



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Monday 19 December 2022

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
33rd Meeting 2022, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Reem Alsalem (United Nations Special Rapporteur on Violence against Women and Girls, its Causes and Consequences)

Victor Madrigal-Borloz (Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity)

Ash Regan (Edinburgh Eastern) (SNP)

Emma Roddick (Highlands and Islands) (SNP)

Tess White (North East Scotland) (Con)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Monday 19 December 2022

[The Convener opened the meeting at 17:45]

Gender Recognition Reform (Scotland) Bill

The Convener (Joe FitzPatrick): Good evening and welcome to the 33rd meeting in 2022 of the Equalities, Human Rights and Civil Justice Committee. We have no apologies.

We are joined by Emma Roddick MSP and expect to be joined soon by Ash Regan MSP and Tess White MSP—you are all very welcome.

The only item on our agenda is to hear from United Nations experts on the Gender Recognition Reform (Scotland) Bill. We will hear first from Victor Madrigal-Borloz, United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity, and then from Reem Alsalem, United Nations special rapporteur on violence against women and girls, its causes and consequences. I refer members to paper 1.

I welcome Victor Madrigal-Borloz to the meeting and I invite him to make a short opening statement. Over to you, Victor.

Victor Madrigal-Borloz (Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity): Thank you very much, convener. I am very grateful to the committee for this invitation. Pursuant to United Nations Human Rights Council resolutions 3022, 4118 and 5010, United Nations member states have mandated me to address and investigate root causes of violence and discrimination against persons based on their sexual orientation and gender identity, assess the implementation of relevant international human rights SOGI instruments and provide advice to states.

At the invitation of this committee, in June, I gave my advice on the Gender Recognition Reform (Scotland) Bill. On 12 December, I restated that advice. By way of introduction, I would like to present the reasons for that restatement, my understanding of its placement in the procedure and its scope.

I turn to the reasons that motivated my restatement. As I have monitored the public and parliamentary debate on the bill, I have become

increasingly concerned about the misrepresentation of the United Nations' long-standing position on legal recognition of gender identity based on self-identification. I am also concerned about narratives that appear to be utilising the discussion around the bill as a proxy for reigniting exclusionary discussions on the very existence and rights of trans people.

As I noted in my report on narratives of exclusion, which was presented to the United Nations general assembly in October 2021, those narratives often use stigma against trans men and trans women and generally pull a trio of rhetorical levers about the rights of non-trans women and girls, the rights of children and the issue of sports. I have grown concerned about the toxicity of the debate and its impact on the safety and security of all, but very particularly of trans persons, because those are the very myths that drive most of the violence and harassment that is inflicted on them.

In the most recent survey by the European Union Agency for Fundamental Rights, 50 per cent of trans persons in the United Kingdom reported harassment based on their gender identity in the past 12 months. The figure rises to 66 per cent for trans women, which is significantly higher than the figure for the whole LGBT population combined. Thirty-six per cent of trans women in the UK reported physical or sexual attacks in the past five years, which is more than triple the rate for women as a population.

On the procedure that was followed for my advice, I understand that my presentation in June was rendered in the correct procedural phase. My restatement and further granularity are descriptive of sources that were available at that moment, all of which I referred to then. There is one exception, which is the report by the Council of Europe's Commissioner for Human Rights, which, I believe, was available to the Government a month before its publication a couple of weeks ago.

I have valued highly the constant interaction of the United Kingdom with the three reports that constitute the core of my advice. For example, the statement of 25 June 2021 by the United Kingdom commenting on one of my reports on gender identity referred to the

"increasingly toxic and polarising global debate, particularly on social media, about the concept and process of changing gender",

and it clearly states that one should not be discriminated against because of gender identity when that gender identity is different from that assigned at birth.

On the scope of my advice, my objective has always been to communicate to the Scottish Parliament the acknowledgement of gender and, therein, gender identity and gender expression

within international human rights law and to actually present what I consider, on the basis of evidence, to be a long-standing position of the UN human rights machinery in relation to gender identity and its connection to the standard of self-identification. I have also described the evidence that has led me to the conclusion that there is UN consensus on the legal recognition of gender identity as inextricably linked to compliance with the fundamental principle of equal protection and recognition before the law, which is a cornerstone of so many human rights instruments on the global stage and in regional law.

Finally, I have presented my legal analysis of why the conflation of the legal recognition of gender identity with safeguards of safe spaces is not supported by the evidence or human rights-based analysis, under which non-discrimination is a fundamental element and cornerstone.

In this context, and in the context delineated by the motivation and procedural understanding of that scope, I am of course honoured to be having this conversation with you today, and I will be pleased to share whatever elements of evidence I have available to me. Thank you, convener.

The Convener: Thank you. We now move to questions, starting with Maggie Chapman.

Maggie Chapman (North East Scotland) (Green): Good evening, and thank you for joining us this evening. In your opening remarks, you mentioned the Council of Europe Commissioner for Human Rights, Dunja Mijatović, and her report, in which she talks clearly about the stigmatising discourse that Government officials and certain parliamentarians have contributed to, which has contributed to the culture wars around trans rights and the distortion of human rights that has pitted trans rights against women's rights as a zero-sum game. Could you comment on that and give us a bit more of an explanation about why you have come to your view?

Victor Madrigal-Borloz: There are several angles for that analysis and, of course, they all find a point of departure in the reality that there does not appear to be any socially or politically redeemable reason to discriminate against trans or gender-diverse people in general under a human rights-based analysis. That entails the reality that we are operating under certain existing structures that are binary in nature and which create realities upon which we define the language of rights and of injustice. That is a rich angle for analysis of what the commissioner, myself and many other parts of the human rights machinery have arrived at.

That analysis is that, given that there are no socially or politically redeemable reasons to carry out this discrimination against the whole

population, and it does not resist the analysis of non-discrimination, the question then becomes about what the reasons are for why populations and communities are seeing themselves stigmatised and how prejudice actually works against them.

The basis of the commissioner's conclusions is the understanding that there is a weaponisation and an instrumentalisation of the very existence of, in this case, trans and gender diverse persons for purposes that could, in some cases, be described as galvanising political bases or using those discourses as proxies for other dialogues.

That is where I see a very strong connection with my findings in my report on narratives of exclusion, in which I created an inventory of, among others, a triad of elements: it is always, in succession, the rights of non-trans women and girls, the rights of children and the issue of sport. Those narratives have been quite powerful and appealing, because they evoke real problematics, but they are actually just making what is, in my view, an artificial connection between those problems and the existence of trans persons.

I find very revealing the findings of the commissioner when she speaks in her report about the idea of

"deliberate attempts by some politicians to turn the situation of trans people into 'culture wars' or 'wedge' issue for electoral purposes",

and says that,

"The Commissioner is ... concerned that this has led to a loss of trust by significant parts of the LGBTI community in the government as a protector of their rights".

To me, that all connects with the instrumentalisation, if you will—the weaponisation—of the very existence of trans persons.

Again, it is important to underline that I have found it extremely troublesome that, in the context of the discussion of the Gender Recognition Reform (Scotland) Bill, which is meant exclusively to simplify a procedure that already exists and which introduces no new rights in relation to the legal recognition of gender identity, the popular and political discussion appears to be very much geared to questioning the very existence of trans persons and describing them with such horrifyingly stigmatising language as "men dressed as women" and so on.

Maggie Chapman: Thank you, Victor—that is really helpful. I could come back on a couple of points, but I know that the convener is keen to allow everybody to speak, so I will leave it there for now.

The Convener: Thank you, Maggie—I am keen that we get round everyone, but we might have time to go back to some members.

I go to Rachael Hamilton next.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Thank you, Victor, for coming to the committee this evening to give evidence. I want to speak to you about the intervention from your counterpart: the UN special rapporteur on violence against women and girls, Reem Alsalem. She said that her safeguarding fears were

“based on empirical evidence that ... the majority of sex offenders are male, and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse.”

She is right, is she not? We are all aware of countless examples of the lengths that repeat sex offenders go to in order to access potential victims.

