on the basis that the Convention rights are given effect through the Equality Act 2010 and the Human Rights Act 2010. Any Scottish incorporation of CEDAW that treated the asserted “spirit of the Committee” as authority to adopt a different definition would collide with that domestic framework and with the Convention’s own object and purpose. It would convert women’s sex-based protections, data and positive actions into measures males can claim which would also, as the Supreme Court determined, render women’s reproductive and maternity protections incoherent and unworkable.

The same misunderstandings about the terms used in General Recommendations have already been aired in court (see our [CEDAW case study](#)) when the Scottish Ministers claimed transwomen inclusion in the definition of woman in the Gender Representation on Public Boards (Scotland) Act 2018 was consistent with CEDAW. Although the first instance court found in favour of the Ministers, its judgment was [overturned](#) in its entirety by the Court of Session Inner House in 2022. Self-declared “gender identity” overwriting sex is not

consistent with CEDAW. The Scottish Government did not challenge this decision and the matter is now settled law.

Several attempts have been made to persuade courts that the UK Supreme Court judgment on the definition of sex is incompatible with Convention rights, for example, [Haynes v English Blackball Pool Federation](#) and [Good Law Project v EHRC](#). All have failed. Most notably, in the transgender prisoner guidance judicial review, the Scottish Ministers advanced an additional argument that exceptions to reserved “equal opportunities” in the Scotland Act 1998 permitted the more expansive category of “gender identity” as opposed to the Equality Act’s “gender reassignment”. The Court of Session unequivocally ruled against that proposition: it is not within devolved competence to broaden protected characteristics, there is no Convention incompatibility in the provisions of the Equality Act, and public authorities cannot be required to act in a way which is contrary to the Equality Act (§100-108, [FWS v Scottish Ministers \[2026\] CSOH 59](#)).

Although we do not yet know the detail of the proposed Human Rights Bill, the Scottish Government’s own wording in [Towards a Human Rights Bill for Scotland](#) (page 21) is that the equality duty to be placed on certain public authorities has “evolved” to explicitly include “gender identity” – despite none of the four treaties to be incorporated using the term. It says the extra ground is taken from a [general comment](#) of the monitoring committee for the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in turn lifted the term (at §32) from the Yogyakarta Principles. These principles were drafted by activists and impose no legal obligation of compliance, and in fact should be firmly rejected since [principle 31](#), which demands sex be removed from birth certificates and identity documents, is counter to the interests of women as detailed in Article 1 of CEDAW, which states the recognition of women on the basis of sex should not be impaired.

The EHRCJ Committee should be fully cognisant of attempts to overstate or give undue legal weight to any rolling body of Convention committee opinion in the forthcoming Human Rights Bill, and ask what practical effects it will have on implementation, both for actions taken by public authorities and conflicts requiring court resolution. A balanced position on monitoring-body material can help with implementation of rights that are actually in the treaties but, misunderstood or used improperly, it becomes a way to smuggle in new protected groups, undermine women’s rights, and create conflict with reserved equality law without putting those choices on the face of the Bill.

The comments from the witness are an apt demonstration of what our pleadings from the previous week cautioned (col 45 in the [Official Report](#)): that the Committee “need to future proof legislation, rather than following what their political party or their ideology tells them. They need to make sure that what is in front of them is legally robust, that it can be implemented and that it will benefit everybody in the country...if anything comes before the committee that is not legally sound, I ask you to send it back, please.”

Yours sincerely,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland