



## Mandate of the Special Rapporteur on violence against women and girls

### **Statement by Ms. Reem Alsalem, Special Rapporteur on violence against women and girls\***

The following statement comes in response to the statement published by the Sexual Rights Initiative (SRI) on 15 February 2023, entitled *SRI's statement on the Special Rapporteur on VAW, Reem Alsalem, harmful position on gender identity*, and which can be found here: <https://www.sexualrightsinitiative.org/news/2023-feb/sris-statement-special-rapporteur-va-rem-alsalem-harmful-position-gender-identity>

In the wake of my pronouncement on the Scottish Gender Recognition Act, I wish to take this opportunity to clarify my position in this regard, and to respond to some of the more specific issues raised in the SRI statement.

I should clarify at the outset that SRI did not share this statement with me prior to posting it online; I found it by pure coincidence. I was not aware therefore that the SRI “has decided to stop engaging with this mandate-holder and encourages other feminist organizations and activists to do the same.” I am pleasantly surprised, however, that despite this statement the SRI has in fact recently requested a meeting with me. Nevertheless, I wish to address some of the issues outlined in the statement which I find concerning.

Firstly, the statement issued by SRI describes my letter on the bill reforming Scotland’s Gender Recognition Act (GRA)<sup>1</sup> as ‘harmful’ and in contravention to trans rights and established human standards and my own mandate. This misrepresents my longstanding position on the rights of LGBTI persons, including trans persons, and international human rights standards for the following reasons:

- My support for the rights of LGBTI persons to non-discrimination, dignity, and freedom from violence is well documented and evidenced in my statements to both the UN Human Rights Council and to the UN General Assembly, as well as in my country visit reports, interventions in public events and lectures, etc. The safeguarding and other concerns I raised in the letter sent on the bill reforming Scotland’s GRA, have been raised by me for women in all their diversity.
- The LGBTI community, as with other communities is a diverse one; and I believe that the SRI’s views do not represent the entirety of this global community. Indeed, LGBTI organizations and individuals, including trans persons, were amongst those that had written to me asking me to intervene on this issue. Following the issuance of the letter, I have also received letters of support from a wide range of stakeholders in the UK and Scotland, including political representatives, women’s organizations, individual feminists, and victims of violence. Some of the support I received was from individuals who belong to the LGBTI community, including trans

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<sup>1</sup> A copy of this letter can be found here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27681>

persons. Furthermore, since I issued the letter on the reform bill of Scotland's GRA, women's organizations from more than 10 countries, mainly in the Global North, have written to me asking me to raise these issues with their governments as they have similar concerns.

- The issues I addressed in relation to the GRA fall squarely within the purview of my mandate, namely the lack of safeguarding of the proposed legislation and its impact on the dignity and safety of all women and girls, and their access to single sex spaces as well as their freedom from violence.
- In my letter, I sought to address a situation of a tension of rights, which often emerges in the human rights sphere – not only in the sphere of gender identity recognition. While we know that human rights are indivisible, interrelated, and interdependent, States must address and resolve the tension between rights and manage risks in an effective manner. As independent human rights experts we can advise Governments and make such recommendations in conjunction with other experts, academia, and NGOs, etc.
- The claim by SRI that I support obstacles against legal gender recognition, is misrepresentative of my position on the matter. Nowhere have I said anything to that effect. This is a blanket misrepresentation of my position. I find it particularly surprising given that in a letter received by several NGOs, including SRI, on 30 November 2022, the authors stated that they could see that my intention “*may have been to present a balanced view that takes into account multiple positions*”. As I stated in my letter on the reform bill of Scotland's GRA, and elsewhere, I acknowledge that according to human rights standards, States have a core obligation to facilitate the legal recognition of gender diverse people, in a manner consistent with the rights to freedom from discrimination, equal protection before the law, privacy, identity and freedom of expression. However, a right to legal gender recognition does not imply a right to unregulated self-identification of gender identity without appropriate safeguarding and risk assessment. Today, some twenty States permit some form of legal gender recognition based on self-identification, which is regulated to varying degrees, however it is a practice adopted by only 10% of the total number of UN Member States. It does not, however, demonstrate an international consensus that there is an inherent human right to the self-identification of gender identity. In addition, and crucially, where self-identification processes are in place, international human rights standards recognize the right for States to include restrictive measures as long as they pursue a legitimate aim and are proportionate response to that aim.
- I wish to also stress that the Yogyakarta Principles do not create binding obligations on States, nor are they a source of international human rights obligations for States, particularly since they are increasingly cited as a reason to advocate for unrestricted self-identification processes and policies of gender identity.<sup>2</sup> It is also concerning that at least one member of the body that drew up the principles has publicly withdrawn its support, citing an insufficient consideration on the impact on the rights of women.