First, can you tell me why you think that the Gender Recognition Reform (Scotland) Bill as it stands will not be similarly abused by violent sex offenders if vital safeguards are removed? Secondly, if you say that that is a possibility, would you agree that a safeguard to prevent convicted sex offenders from applying for a gender recognition certificate is a reasonable and necessary measure?

Victor Madrigal-Borloz: Thank you very much for that question—I hope that you will allow me to shed light on a couple of things, but I want to make sure that I delineate my answer within one aspect.

You have referred to the submission by my colleague special rapporteur Alsalem. Nothing in my opinion is meant to be seen as a commentary on or discussion about her paper. We are both equally mandated by the Human Rights Council to carry out our work. The ambits of our competence are well delineated by the resolutions that are fundamental to our mandates. It is very important for me that it is clearly understood that the only person who is able to comment on her position from the standpoint of special procedures of the UN is special rapporteur Alsalem. That is of course not only a question of collegiality but a question of recognition of the way in which our mandates are created.

18:00

Therefore, if you will allow me, I will try to place my understanding of your question in the more general context of my opinion. I am convinced that women are of course right to fear violence at the hands of predators, and predatory men in

particular—that is absolutely a certainty on my part. Women are massively affected by that.

Although I know that special rapporteur Alsalem is the person who is in charge of analysing the scope of violence against women, I am concerned from the angle or point of view of lesbian women, bisexual women and of course trans women in general. One idea that I find quite problematic in relation to the issue is how the sort of exclusionary narratives that I described that are advocated by some make a connection with the idea that trans women are actually men in dresses and therefore—[*Inaudible.*—]—be predatory men in dresses. There is something quite off about that, and I think that it creates significant possibilities for stigma and discrimination. Trans women are not men in dresses, and they are certainly not predatory men in dresses—they are not men at all.

Although I do not think that trans communities and populations need to provide evidence of lack of abuse in the systems that have legal gender recognition based on self-identification, it is telling that in none of those countries have there been administrative or judicial findings of predatory men abusing the system to obtain access to places to which they, as men—as they are—would not be entitled to gain access.

To me, there is great importance in acknowledging that, under the legal recognition standards that exist, including of course in Scotland—I do not think that the proposed legislation is making a change to that aspect, as those standards already exist—a trans woman is a woman with all the rights that a woman has. In my opinion, which of course is the one that I very much hope to give clarity on, I explained that, in my view, there is no evidence and no legal analysis that concludes that maintaining complexity in the process of recognition of gender identity would be an effective safeguard for women in all their diversity, and that includes lesbian women, trans women, bisexual women and of course all other women.

There is no evidence linking to the point that complexity in the procedure of legal recognition is an effective safeguard for women in all their diversity in relation to the goal that we all share—or, let us say, a very significant proportion of us share—of ensuring freedom of all women from violence and discrimination.

Rachael Hamilton: I want to pick up on one point that you made. Obviously, we want to ensure that there is a balance and that women’s rights, safety and privacy are protected, which was not addressed in your submission to the committee.

I want to ask you about the countries that currently have legal recognition of gender-based self-identification. Are there concrete examples

that show that that has reduced the number of acts of violence against trans people?

I recognise that you are discussing here—*[Interruption.]* Did you understand the question? I am sorry about that.

Victor Madrigal-Borloz: Let me try and tell you what I understood as your question—I hope that I have not misunderstood.

Significant evidence is coming through in surveys, including on the number of policy barriers that have been put in place in countries that not only have legal recognition based on self-ID but have legal recognition of gender identity as a policy and have adopted it through administrative or legal means. That is one thing. Legal recognition of gender identity is recognised in all those countries and in evidence as one of the essential steps to ensuring the reduction of violence and discrimination against trans persons—that includes trans men, trans women and, in many contexts, non-binary and gender-diverse persons. Legal recognition of their existence creates a link under that existence with the full range of state services from which they have been traditionally excluded. As you may have seen in the evidence that has been presented, that includes access to health centres, employment, better education and so on, so it is a significant step in relation to the wider agenda of social inclusion. Once you have better social inclusion, you typically see as a result an improvement in the conditions surrounding overall discrimination and violence.

I also underline the fact that trans women, trans men and gender-diverse persons are fighting decades of stigmatising discourse and prejudice. In general, those populations have significantly lower health outcomes in many aspects, so this work will take more than a five or 10-year cycle of public policy to ensure that they are not left behind.

Rachael Hamilton: You did not exactly answer my question about concrete examples of acts of violence against trans people being reduced, but you talked about other examples of your views.

I have one final question, if I may. I am slightly confused about the “Living Free and Equal” report that you talk about. From my research, I believe that it does not provide a legal basis for the recommendations that you make. I wonder about two points. Is there a legal obligation on Scotland to enact reform that allows anyone to change their sex by self-ID? The UK’s Equality and Human Rights Commission says that the Gender Recognition Act 2004 is in line with international human rights obligations. Do you agree with that?

Victor Madrigal-Borloz: That relates to the way in which my opinion described those different

elements. As I mentioned in my introduction, legal recognition of gender identity is seen widely as inextricably linked to equal recognition and protection under the law. In that sense, it is a human rights obligation, as seen uniformly by all United Nations human rights bodies that have expedited the matter.

You talk about the “Living Free and Equal” report, but that is only one of a series of sources that I include in my legal opinion on the matter. I think that a significant body of evidence was compiled by the Office of the United Nations High Commissioner for Human Rights, for example when preparing legal opinion that the high commissioner presented to the Inter-American Court of Human Rights on advisory opinion OC-24/17. What was contained therein, which is cited in my opinion, is the legal construction upon which the Office of the High Commissioner for Human Rights based its support of the idea that legal recognition of gender identity is an imperative.

I would think, and I hope, that the resolutions that create my mandate—of which, of course, the United Kingdom is very supportive—also create an understanding that gender identity is a significant driver of violence and discrimination that needs to be assessed, and the creation of my mandate actually signals precisely that acknowledgement. I think that, when we then talk about self-identification, the understanding is that it is recognised as the best practice standard—the standard to follow.

I hope that you will allow me to say two more sentences in relation to this matter. Significant evidence has been built up that any requirements that place the decision on recognition of gender identity outside the individual concerned have been very much seen as violations of human rights. One example is pathologisation, and another is assessment by traditional or administrative bodies, both of which tended to reproduce stigma and bias.

The Convener: Thank you. I call Karen Adam.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good evening, Victor, and thank you for joining us. I will ask you a question about the evidence that you have gathered on this subject. What were some of the key findings that really stood out for you? That is a general question and might be quite broad, but pinning down a couple of the main issues would be really helpful.

Victor Madrigal-Borloz: Absolutely. I will quickly mention that in the furtherance of my mandate, I have carried out three main inquiries on the issue of legal recognition of gender identity, and all the rest of my work has also surrounded sexual orientation and gender identity. You are asking me what the main findings are of the last

five years of my work in the United Nations and my last 15 years working with these issues.

The main ones that I will describe are in the axes of inclusion and exclusion. In the axis of inclusion, I would say that there are four main findings. The first finding is that under international human rights law gender identity is recognised, given a very robust body of evidence, as a trait that must be protected from discrimination and violence.

The second finding is that legal recognition allows the creation of a relationship between the individual and the state that eliminates the elements that create social exclusion. In that sense, trans, non-binary and gender-diverse persons around the world significantly benefit from that legal recognition. I think that that is what your colleague's previous question was inviting me to explain.

I can give a very specific example in relation to that. When I started working 15 years ago at the Inter-American Commission on Human Rights, we did a mapping of violence against trans women, and in particular killings of trans women. What we came back with in terms of official statistics was that there had been zero killings of trans women. The reason for that was very simple: because there was no legal recognition of trans women, they were all registered as men who had been killed. It took a deep dive into the data to actually begin to see the magnitude of violence against them—as we now know, in Latin America, one trans woman gets killed every day, and, of course, elements can be extrapolated under different aspects.

18:15

The third finding is that there is a significant amount of evidence supporting the standards that guide legal recognition. As I think that the UN High Commissioner for Human Rights restated to one of the media outlets in the United Kingdom in the last couple of days, there are a number of standards for legal recognition, and that includes self-identification, a simple administrative procedure and others that I have included in my opinions.

