

3 May 2023

Katharina Rose
Geneva Representative
Global Alliance of National Human Rights Institutions
(GANHRI)
UNOG
CH – 1211
Geneva 10, Switzerland

Dear Ms Rose,

We are writing to GANHRI, to the Office of the High Commissioner for Human Rights, and to the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to again raise our profound concern about the actions of Great Britain's Equality and Human Rights Commission (EHRC), which is failing to meet its basic duties as a National Human Rights Institution, as set out in the Paris Principles.

In February 2022, Stonewall, along with organisations from our movement, made a submission to GANHRI's Subcommittee on Accreditation, requesting a special review of the EHRC on several grounds. These included that the EHRC was acting to undermine the rights of trans people in Great Britain and was non-compliant with the Paris Principles (see Annex 1). The Subcommittee on Accreditation did not agree a special review was needed, but instead encouraged our movement to submit to the Great Britain's periodic review in September 2022, which we did, along with 25 other civil society organisations (see Annex 2). Between the time of our initial request for a special review and time of our submission to Great Britain's periodic review, the EHRC had gone even further, and the matters we highlighted included:

- 1) lack of political independence
- 2) evidence of politicisation and institutional capture at the EHRC board level
- 3) opposition to progressive reform of the UK's systems of gender recognition and, in particular, opposition to the creation of a system of gender recognition based on legal declaration

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- 4) opposition to the legislative protection of trans people from conversion practices, despite clear evidence that trans people are a high-risk group in Great Britain
- 5) issuing guidance on access to single sex spaces that sought to enable greater exclusion of trans women.

In our submission for the periodic review we raised our concern that the EHRC was now set on a course that would lead directly to a rolling back of trans people’s rights in Great Britain. We stressed that this was already causing harm to the community by facilitating a politically manufactured culture war.

We write with profound regret to make clear to the Subcommittee on Accreditation, and to the wider multilateral human rights system that the EHRC as Great Britain’s independent national human rights institution has not only continued to work in a way that is hostile to the rights and dignity of trans people but has escalated its interventions to a point where it is now actively advocating for a roll back of rights.

The most recent example of this is in April 2023 when the EHRC published correspondence with the UK Minister for Equalities in which it recommends changing the UK Equality Act definition of ‘sex’, restricting the Act’s protections to ‘biological sex’¹. We believe this change is unnecessary, unworkable and unfair. It represents an attempt to roll back rights that trans people in Great Britain have held for many years, and it risks significant harm to the community in their day to day lives.

While we thank GANHRI for its recommendations in the previous periodic review, we are conscious that the voices of civil society and of the Subcommittee have not thus far been enough to convince the EHRC to change its course and to follow the Paris Principles. So, we will instead point to the words of the EHRC’s own National Committees in Scotland and Wales, which advised against this direction of travel, and did so in the strongest possible terms².

¹ <https://www.equalityhumanrights.com/en/our-work/news/clarifying-definition-%E2%80%98sex%E2%80%99-equality-act>

² <https://www.equalityhumanrights.com/en/about-commission-scotland/meet-scotland-committee/scotland-committee-minutes> <https://www.equalityhumanrights.com/en/about-commission-wales/wales-committee/wales-committee-meeting-minutes>

Both the Scotland and Wales Committees of the EHRC advised the EHRC's Board that it should not issue this advice on the definition of sex in the Equality Act:

The Committee discussed the option of advising the Government to change the definition of 'sex' in the Equality Act 2010 to mean 'biological sex', agreeing that this was not the preferred course of action due to the points already discussed.

Equality and Human Rights Commission Wales Committee,
Minutes of Extraordinary Meeting 28 February 2023

The Scotland Committee agreed that their preferred option would be to maintain the status quo as they do not consider sufficient evidence has been presented to justify amending the definition of legal sex in the EqA 2010 to biological sex at this time. They advised gathering additional analysis, evidence and stakeholder views to better understand the implications and wider ramifications of such a change, and to consider alternative approaches.

Equality and Human Rights Commission Scotland Committee,
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Both the Scotland and Wales Committees were clear that if the changes being proposed by the EHRC were enacted there would be adverse impacts on the rights of trans people:

The Committee expressed serious concerns that the proposed change to the definition of sex in the Equality Act 2010 would result in the diminution of the rights of trans people with a Gender Recognition Certificate (GRC). They advised that it is important that any potential changes do not weaken the protections that the Act currently provides to trans people.

