

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/18, 42/16, 37/2 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a proposed bill, submitted to the Hungarian Parliament, that would make it impossible for trans and gender diverse people to legally change their sex/gender.**

According to the information received:

On 31 March 2020, Deputy Prime Minister Zsolt Semjén submitted a draft bill on Changes of Certain Administrative Laws and Free Donation of Property (or Bill T/9934) to the Hungarian Parliament. The draft legislation includes, among other things, amendments to the Hungarian Registry Act. Article 33 of the Act would replace the term "nem" (In Hungarian, it can mean both "sex" and "gender") to the terms "születési nem" (sex at birth), defining it as "biological sex based on primary sex characteristics and chromosomes." According to the proposal, the birth sex cannot be amended once recorded in the national registry of birth, marriages and deaths – in other words, the amendment would indefinitely outlaw the legal recognition of the gender identity of trans persons.

The rationale behind the amendment is reportedly that it is important to define the sex by birth by recording it in the official registry because of certain rights and obligations that would be connected to it. Also, the explanation noted that it is impossible to completely change one's biological sex to the other.

Allegedly, this amendment might also impact persons who have already received legal recognition of their gender identity, resulting in the reversal of previously issued documentation, including new birth certificates. Currently, although there is no proper legal measure in place to regulate legal gender recognition in Hungary, transgender people have been able to change their gender marker and

name on identity documents since 2003. However, processes have been halted for nearly two years in spite of the fact that several courts found that the suspension was unlawful and have ordered the authorities to resume the respective processes.

The amendment was proposed in the midst of the COVID-19 crisis. One day before the bill was presented, the Hungarian Parliament has given Prime Minister Victor Orbán power to rule by decree without consulting other lawmakers before making policy decisions for as long as the coronavirus crisis is deemed to be continuing.

We wish to express our concern about the bill that would deprive trans and gender diverse people of the right to gender recognition, and their right to self-determination, which contravene international human rights standards. International human rights law acknowledges that everyone has the right to recognition as a person before the law, including persons of diverse gender identities. Such human rights standards are included in Article 6 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights (ratified by Hungary on 17 January 1974), Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Hungary on 22 December 1980), and Article 8 of the Convention on the Rights to Child (ratified by Hungary on 7 October 1991).

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity expressed concerns that trans and gender-diverse persons whose identity is not adequately recognized suffer denial of the right to health; discrimination, exclusion and bullying in education contexts; discrimination in employment, housing and access to social security; violations of the rights of the child; and arbitrary restrictions on the rights to freedom of expression, peaceful assembly and association, the right to freedom of movement and residence, and the right to leave any country including one's own (A/73/152, para. 23). In addition, he noted that equal recognition before the law is a basic element in a well-functioning framework for protection from arbitrary arrest and detention, torture and ill-treatment, as it is well established that in all situations of deprivation of liberty, the proper identification of the individual is the first guarantee of State accountability (*Ibid.*, para. 24). In light of these conclusions, he urged States to enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents based on the procedures that ensure due respect for free and informed choice and bodily autonomy - in particular, based on self-determination by the applicant (*Ibid.*, para. 81 (d) (i)).

Similarly, the former United Nations High Commissioner for Human Rights has drawn attention to the fact that transgender persons face multiple rights challenges due to the lack of legal recognition of their gender (including a change in recorded sex and first name on State-issued identity documents). Such challenges include employment and housing, applying for bank credit or State benefits, or when travelling abroad (A/HRC/29/23, para 69). In this regard, he recommended that States issue legal identity documents, upon request, that reflect preferred gender (*Ibid.*, para. 79(i)).

Moreover, we are concerned at the bill's impact on trans and gender diverse people's rights to informed consent, bodily integrity and autonomy. These are essential components of right to health as enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Hungary in January 1974. The right to health includes the right to control one's health and body, including sexual and reproductive freedom. It further includes the right to make free and responsible decisions and choices over matters concerning one's body and sexual and reproductive health. The former Special Rapporteur on the right to health (A/64/272) stressed that informed consent is not the mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision and a fundamental aspect of individual's autonomy, self-determination and human dignity. Informed consent invokes the rights to health, to self-determination, to be free from discrimination and non-consensual experimentation, the security and dignity of the human person, as well as the rights to recognition before the law, to freedom of thought and expression and to reproductive self-determination.

We would like to recall Concluding Observations of 3 March 2020 of the Committee on the Rights of the Child, in which it urged that Hungary develop a national strategy to prevent and address all forms of violence against children, including sexual abuse, paying particular attention to lesbian, gay, bisexual, transgender and intersex children (CRC/C/HUN/CO/6, para. 24 (a)). The Committee further urged Hungary to intensify its efforts to prevent and address bullying in schools, including online bullying, and to provide support to child victims, in particular lesbian, gay, bisexual, transgender and intersex children (*Ibid.*, para. 36 (d)).

We further wish to draw attention to the Concluding Observations of 9 May 2018 of the Human Rights Committee, in which it recommended that Hungary intensify efforts to combat negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons (CCPR/C/HUN/CO/6, para. 20(d)). In addition, we would like to refer to the last report of the Working Group on the Universal Periodic Review of Hungary (A/HRC/33/9), drawing particular attention to the recommendation in paragraph 128.103: "Implement effectively its legislation and policies against hate speech and hate crimes with particular focus on the human rights protection of [...] lesbian, gay, bisexual, transgender and intersex persons and other vulnerable groups", which Hungary accepted.

Finally, regarding States' security measures in their response to COVID-19 crisis, the United Nations High Commissioner for Human Rights stated "measures to contain and combat the spread of COVID-19 should always be carried out in strict accordance with human rights standards and in a way that is necessary and proportionate to the evaluated risk".¹ UN human rights experts echoed this call and warned "emergency declarations based on the Covid-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health." They further stated that although

¹ Press release by the United Nations High Commissioner for Human Rights "Coronavirus: Human rights need to be front and centre in response, says Bachelet" (March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>.

some States and security institutions may find the use of emergency powers attractive because it offers short cuts, “[t]o prevent such excessive powers to become hardwired into legal and political systems, restrictions should be narrowly tailored and should be the least intrusive means to protect public health”.²

In view of the aforementioned observations, we respectfully urge your Excellency's Government to revoke the amendment and repeal it completely as it would not be in conformity with international human rights law.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide the full details of how the bill complies with your obligations under the international legal framework of human rights law and standards including, among other things, ICCPR, CEDAW, CRC, and CESC.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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

² Press release by UN human rights experts “COVID-19: States should not abuse emergency measures to suppress human rights – UN experts” (March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>.

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