Finally, there is another angle to my findings, which concerns narratives that I have studied in which I received significant submissions in relation to my reports on gender. Those are the ones concerning what I call exclusionary narratives that basically range from denying that trans women, trans men and gender non-binary persons exist to the realm of accepting that they exist but under a somewhat limited legal capacity as human beings, whereby they would be recognised as women or men, except for certain cases. In that regard, I

have analysed the triad of elements that I have mentioned that come up recurrently in the narratives, and I have also analysed the risk of perpetuating violence, discrimination and stigma in relation to this issue.

Finally, I said that all my other inquiries have angles relating to lesbian women, bisexual persons, gay men and so on. That includes my work on data. I am quite keen on underlining that I am very worried about the lack of existence of data concerning lesbian women and bisexual women in the health field, for example, where we tend to have more information on gay men and trans women because they are designated as a key population under HIV/AIDS programming, which means that more resources have been available to map their health situation. That means that there are asymmetries within LGBT communities themselves, which impact disproportionately lesbian women, trans men and bisexual persons of both sexes. That is concerning to me. There you have an example where my work on data has drawn on these perspectives.

Karen Adam: That is helpful. I acknowledge that it is hard to pin down the scale, but, if trans people could gain access to a gender recognition certificate more easily than they can now, would that be helpful with regard to our data overall?

Victor Madrigal-Borloz: My assumption has always been that complexity in the procedure is a deterrent in itself. Complexity in the procedure, the othering of persons and the placement of decisions on a person's gender identity in bodies that are external to the individual concerned function as a deterrent and, therefore, tend to blur the picture.

Of course, the most extreme example of that is ambits of criminalisation. This is not the case in the UK but, in my view, countries in which criminalisation of either sexual orientation or gender identity exists have zero possibility of claiming full integrity of their data, because you will never be able to ask people if they are a lesbian or if they are gay under ambits of criminalisation. I think that the same thing is applicable in ambits and environments of deep stigmatisation and prejudice, where self-identifying and even accessing procedures might be a deterrent. So, of course, simplicity and adherence to international standards will significantly create a more accurate picture of what reality looks like.

Karen Adam: Thank you.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you for everything that you have shared with us so far, Victor, and for giving us your time this evening. I note what you have just said about data and health, and I will read the *Official Report* of that later, because I thought that it was very helpful. A

colleague of mine has lodged an amendment on that, and it is something that we are keen to look at.

Moving to my questions, I am sure that you will have heard that some people are quite worried about this legislation, and I note your concerns about some of the confluences that have been made and the worries that have been raised. However, I want to ask you about the impact of self-declaration systems in some countries. Have you seen any evidence anywhere of women self-excluding from women-only spaces?

Victor Madrigal-Borloz: Thank you very much for that question, because it highlights a significant concern even with the overlap between different mandates. As I have said, my mandate is to study discrimination and violence against lesbian and bisexual women; the issue goes beyond the remit of trans women alone, and I am concerned about services and spaces in that connection.

In that respect, I rely on those who can best gather the information—that is, Governments and, in the absence of Governments, civil society in this field. For example, I am guided by the statement that I have read and which I understand has been made by seven organisations that have been operating trans-inclusive services in Scotland for, as I understand it, 15 years and which have recorded no particular instances of abuse or patterns of self-exclusion. I would say the same about other countries where self-identification is the standard as well as countries that have legal recognition, even though they have not achieved the self-identification standard. These are trends that, until the evidence says otherwise, I need to see as hypothetical.

Of course, my work on this did not start just when I was appointed United Nations independent expert. As a member of the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, I visited crisis centres, hospitals and other centres in many countries of the world, and because of my remit as rapporteur on LGBT issues, I visited particular centres with inclusionary or exclusionary policies. I have to say that I never saw the type of trend that you have talked about being documented in any country that I visited, which, of course, included countries that have legal gender recognition.

Before that, I was the technical adviser in charge of creating the unit for LGBTI issues at the Inter-American Commission on Human Rights. Even with its significant mapping, this was not an issue that ever showed as a trend.

I am therefore puzzled about the evidence on which this argument has been based, particularly because I would imagine that, had a need arisen to address claims of self-exclusion, there would

have been diagnosing studies, and I am not aware of any such trends or related evaluations.

Pam Duncan-Glancy: I appreciate that full answer.

In a similar vein, and on the point about evaluations and reviews that you finished with, you will know that a number of people who are critical of the legislation have said that an absence of evidence is not evidence of absence. As a result, Scottish Labour has lodged amendments seeking regular reviews of the impacts of the legislation in order to gather the information that we might need. Have you seen any examples of similar monitoring in international legislation and, if so, what has it found?

Victor Madrigal-Borloz: I would highlight two issues in relation to that. First, my experience of dialoguing with public policy makers—which is as long as I have been working—is that evaluations and studies are usually made on the basis of need. You begin with certain working theories arising from administrative or judicial findings, and you then work your way to patterns or models that might lead to other working theories requiring studies or evaluations. Otherwise—and I think that I have said this before—you create solutions in search of problems, and I do not think that that is how the evaluation of public policy is undertaken.

Again, given the absence of particular judicial or administrative findings that would actually reveal such trends, I am not sure that that would be a strong fundamental basis for a whole line of inquiry, the findings of which would appear to have already been predetermined. To me, that is not the way to go. I understand public policy, and the need for evaluation of public policy works, but an inquiry has to be undertaken with a particular objective, which in this case might be to look for a problem to match a solution that has already been found.

Pam Duncan-Glancy: Thank you for that.

Pam Gosal (West Scotland) (Con): Good evening, Victor. Due to time constraints, the committee has not been able to hear from many groups that wanted to give evidence to us, including survivors of domestic violence and abuse. Why did you think that it was important that we hear from you a second time? What new evidence do you bring with you to the committee today?

Victor Madrigal-Borloz: Thank you very much for that question; it allows me perhaps to bring more clarity to the framework that I created in my introduction. I thought that it was important that I accept the invitation because I am mandated by the United Nations member states to provide advisory services where governmental and state agencies so require. I do not think, therefore, that

it would be a very happy position if I were to reject such a kind and generous invitation to make some clarifications in relation to the opinion that I rendered in June.

You may perhaps be asking why I was invited. Clearly, the motivation for the invitation was not something over which I myself had control. Having said that, I have the ability to consider whether something is absolutely redundant, and I do not think that that is the case here, given the way in which the public debate has proceeded since June. There are, as I said, three elements of the debate that are deeply concerning to me. One element is what I consider to be the misrepresentation of the UN's long-standing position, which was reinforced by, among other things, the statement by the UN High Commissioner for Human Rights to a media outlet in the past few days. The other elements are the continued use of the conversation in this context, in my opinion, as a proxy for a discussion that appears not to be connected with it, which is an argument about the very legal recognition of gender identity. In my understanding, that is not what the bill is about.

In my mind, there is a clear added value in restating the international human rights law acknowledgement of gender identity and legal recognition, and the absence of a connection between those elements and the whole issue that we are debating in relation to the specifics of simplifying the procedure.

Pam Gosal: Thank you, Victor. To add to that question, I highlight that the Muslim Council of Scotland has written a letter to the Cabinet Secretary for Social Justice, Housing and Local Government, in which it states:

"For Muslims, where protected single sex spaces are a religious requirement for ablution and prayer and for access to a range of services and leisure opportunities, this proposed legislation risks undermining a range of their human rights, by opening access to legal masqueraders."

At the same time, the Scottish Association of Mosques wrote to the cabinet secretary, stating:

"This Bill would potentially give access to female only spaces and services, including critical safe spaces for girls under 16, to men who have self-declared their gender, including at places where women and girls are most vulnerable. This creates a clear safeguarding issue."

Those organisations represent thousands of Muslims in Scotland. In your opinion, are they wrong to hold those concerns? Could you please tell the committee what analysis you have undertaken of the impact of the bill on women of faith and their access to and/or self-exclusion from single-sex services and spaces?