Equality and Human Rights Commission Wales Committee,
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...there is a concern that changing the definition of sex could diminish trans people's rights; for example, legal colleagues advised that, if the proposed change were implemented, obtaining a Gender Recognition Certificate would no longer change a person's sex in discrimination law. The Committee considered the Commission should be advancing the rights of minorities and not potentially diminishing rights for some groups.

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Equality and Human Rights Commission Scotland Committee,
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Both the Scotland and Wales Committees queried both the analysis and the evidence underpinning the EHRC recommendations:

The Committee advocated for an evidence-based approach that considers the potential impact and risk of unintended consequences of changing the legislation.

The Director, Legal Policy and Advice, noted that the Commission had not yet conducted a robust process to ensure that we are able to fully advise on all issues in the current operation of the law.

Equality and Human Rights Commission Wales Committee,
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...the legal analysis (as outlined in the Committee meeting paper) has not demonstrated that amending the definition of sex in the EqA 2010 would resolve where the law as drafted is not currently working properly. Committee members noted that only excerpts of the legal advice had been provided in the paper and sight of the full legal advice would have been helpful.

...the Committee considered it would be helpful to have a comparative analysis of what is being sacrificed and what is being gained, as otherwise any action could be considered a regressive step without justification;

Equality and Human Rights Commission Scotland Committee,
Minutes of Extraordinary Meeting 28 February 2023

Both the Scotland and Wales Committees noted the risk of legal challenge:

The Committee noted that the proposed definitional change marks a distinct change from our previous policy position, and there was potential for unwelcome legal challenge.

Equality and Human Rights Commission Wales Committee,
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...Such a change would lead to diminution of trans people's rights, which we have a duty to uphold, without evidence of any

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specific benefit for other minorities. Such a move could lead to legal and other challenges to the Commission;

Equality and Human Rights Commission Scotland Committee,
Minutes of Extraordinary Meeting 28 February 2023

Both the Scotland and Wales Committees queried whether issuing this advice was an appropriate role for the EHRC:

Members discussed the Commission's role as a regulator, advising that our position should be to respond to any legislative changes proposed by the government. They queried

whether it was within our remit to make specific proposals about legislative change and were advised by the CEO that under section 11 of the Equality Act 2006, we have the duty to advise the Government on the effectiveness of equality law.

The Director, Legal Policy and Advice added that while this is the case, the Commission should be cautious in proactively proposing legislative solutions, given the contentious subject area and lack of evidence base.

Equality and Human Rights Commission Wales Committee,
Minutes of Extraordinary Meeting 28 February 2023

...the Commission's role is to regulate the Act and not to provide legal advice to the Government;

Equality and Human Rights Commission Scotland Committee,
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Both the Scotland and Wales Committees noted the risk of serious damage to the reputation of the EHRC itself:

The Committee highlighted that the Commission has, so far, been successful in being a balanced, impartial regulator. The Committee strongly advised that any further action should not alter this position.

Equality and Human Rights Commission Wales Committee,
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...the Board should consider the risk to our perceived political independence if we are perceived to be aligning with Government in the absence of robust evidence. This is a potential existential risk that such a perception could risk the Commission's existence going forward;

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In the face of this extensive critique and clear advice from its two National Committees in Scotland and Wales, the Equality and Human Rights Commission nonetheless published its advice to the Minister for Equalities, recommending a course of action that rolls back the rights of trans people in Great Britain.

This is not an institution that has listened to civil society, to the recommendations of the Subcommittee on Accreditation or to its own national committees. It is not demonstrating a commitment to the human rights of all persons, nor is it functioning in a pluralistic, independent and effective manner as mandated under the Paris Principles. It is a failed institution, it is harming the trans community in Great Britain, and it is undermining the status of independent human rights institutions and systems.

We again ask that GANHRI and OHCHR take all possible steps to ensure that the EHRC acts in line with the Paris Principles, in accordance with relevant human rights standards and that you use your powerful institutional leadership and mechanisms to stand in solidarity for the rights of trans people.

Kind regards,



Nancy Kelley
Chief Executive, Stonewall

On behalf of:
Claire's Trans Talks
Equality Network
Feminist Gender
Equality Network
Gendered Intelligence
GIRES (Gender Identity
Research and
Education Society)
Global Butterflies

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