While I agree with SRI that gender-based violence goes beyond the interpersonal to include structural violence, including economic, social, psychological, and political structures and norms, the reason these forms of violence are problematic from a human rights perspective is not - as SRI claims - that they “maintain binary gender categories and roles.” International human rights law, including the CEDAW convention do not support this causal link. In its

preamble, CEDAW explicitly acknowledges that "extensive discrimination against women continues to exist" and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood to be "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field".<sup>3</sup>

In General Recommendation 28, the CEDAW Committee states that the Convention covers gender-gender-based discrimination against women, with gender referring to "socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women."<sup>4</sup> The key issue here is the meaning given by society to differences in biological sex that results in inequality and discrimination, not that binary gender categories and roles exist.

While I recognize that SRI has the right to decide not to engage with me, given the long-standing engagement of SRI with the mandate, including with me at the initial stages of my tenure, it would have been reasonable and courteous to expect a meeting with me prior to taking such a decision. Their call on other feminist organizations and activists not to engage with me is regrettable and problematic from a human rights perspective. It demonstrates the opposition of an organization that claims to be centered on human rights principles, to the very foundations of freedom of belief and speech. In that sense, it is beyond ironic that I am receiving the same treatment that many women on whose behalf I intervene in my capacity as a Special Rapporteur, face and that are only intensifying: The rising backlash and intimidation against women for raising concern on the human rights implications of gender identity and sex for all those involved.

It also demonstrates a concerning development in the apparent terms of engagement that SRI is willing to have with the special procedures of the Human Rights Council. Indeed, their decision implies that they will only engage with special procedures mechanisms as long as these conform with SRI's views as acceptable positions and standpoints and regardless of any differences of opinion within the LGBTI community. This does not appear to have a sufficient respect or consideration for the independence of the Special Rapporteur and the requirement for the mandate to respond to the needs of all members of the community it represents.

It is also a form of coercion, not only in terms of the mandate holder, but also of other NGOs and stakeholders who will undoubtedly feel the pressure not to engage with a mandate holder, even if they would like to do so, out of concern that they may be accused of being *anti-trans*, and effectively going against human rights. While the full scale of this call and the self-censoring by stakeholders, be they NGOs and UN agencies, or States, that has ensued as a result is still unknown, on one of my recent visits to a country, a prominent national feminist NGO and a human rights defender – both of whom reportedly work closely with SRI - refused to meet with me due to my position on the bill reforming the GRA in Scotland. They also refused to engage with me on some of the compelling issues of violence against women in this country, even though I had engaged on them in support of these stakeholders in the past. In that sense, it was a lost opportunity.

Finally, it is disingenuous on behalf of SRI to suggest that I am trying to "fragment and divide human rights and social movements along narrow identity or issue-based lines". These issues

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<sup>3</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

<sup>4</sup> See CEDAW General Recommendation No. 28 accessible at: <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf>

have been in discussion long before my letter on Scotland's GRA. If anything, it is because of the refusal to hear and the isolation of the voices of women and women organizations that have legitimate concerns concerning the impact of gender identity on the rights of women that we are where we are today. The women's human rights movement has had a long history of disagreement but also one of effective coalition building when it matters; which has led to the passage of CEDAW and the development of the human rights of women. Refusing to engage with those we may disagree with is the antithesis of feminist coalition building and is exactly what exacerbates the fragmentation and division of human rights and social movements along identity or issue-based lines. I look forward therefore to engaging with the SRI in due course on these issues.

***\* The Special Rapporteur on violence against women and girls, as a Special Procedures mandate of the Human Rights Council, serves in her individual capacity independent from any government or organization***