18:30

Victor Madrigal-Borloz: Thank you for that question. It delves into something that I am interested in, which is the alleged tension between freedom of religion and belief and freedom from violence and discrimination based on sexual orientation and gender identity.

I would place it in the general context of my joint work with successive UN special rapporteurs on freedom of religion or belief, the first manifestation of which was the issuing of a statement backed up by, I believe, 115 independent experts at UN and regional level. In that, there was a clear point of departure on the fact that, in the substance of the functioning of those rights, there is no contradiction, but there is interdependence and mutual reinforcement. The reason for that is that freedom of religion and belief and freedom from violence and discrimination based on sexual orientation and gender identity are based on a number of rights that are articulated in the global and regional systems that refer to equal recognition before the law, freedom of expression and, in general, dignity and the constructions that are attached thereto.

That will give you a clue about my thinking about this issue, and I will elaborate further on that when I present my report to the UN Human Rights Council in June 2023 on the connectivity of these two conceptual constructions.

By the way, I do not think that concerns are ever wrong. It is healthy to understand the basis of concerns and how they can be addressed through respectful democratic debate. You referred to particular communities that fear that men masquerading as women would penetrate certain spaces. There is one element in the legal construction that answers to that, which is that legal recognition of gender identity implies that trans women are women. Therefore, under human rights-based approaches, you cannot make the construction that trans women are men penetrating any space whatsoever.

This is something that the Council of Europe Commissioner on Human Rights brilliantly described in her report. In cases where there might be significant views and concerns that arise during a process of integration, they need to be solved on a case-by-case basis. That requires a non-discrimination analysis, which has a number of elements that are uniform throughout international human rights law, which are proportionality, necessity and so on. My point is that what is not supported by the evidence in relation to international human rights-based approaches is the restriction of the rights of a whole community or population based on a particular stigmatising or discriminatory view. That includes instances in which particular women

might have long-held trauma in relation to particular populations, and that needs to be handled on the basis of non-discrimination analysis.

My message here is that there are tools in the international human rights-based system that can be used to ensure that, as the Council of Europe Commissioner of Human Rights has said, legitimately held concerns can be channelled in a way that is non-discriminatory and non-stigmatising in nature.

The Convener: Rachael Hamilton has a brief supplementary question.

Rachael Hamilton: Victor, your mandate stresses the importance of respecting regional, cultural and religious values in human rights. How will the gender reform self-identification system impact everyone's human rights across the UK?

Victor Madrigal-Borloz: I think that it will bring the United Kingdom closer to conformity with what is, at the moment, considered the standard for legal recognition of gender identity.

However, I am not sure that I would place my evaluation in that connection in particular religious or social mores; that is not really the angle on which I am basing my analysis. Instead, my analysis relates to international human rights law systems in which the United Kingdom is, like every other state, a key stakeholder in the formation of what is a consensus that has been long held. In my introduction, I referred to the United Kingdom's constructive and clear interaction with my reports, so it would be very puzzling to me—indeed, it would hard for me to see—how this decided position in relation to legal recognition of gender identity, which has been held, could be in any way a contradiction.

The Convener: Thank you. I call Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good evening. My question is about something that you have already referred to—the report that the Council of Europe's Commissioner for Human Rights released last week about her visit to the UK. In that report, she notes:

“trans persons in the UK face increasingly hostile and toxic political and public discourse.”

What is your view on that? Can you comment on the impact that the sort of discourse that we have seen in the course of this debate is having on this or any minority community?

Victor Madrigal-Borloz: I am sorry—the sound was not very clear. Can you repeat the question, please?

Fulton MacGregor: No problem. Do you need me to repeat it right from the start?

Victor Madrigal-Borloz: Just the question.

Fulton MacGregor: Okay. Can you comment on the impact of such discourse on the trans community here in Scotland, and indeed any minority community?

Victor Madrigal-Borloz: Thank you very much. This is, of course, a very interesting question. I have already referred to what my remit is concerned with—that is, persons affected by discrimination and violence based on sexual orientation and gender identity. I have significant concerns about the impact of this admittedly toxic debate on the notion of safe spaces and how persons relate to such spaces when they face those who, from the very beginning, should not have been stigmatised as men dressed as women penetrating those spaces for predatory purposes. I am enormously concerned about what it will do to the perception of safety in those spaces. Again, that is in light of the realisation that it is absolutely arbitrary and undemocratic to take away the rights of a whole community—in this case, trans women or trans men—just because of long-held views that they do not really exist or that they are not really women.

I will be quite measured in the way in which I extrapolate this to other communities, because it is not my area of expertise. However, for politicians debating and considering the matter, one of the questions that I think is valid is, to what extent is this affecting a wider population of women and girls? To what extent will the stigma and discrimination against trans persons and the nature of their presence in such spaces create an atmosphere—an artificial atmosphere—of moral panic and impact on the notion of safety in those spaces? Therein lies significant political responsibility to ensure that the debate is evidence based and abandons stigma as one of the departure points.

The Convener: Emma Roddick has the final question.

Emma Roddick (Highlands and Islands) (SNP): You have talked a lot about the toxicity of the debate in the UK and the effect that that is having on trans people in particular but also on cisgender women who, as you have said, have every reason to be afraid of predatory men. Elected representatives and celebrities linking this legislation to that separate issue will cause fear. Have you seen that happen on a similar scale in other countries that have implemented similar procedures? Do you have advice for politicians on how to address those concerns? Perhaps you could highlight best practice that you have seen elsewhere.

Victor Madrigal-Borloz: In my report on narratives and practices of exclusion, I studied quite a wide evidence base in that regard. There are a number of contexts, which I highlight in the report, in which I have seen those stigmatising attitudes translate into the zero-sum game dialogue to which the Commissioner for Human Rights of the Council of Europe was referring. That is to the gain of those who are feeding the frenzy, but I do not think that it is to the gain of communities and populations who have historically been subjected to discrimination and violence, which is a chunk of communities and populations around the globe.

That is a rather destructive use of trans lives for instrumentalising their purposes but also of narratives invoking the very real issue of violence against women in all their diversity at the service of the creation of an atmosphere of moral panic that feeds those purposes.

My advice is—this is by no means a mystery—to look at the evidence. Stigma, by definition, is fuelled by lack of evidence. You are just hoping that your voice is loud or strong enough, or that it appears to be supported by a sufficient number of people and you are hoping that that will be the evidence in itself. That is the definition of rhetorical devices.

Against, and I use the word “against” intentionally, that kind of approach, evidence-based approaches are getting everyone to take a look at the evidence that exists and see that it is credible—that is, that it is not planted in there but that it follows due process, scientific methods and ethical frameworks of research, so that studies can ensure that there is a credibility framework—and then conclude what the evidence tells us. So far, the evidence tells me that that connection is artificial.

The Convener: We have gone a bit over time, so I will end the session here. My huge thanks to Victor Madrigal-Borloz for making time to come along.

I suspend the meeting. We will resume in about 10 minutes.

Victor Madrigal-Borloz: Thank you, convener; thank you, everyone. It was a great honour to be with you. Goodbye.

18:43

Meeting suspended.

18:52

On resuming—

The Convener: Welcome back. I welcome Reem Alsalem, UN special rapporteur on violence

against women and girls, its causes and consequences, and I invite Reem to make a short opening statement.

Reem Alsalem (United Nations Special Rapporteur on Violence against Women and Girls, its Causes and Consequences): Thank you for having me. Even though it is late in the process, I very much welcome the opportunity to elaborate on the letter that I sent to the UK Government and the issues that I have raised.

Can you hear me?

Rachael Hamilton: Yes, Reem, we can hear you.

Reem Alsalem: Many of the issues that I mentioned echo points made by feminist organisations and victims. In a nutshell, I wanted to emphasise that the issues that I raised are not about legal recognition of self-ID or it being a right in international human rights law. The issue is that self-ID has no established basis in international law, and although the reform can of course be based on self-ID, there is no basis in international law to have an unhinged self-ID process.

It is very logical and legitimate to expect that any process in which there will be access to a group of individuals who may be vulnerable, such as women and children, by sex offenders is firewalled by safeguards or has safeguards attached to it. Likewise, any process in which access to additional rights would be given would have to be regulated.

On the first point, I would say that our experience as women who are born female is that violent males who can take advantage of any loopholes will do so in order to get into women's spaces and have access to women. Our experience as women born female tells us that. Also, when it comes to situations in which safeguarding policies are expected, that does not mean by any means that we are saying that everyone will commit offences. For example, there are safeguarding policies in schools, hospitals and police stations, but that does not mean that, if there is a case of a police officer raping a woman, all police officers are rapists. The issue is that we have to make sure that there is protection in place where there is any policy that allows access to women and children.

All that I was saying through this letter is that a number of issues are still to be worked through when it comes to GRA reform, and that this is a good opportunity to do a comprehensive adjustment of the GRA, because there are issues preceding the current reform that have to be addressed. One issue is its relationship to the Equality Act 2010, and another issue is its impact on single-sex spaces, including the reasons why women self-exclude. It is about taking the time to

do this properly and not to rush through it, while at the same time ensuring that we look at the totality of rights for women in all their diversity.

I believe that it does not have to be a zero-sum game. You can actually work out a system that looks to the co-existence of rights for different groups of women, and that is what an intersectional approach is all about.

The Convener: Thank you, Reem. I will go to questions from Maggie first.

Maggie Chapman: Good evening, Reem. Thank you very much for joining us—I appreciate your making the time to be with us.

I have two questions for you. I would like to explore your reflections on the report by Dunja Mijatović, the Commissioner for Human Rights of the Council of Europe, in which she said,

“Both government officials and certain parliamentarians have actively contributed to an intolerant and stigmatising discourse.”

After that, she critiques the “culture wars” surrounding trans rights in Scotland. She also says in the report that

“trans persons in the UK face increasingly hostile and toxic political and public discourse.”

What are your thoughts on her report in general, but also on those two points specifically, given the context in which we are discussing and debating this bill?

Reem Alsalem: Thank you for that question. I must say that one of the main problems is precisely that groups of women are coming forward to try to reassert their sex characteristics and the discrimination that they endure based on sex characteristics, and also to try to ensure protection for single-sex spaces, and they are being accused of hate speech and intolerance and of being transphobes. They are lumped together automatically with all sorts of other movements, be it anti-abortion, be it this, be it that. Therefore, there is no space for them to practise their human right of freedom of expression. As a result, it negates the opportunity for those groups of women to express and reassert their needs based on their identities and profiles, which is something very legitimate. The international human rights law does not negate the protection of sex characteristics, and it does not erase them.

19:00

More recently, we looked at discrimination and violence against women, based on gender identity but also sex. We cannot conflate the two, and we cannot say that one equals the other. While I recognise, of course, that LGBTIQ persons face discrimination and intolerance, including in

Europe, and that we have to address that, it does not mean, therefore, that we can deny others the right to express their needs.

Maggie Chapman: Thank you for that. I asked specifically about the impact of the culture wars, which trans people are bearing the brunt of and experiencing. You talked about freedom of expression. We have heard elsewhere in evidence to the committee that freedom exists up to a point where it does not impinge on the freedom of other people to exist. That is an important statement to make.

In the letter that you wrote last month, you spoke about the need to “listen”, and to take account of and evaluate the responses that have been received in the consultation and scrutiny processes that the Scottish Government and the committee have undertaken. In that letter, you said that,

“consultations”

were perhaps not

“sufficiently inclusive of other groups of women”

nor of organisations that represent them.

Given that we have heard from Scottish Women’s Aid; Rape Crisis Scotland and some of its network members; Engender and the Scottish Women’s Rights Centre, all of which support the reforms in the bill, I am interested in which other women’s organisations in Scotland, in the domestic Scottish setting, you have approached, or which have approached you. Where does your evidence come from for calling for the bill to have, as you called it, a comprehensive refresh?

Reem Alsalem: First, I want to come back to your earlier comments about this being about culture wars. I do not think that that is the right way to characterise it. It is really about fundamental human rights issues of how we can ensure the coexistence of rights of different groups in society in a dignified and equal way without one erasing the other.

On your other question, much of that is mentioned in reports on discussions that the Parliament has had, in which a number of Scottish organisations have come forward and said that they have not been consulted. There have been victims who have said that they have not had access to the parliamentary committee, and detransitioners who have been asked to come in very late in the process. One issue is participation, which may or may not have happened to varying degrees. However, what has been clear to me, from the flurry of letters that I received after sending my letter, is that responses have not been sufficiently digested and taken into consideration. Those persons may have been consulted, but there is a difference between being asked for your

opinion and feeling that you are not heard and that whatever you say does not matter.

Maggie Chapman: Thank you. I will follow up quickly on two points. The reference to “culture wars” comes from the Commissioner for Human Rights of the Council of Europe; that is clearly her statement. Whether or not I agree with this—to be clear, I happen to agree with it—she says that,

“government officials and certain parliamentarians have actively contributed to an intolerant and stigmatising discourse”

within the context of “culture wars”. That is a direct quote from her report.

On the organisations that have been in touch with you, you wrote in your letter about listening clearly to organisations and survivors of violence. It is worth restating that the Scottish Women’s Rights Centre, Rape Crisis Scotland and Scottish Women’s Aid, which all directly support victims and survivors of gender-based violence, all support the reforms.

I appreciate that time is short so I will leave it there, convener.

Pam Gosal: In your letter, you say that ring-fenced funding should be available for single-sex and gender-based service providers. Although it was determined that that was outwith the scope of the bill, do you think that it would be helpful to amend the bill so that the Scottish Government will at least review the impact of the legislation on funding for single-sex services, and set out any further steps that it considers will be necessary following such a review?

Reem Alsalem: Absolutely. One of the reasons why a pause would be useful is that some of the impact assessments that have been missing could be carried out, not only in Scotland but in other countries that have adopted legislation on self-ID. Across the board, we can see that assessments have not been done on other groups of women who might have been affected by the legislation, particularly those who are in single-sex spaces such as prisons and shelters for victims, rather than just those who might acquire gender reassignment certificates or self-ID. A pause would be useful for those assessments.

A pause would also be useful to allow the collection of data that includes gender and sex. I am afraid that the collection of sex data has recently been deprioritised and neglected, which, of course, leads to the conflation of data results. For example, the number of sex offenders in prisons who are women has gone up, but we do not know whether they were born male, so we might draw the wrong conclusions.

In addition to that—and I suggested this to Government—we could take the opportunity of a

pause to undertake amendments in areas of the GRA that are problematic. For example, if we look at the exceptions, especially with the recent ruling by Lady Haldane, which was that males with a GRC are considered to be legally female, that shows that the reform has an impact on the Equality Act 2010. Why not wait to see what the UK Government thinks about how we are going to resolve the issue of the Equality Act 2010, in which the definition of sex is still understood to be biological? If you look at the exceptions in the GRA, you probably have to also allow for information to be disclosed when it comes to decisions about access to single-sex spaces. Right now, that is not explicitly stated and it is causing a lot of problems for service providers in assessing who to let into a single-sex space.

There are therefore things in the GRA that are already problematic even without this latest round of reforms and they could also be addressed before we move to another set of reforms that could be problematic.

Pam Gosal: Thank you, Reem. To follow on from that, I have another question. Since you published your letter to the UK Government, several parties have reached out to speak with you to gain a deeper understanding of your intervention. At a meeting that I attended, you mentioned briefly that, in Belgium, a safeguarding mechanism to reject applications is legislated for under public order measures. Could you talk about that in further detail with the committee today and outline any other international examples of safeguards that have been used to make the process more robust in the face of bad-faith actors?

Reem Alsalem: As I said, we need to take any examination of other countries’ legislation with a grain of salt. The first reason is that each country’s context is very specific. As I said earlier, Scotland is part of a union, whether we like it or not, and any legislation that is made in Scotland has to be assessed in the context of the wider UK territory and the Equality Act 2010. Basically, what happens in Scotland does not stay in Scotland. We have heard the comments from Westminster on the bill and the implications for movement. We should continue to look at the needs, requirements and situations of Scotland and the UK.

Secondly, I do not think that any of us is really an expert on how other countries have undertaken their processes, what has gone well for them and what has not, and the extent of their consultation. I have mentioned the lack of data and the lack of impact evaluations across the board. In addition to being Jordanian, I am Belgian. Even though the Belgian legislation considers the possibility of rejecting an application based on public order—by the prosecutor, I think—it is clear that Belgian,

too, has not carried out an impact assessment. When it collects data, it does not do so based on sex. Is it good that Belgium has some additional safeguards in place when it comes to self-ID by children or acquiring a gender recognition certificate? There are different sorts of models, depending on whether the parents agree, how old the child is and so on. Belgium has come to something that makes sense for that country, but we have to look at the matter holistically and bring the discussion back to Scotland and the needs of everyone in Scotland.

Pam Gosal: Thank you for emphasising how important it is to collect and review data. That is one of the main aspects that I have taken forward, so I thank you for that.

Fulton MacGregor: Good evening, Reem, and thank you for coming to give evidence today, especially given your tight schedule.

I think that you will have heard a wee bit of the previous session, in which we heard from Victor Madrigal-Borloz. He stated in his letter to the Scottish Government that he was

“concerned about misrepresentation of the existing consensus within the bodies and entities of the UN Human Rights System”.

What is your take on that consensus? How confident are you that your views are also those of the bodies and entities of the UN human rights system?

Reem Alsalem: As I said, there is a consensus that persons should have access to legal recognition and that that should happen in a way that is consistent with fundamental principles of dignity, human rights and so on. As I said, however, I do not think that there is a consensus—I have not seen consensus—that countries should adopt a self-ID model. I think that it can be based on self-ID, but there is no proof anywhere that it should be unhinged and that we should have a complete disregard for safeguards. There is often reference to the Yogyakarta principles, which, by the way, are not binding and which erase the issue of sex completely from their consideration.

When it comes to our opinions or positions as special rapporteurs, we are independent experts. We represent our views. We try to base our opinions on established human rights law, but our opinions are not binding on anyone other than ourselves. There are instances when we disagree with each other. We try to develop jurisprudence and push the envelope, but we cannot say that it is established jurisprudence that we speak on behalf of the UN or that we represent the UN.

19:15

Fulton MacGregor: Thank you very much for that clarification. Convener, am I okay to ask another question?

The Convener: You are okay, yes.

Fulton MacGregor: Thank you, convener. I know that time is tight.

We have heard from both sides, if you want to call them sides, about the need for empirical evidence. You describe needing that evidence in the context of safeguarding and risk management protocols. What evidence on that is there from other countries? In your answer to Pam Gosal, you spoke about data not being collected in certain areas. What evidence has informed your views and interventions on the issue?

Reem Alsalem: One thing is the lack of concerted effort to do impact assessments and to collect data based on sex. There is evidence in different reports that we see in the media. For example, certain prison managers will have evidence of how the violation of the single-sex sanctity for female prisoners has caused problems. The issue is that the evidence is not consolidated and analysed, so we do not see the trends. For example, I was intrigued to read in one research paper that, since 2018, at least 30 cases have been brought in the UK by feminists, non-governmental organisations and women’s organisations to challenge the erasure of single-sex spaces and reassert their right to identification based on sex. Of course, if you do not see all that evidence brought together in one place, you might say that it is not really an issue and women are not really raising it as an issue so what is the fuss about? It is an issue for many.

We also see such evidence in many countries across Europe and the world. A small example is that, since I wrote my letter, I have been contacted personally by a number of women’s organisations in all their diversity, including trans women, that have said that self-exclusion is a concern for them. They say that the understanding of the need for dignity is not present. There does not have to be contact-based sexual violence. If you have somebody in your space who will look at you or flash you and you fear being in their vicinity, that is also a form of violence. I am afraid that, being male and identifying as a man, you might not understand those issues.

It also comes down to who we ask and whose voices we hear on these issues. Men do not go through the same experiences, so they might not have a full understanding of the implications of something as simple and essential as that.

Pam Duncan-Glancy: Good evening, Reem. Thank you for joining us tonight and for engaging

with us at this time. During our evidence sessions, some witnesses raised similar concerns to those that are set out in your letter. Others, such as Rape Crisis Scotland, explained that single-sex services, such as the one that it provides, have never required a gender recognition certificate and that it has never asked anyone to provide proof of their gender. It also noted that its services had been trans inclusive for 15 years. Have you had any discussions with single-sex service providers in Scotland? Which organisations in Scotland did you engage with on your conclusions in your letter?

Reem Alsalem: I want to be clear on two things. First, I am still on mission in Libya. I have been here for a whole week, and I wish that I had more time to concentrate on this as much as I wanted to. However, I am doing this under strenuous circumstances.

The other thing is that I have engaged in conversations with anyone who has reached out to engage with me. I have engaged with a number of organisations, but I would like to respect their privacy and confidentiality, so, unless they come forward to say that they have met with me or unless they agreed to it, my policy has been not to disclose that publicly. That said, many of them are listed in the reports on the parliamentary sessions. You know who they are, because they have spoken out about this issue. We come back to the fact that, even before the latest reform, you had a situation where it was very difficult for on-the-ground service providers to decide what to do with somebody who is not female, even if they do not have a GRC, because of the criminalisation of disclosing information and because of the lack of funds available for single-sex spaces.

I think that it was last week that we saw a high-profile person—a writer—decide to fund a centre in Edinburgh because one did not exist and because there is pressure on those who provide single-sex spaces not to do so. By the way, that is not just the case in Scotland. You hear the same in Canada. It is not considered acceptable to protect that space, because you are not considered to be inclusive or sensitive enough. Actually, that is not even the right issue, because we are saying that there should be single-sex spaces alongside gender-based spaces. We are not saying that we are going to abolish mixed-sex spaces. Those continue to exist—they exist in abundance—but the issue is to make that other option available to those who want it.

I listened to your question about, for example, women who belong to religious minorities. I have to say that it is really about any victim or anyone who is at risk of violence. It is not our job to second-guess them or to question why they feel that way. It is our job, as states and as

organisations, to reduce the barriers to access. If those barriers include spaces being mixed sex, we have to find a solution, because those people are often among the most vulnerable. That is also what is required in taking an intersectional approach: we must look at the different groups that face more barriers to accessing services and that face higher rates of violence, potentially, and help them to access the protection and assistance that they need.

To do that, we have to understand people's reasons for making their decisions. If those reasons include mixed-sex spaces, we have to work on that, without passing judgment and without saying that it is transphobic or hate speech. They are not saying that the others do not exist. They are not saying that they do not have their needs. They are definitely not saying that they should not have access to services. They are just saying, "We have specific needs, and we'd just like to have a space for us."

Pam Duncan-Glancy: Okay—thank you. When you were forming your view of the proposed legislation in the way that you set out in the letter to the cabinet secretary, what consideration did you give to international examples that already have self-ID systems, and what evidence have you taken specifically on those?

Reem Alsalem: I am sorry but I do not understand the question. Could you repeat it, please?

Pam Duncan-Glancy: Yes; I am sorry. When you were forming your view, which you set out in your letter to the cabinet secretary, what examples or evidence did you look at of where self-identification systems have been used in other jurisdictions internationally? How did that help to inform your view?

Reem Alsalem: I thank you for that question, because I want to come back to the reason why I intervened on this issue. I intervened on it from the perspective of my mandate, so I am not looking at this from the point of view of whether persons are entitled to self-ID. As I said, the issue of legal recognition is already established in international law; self-ID is not. However, the point of entry, and what I looked at in my letter, is not whether there should be self-ID; it is the impact of unhinged self-ID without appropriate safeguards on access to and the enjoyment of protection and assistance by women, in all their diversity, who are either experiencing violence or at risk of violence. If we look at it that way, we will also take into consideration the extent to which they are meaningfully included in conversations and the extent to which their views are taken into consideration, the impact of certain policies on access, and the barriers, including self-exclusion.

Then it becomes a different entry point, I have to say.

I want to draw your attention to the fact that my colleague who spoke before me, and whose mandate this is, presented a report in 2019 on the issue of data and the presence of adequate data on the violence that LGBTQI persons experience. He said very clearly, and I agree with him, that the fact that data does not exist on the violence experienced by LGBTQI persons does not mean that the violence does not exist. Of course, we have to collect—or the state has to collect—data very deliberately and very consciously. I invite us, by analogy, to move that to what we are discussing now. The fact that data does not exist or, rather, is not consolidated—because I think that it does exist—and is not sought is not a reflection of the fact that we do not have a problem. It is a reflection of the fact that nobody is looking for it, because we have victims and women's organisations telling us—they have been telling us for many years and they have told us again in this context—that it is a problem.

Pam Duncan-Glancy: Thank you for that.

With regard to the concerns that you and others have raised and to help to ensure that public bodies, for example, in Scotland both deliver the reform of the gender recognition process that we know that trans people need and understand their responsibilities to women and girls under the Equality Act 2010, do you believe that the Scottish Government should introduce guidance to give clear advice to public bodies and the wider public on how they act and operate?

Reem Alsalem: Did you ask whether it should include guidance? I am sorry that I cannot hear you very well, because of the connection. Can you repeat the question?

Pam Duncan-Glancy: Yes, of course. I am sorry. Given some of the concerns that people have raised, would it be helpful for the Government to issue guidance on that area?

Reem Alsalem: It would be helpful to issue guidance, but, frankly, on its own, that is not enough. That would be a bandage solution to wider and more systematic flaws with the process and the draft legislation as it stands. I suggest again that we go back and address all these different pieces, because they are all linked to each other, and that we do not suggest that there will be a magical solution to some of these issues as a result of non-binding guidance.

19:30

Some things must be clarified and spelled out in law. That is what women's organisations and many victims expect. That is also what lawyers

and experts expect, and know to reasonably expect, because we have seen this in other legislation. It comes back to slowing down again and doing those things, and looking comprehensively at what needs to be adjusted and done. One of those things could be more detailed guidance.

Pam Duncan-Glancy: There are amendments to the legislation that relate to that area, and you are aware that the Parliament will look at that this week. Are there any other amendments that you think would be helpful in terms of providing reassurance?

Reem Alsalem: I want to mention an area that I did not mention in my letter—because I did not have time to really delve into it—but which I know that others have talked about, namely lowering the age so that children can self-identify. I am not going to speak to that now. It was not in my letter, which I addressed to the Government, so I cannot speak on it publicly, but that whole area needs to be looked at very carefully.

I spoke about section 22 of the GRA and exceptions spelling out specifically that information could be disclosed in order to, for example, make decisions about whether maintaining single-sex spaces is proportionate to achieving a legitimate aim. That wording is presented in there.

Also, on resolving the whole issue, frankly we are not out of the woods on whether the definition of sex is biological or legal. Lady Haldane's decision seems to suggest that it is legal. What does Westminster say? Will there be a legal challenge to that? It certainly complicates the issue of more access to and provision of services, because, of course, Lady Haldane's decision means that males with a GRC are considered to be legally female. The assertion by the Government—or at least in some instances by the Scottish Government—that the GRA in its new form will have no impact whatsoever on the Equality Act 2010 is quite challenged by that decision.

Rachael Hamilton: Welcome, Reem. I want to pick up on a point that you said that you did not cover in your letter but which you wanted to raise, which is around age. Do you have concerns with regard to the United Nations Convention on the Rights of the Child, which defines anyone under the age of 18 as a child? Do you believe that the lower age will have an impact?

Also, on some of the views around a report called the Cass—

Reem Alsalem: I am sorry. I could not hear the last bit. I heard the word "report" and then I lost you.

The Convener: I think that we have lost Rachael. I will bring in Karen Adam.

Karen Adam: Thank you for coming this evening, Reem.

In 2021, you joined with other UN mandated representatives to write to Bulgaria to ask it to make gender recognition a more simplified process based on self-identification. What changed your mind over the past year? Can you explain to us the evidence that prompted that?

Reem Alsalem: Sure. As I said, I think that legal recognition could be based on self-ID as long as there are safeguards. I joined that letter a month after becoming a mandate holder, and I have now had nearly half—almost a year and a half—of my mandate.

I am still of the view that it can potentially be done. Of course, the European Court of Human Rights defers the decision on how to go about legal recognition to the state. If the state would also like to include the principles of self-ID, again, as long as safeguards are included, that is fine. I am not against it in principle. At the same time, over the past year and a half, I have become more aware of the issues surrounding the application of unhinged self-ID.

In the letter to Bulgaria, we addressed whether it should be done or not. In hindsight, I wish that I knew then what I know now, because I would have qualified my joining much more. I would have spelled out the issues around safeguards, and I definitely would not have joined a communication that falls back on the Yogyakarta declaration, because, frankly, I know much more about that declaration now than I did then. Although many position the Yogyakarta declaration as being established human rights law, it is very clear to me now that it is not and that it is, in fact, dangerous to look at it as such.

I must say that there are also other issues that were not initially on my radar screen. We are contacted by organisations representing women victims and feminist organisations from all over the world, and that also shapes and refines my understanding.

I will give the committee an example. When I first became rapporteur, I did not think that custody issues were such a big issue for women or that there were a lot of gender stereotypes that could be used to perpetuate violence against women. Over the past year and a half, I have been exposed to concerns from women all over the world. As a result, although the issue was not on my radar and this was not my intention, I will dedicate a whole report to it next year, because it has come to my attention that it is really an issue. What is happening now is a bit similar in that respect.

Karen Adam: I will follow up on that in order to get some clarity on some of the points that you made. You said that you wished that you knew then what you know now, that some issues have come to light and that some organisations have spoken to you, but it is hard for me to get an understanding of where you are coming from. You gave the example of custody issues, but I have not heard an example or evidence that shows why there has been a change of opinion now. Do you have any examples that you could perhaps share with us?

Reem Alsalem: It is not a full change of opinion. As I said, I still believe that persons have a right to legal recognition of their gender identity; indeed, whether I believe that or not is irrelevant—it is an established principle in human rights law. That is clear.

Again, it can possibly be based on—[Inaudible.]

The Convener: Reem, I think that we are losing you.

Reem Alsalem: —it could include self-ID. However, what I now see as missing, which I did not fully understand back then, is the lack of safeguards and the fact that, when it is an unhinged, unregulated process, it can have an impact on the enjoyment of rights by other groups of women and can cause real concerns for them.

I understand that better now—I understand that not only for Scotland but for Spain, for example, which is also going through a process in relation to which women have raised similar concerns. I have had people write to me from Germany, where, apparently, a similar law will be adopted, and from other countries. The concerns in Scotland are not isolated; they are a reflection of wider concerns that we see in other countries.

The Convener: Thank you. We will now go back to Rachael Hamilton.

Rachael Hamilton: Welcome, Reem. You mentioned that you have concerns with age. Do you agree with lowering the age from 18 to 16?

Reem Alsalem: I have one constraint in answering your question, as stipulated by the rules of procedure that we have as mandate holders: before I communicate on something publicly, I have to engage the Government on it. By that, I also mean the UK Government. It is my intention to dig my teeth into this, because I have been approached by parents of children who have transitioned and feel that there were no safeguards about the way in which they transitioned. As we know, most of those children are girls, so they do fall under my mandate. I have intent to look at the issue more closely, but I made the reference to it because I know that it is an area

in which others have expressed concerns, and I can say that they are very legitimate concerns.

Rachael Hamilton: Thank you, Reem. I totally respect what you just said.

In your letter, you advised the Scottish Government to pause the bill. However, given that we will be voting on the bill over the next two days, do you personally have confidence that MSPs who are not part of this committee and are not on this call will have time to adequately consider the evidence that you are giving today?

Reem Alsalem: My job is to provide expert opinion on issues that I feel are pertinent. I very much appreciate that many people in the Scottish Government and in wider Scottish society have engaged with me, reflected on the opinion and thought it through. I would like to think that it has been considered. Whether they do so adequately is really not for me to say; it is something for which they are accountable to Scottish society and the constituency that they represent. That question is better answered by the people whom the parliamentarians represent, and it is about whether they will be happy with the way in which the Parliament makes the final decision on the bill.

Rachael Hamilton: In your letter, you also raised concerns that the views of women's groups and others who are critical of the bill had not been adequately considered in the bill process. Do you think that these last-minute committee sessions have done or will do anything to rectify that, particularly for the women whom you discuss, who feel that their protections are threatened by the potential for predatory men to access single-sex spaces, or have concerns around spaces becoming mixed sex and women then choosing to self-exclude?

Reem Alsalem: To be frank, I am not aware of every single proposal or amendment that is being introduced. I know that you are working on the bill quite judiciously and that time is of the essence. I feel that the need to pass something seems to still be more important than quality and outcome. As I said, it is really not for me to judge; in the end, I just present my expert opinion and it is up to those women, including those from minorities whom you have spoken to, to say whether the most recent set of adjustments answer very seriously their concerns or whether they are cosmetic. I do not know what the latest shape of the bill looks like.

Rachael Hamilton: That is fine, thank you.

The Convener: I call Karen Adam and apologise to her for cutting her off slightly too early when we transferred to Rachael Hamilton's questions.

19:45

Karen Adam: I have a follow-up question. When I asked Reem what had changed her opinion on certain aspects, she said that it was concerns that she was seeing from all over the world. I am trying to really get to the bones of this. Were they concerns with evidence to back them up, or was it solely because you were listening to concerns that you changed your mind?

Reem Alsalem: I have seen evidence—it is not concentrated in one place. I have seen reports in the media from individual service providers and organisations and I have seen testimonies from victims. The information is not all on the same website, so to speak—we cannot go to just one place to find it—but that is how we work. Outside this issue, that is also how I work.

Victims and victim organisations approach me and present evidence. What counts as evidence here is also their lived experience, which I think that we sometimes disregard. I referred to a lack of data or barriers to documenting and verbalising concerns. That is why what has been referred to as a culture war is really not a culture war; it is a human rights issue about the right for people's needs to be heard and addressed. For me, that is evidence. I weigh the elements that are provided, the issues and rights that are at stake and the relevance to my mandate.

In relation to many issues, I have not seen studies or research done on a particular experience of violence precisely because of access problems or barriers, but I know that it is very real because of the experience that victims and victim organisations have. Through their interventions, the extent comes to light. If we scratch the surface, we realise that we are at the tip of the iceberg and that there are many stories of victims having gone through so much and knocked on every door—including the doors of their Government—but nobody has listened to them because of a political agenda, other interests, lobbying or the criminalising of expressions of opinion. That is how it works.

Emma Roddick: As a survivor, I am very aware that there has been a lot of reference to survivors' evidence—[*Inaudible*.]—particularly in relation to rape crisis services. Do you acknowledge that the bill does not impact on how those services currently operate? As Pam Duncan-Glancy outlined, self-ID is the system that rape crisis services in Scotland currently use. Do you acknowledge that there is no single opinion among survivors on the issue?

Reem Alsalem: I agree that there is no one single opinion. As I said, the needs of those who are comfortable with gender-based spaces are addressed, because that is the overwhelming

majority of service providers in Scotland. That is not really an issue.

I also said that, even before the GRA, there were already real challenges for service providers in working out practically how they could exclude trans persons—whether or not they had a GRC—in a way that was legitimate and fell within the exception category. The issue is that it is very reasonable to expect that, as a result of making access to a GRC easier, there will be more GRC holders, which will potentially create bigger challenges, whether for health services, as Victor Madrigal-Borloz said, for spaces that cater to women in their diversity or for spaces that should remain single sex.

If we think of any policy or law that grants extra rights to a group, we take it for granted that we must regulate that. For example, we know that if we make it easier for people to get handouts, additional loans or money, we will get more people applying, and that that increase will have to be managed. I mentioned in the BBC interview that there are many areas of life in which nobody questions it when we put in safeguards or try to regulate things. With refugees, for example, someone is a refugee even before a Government recognises that they are a refugee. Refugees are inherently refugees, but when they arrive in a country, there is still a process to assess their credibility and to determine whether they fulfil the inclusion criteria of being protected under the 1951 refugee convention. Why is that? It is because they will be entitled to other rights.

I became Belgian last year. After five years, I was entitled to become Belgian. I certainly felt Belgian, but I still went through a process whereby the Government vetted whether I fulfilled the criteria of being Belgian. There were safeguards in place—for example, the Government asked for my criminal record.

I think that we are more surrounded by processes that have safeguards and different elements to them than we realise. Why should gender recognition be an exception? The process does not violate people's rights if we do it in a proportionate way. We are not saying that the process should not be simplified or that people should not have access to it. Of course they should, because legal recognition is important. Of course the GRA process should be reformed—it is too slow, it is cumbersome and it demands things that are not in line with international human rights. However, with the bill, it is almost a case of going from one extreme to another. That is what this is about.

The Convener: Are you finished, Emma?

Emma Roddick: I would like to ask a brief follow-up question. Would it not be right to infer

from your suspicion that making the process easier would result in more people making use of it that the current system needs the reform that is proposed and that that reform is the right one to make?

Reem Alsalem: As I said, making it easier is fine, as long as the impacts on other members of the population that have their own needs are taken into consideration. There is clear evidence that the majority of violence against women, or gender-based violence, is committed by males, that the majority of sex offenders are males and that they will use opportunities that they can get to exercise that violence.

Given the prevalence of it, I think that all of us will have gone through an experience of being exposed to sexual harassment or violence even in spaces that we thought were safe, because an opportunity presented itself because the safeguarding was not tight enough. When I was in my 20s, I woke up from full-body surgery to find a male nurse groping my boobs, which was a really horrific experience. I did not report that—women who go through such things do not report them. We need to understand what the implications are when we go through such things. I will never go back to that hospital, for example, and since that happened I have a fear of being under anaesthesia. To come back to the evidence, that is one case of violence because of a lack of safeguards or of those safeguards not being good enough.

This is a question that I would ask about prisons. We know that there have been incidents of rape and violence by trans women who have been placed in female prison wards. Has anyone done a study to ask female prisoners how they felt about having trans women in their spaces? In some places, it probably worked really well with some inmates; in others, it did not. That comes back to there being no evidence because we did not ask the women—nobody is making inquiries of them. However, we have anecdotal evidence that those cases exist.

I come back to the guidance. When I asked Shona Robison about that, she said that prison authorities have their own standard operating procedures for taking decisions on who they move into a prison and which females they move into prisons. I would argue that that is not good enough, as that very much leaves prison authorities to make very important decisions on an ad hoc basis. Sometimes, they will make good decisions, but they will also make bad decisions.

Emma Roddick: As a non-member of the committee, I want to recognise the amount of work that the committee has done over at least a dozen sessions and a hefty stage 2 debate. Earlier, you mentioned that you believe that the bill is being

rushed. The bill has been six years in the making, with two full-scale public consultations, and the committee has had many evidence sessions and has produced a very thorough report. How much more would have had to be done for you to consider that the bill is not being rushed through?

Reem Alsalem: Again, it is really not my place to comment on that. However, if after six years there is still this level of polarisation and very strong feelings about the bill, including people having feelings of exclusion regarding their points of view, I think that that is a reasonably good sign that work still needs to be done. Maybe that has to do with how suggestions are considered; maybe it has to do with how certain proposals are being addressed. However, I think that you would agree that there are very strong opinions on the bill. Of course, there have also been discussions in other countries.

That is really a question for the Scottish constituencies, but I know from surveys that have been carried out, including for the—*[Inaudible.]*—constituency, that it seems that two thirds are opposed to the bill. If that is any indication to go by, there is still work to be done.

The Convener: I give a huge thanks to Reem Alsalem—

Rachael Hamilton: No—

The Convener: —for taking time out to speak to us. I apologise for—

Rachael Hamilton: No.

The Convener: —keeping you waiting a little bit and for overrunning the session. You have been of great help.

Thanks very much, everyone, and—

Rachael Hamilton: Can I just make—

The Convener: I now end the meeting.

Meeting closed at 19:59.

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