

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL NPL 4/2022
(Please use this reference in your reply)

10 June 2022

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 to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to privacy; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 44/3, 43/4, 43/16, 46/16, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged denial of the fundamental right to education, the right to privacy, the right to freedom of expression and the denial of the recognition of gender identity.**

According to the information received:

Rukshana Kapali is a transgender woman human rights activist in Nepal, whose gender in the passport was assigned by authorities as "Others". Nepal currently allows individuals to change their gender marker from "Male" or "Female" to "Others", however, there is no provision for trans men to choose "Male" or trans women to choose "Female". Therefore, she was denied the option to identify under the female gender marker. She nonetheless convinced the authorities to register the name under which she self-identifies (hereinafter "current name"). Until this point, her birth certificate and her educational certificates for grade 8 and grade 10 (School Leaving Certificate, hereinafter "SLC") marked her as "Male" under the name that was assigned to her at birth (hereinafter "previous name").

In 2015 Ms Kapali enrolled in 11th grade, but the discrepancy between her citizenship certificate and school documents brought issues in her registration. She had to seek an alternative method of receiving a certificate of recommendation from her local ward office stating that her current and previous names refer to the same person. She was then able to register in school, and she could also list her gender as female.

In 2017 she enrolled in Tri-Chandra Multiple Campus, Kathmandu (affiliated with Tribhuvan University) for Bachelors in Arts (BA) majoring in Linguistics and Sociology. However, her application for registration at the University was denied due to discrepancy in her educational certificates (11th grade

documents and SLC). She made multiple written and oral applications to the University, but her request was not met with any decision.

She attempted to amend her name and gender details in her SLC and registered an application in May 2019, but the National Examinations Board rejected her request, and handed a letter of rejection in January 2020. Without the amendment she could not register with the University. And, without the University registration number, her degree would be invalid.

She tried to access multiple academic courses while the administrative procedure was ongoing. Each of these courses required submission of a copy of SLC, which did not correspond with her gender identity. She submitted applications to change her birth and Grade 8 certificates but was only allowed to replace her name assigned at birth, and the gender marker was ascribed as “Others”. In addition, the Election Commission has provided her voter identity card mentioning gender as “Third gender”.

Throughout the whole process she was met with harassment and humiliation. Her private contact details and information were disclosed by government bodies and the media in violation of her right to privacy, resulting in subsequent insults directed at her. She petitioned every related Government authority and Parliament Committee but was met with rejection or lack of any decision. She therefore filed a writ petition to the Supreme Court, which is currently under consideration.

Without prejudging the accuracy of the above allegations, we express concern that transgender people continue to be subject to stigma, discrimination, and harassment in Nepal. The lack of legal recognition of their gender identity based on self-identification can contribute to reinforcing and perpetuating discriminatory attitudes towards transgender people, including the denial of their identity. As such, it can increase their vulnerability to violence and degrading treatment.

Gender identity reflects a deeply felt and experienced sense of a person’s own gender and is an integral aspect of overall identity. States should ensure that all people, including transgender people, have access to legal recognition of their gender identity based on, inter alia, the rights to freedom from discrimination, equal protection of the law, privacy, identity, and expression.

We are also concerned about the effect the denial of the recognition of the gender based on self-identification has on the enjoyment of all other human rights, including the fundamental right to education. It may also contribute to difficulties for the person concerned in relation to their legitimate activities as human rights defenders. We would like to emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 allegations.
2. Please, explain what measures have been taken that all persons enjoy their human rights, including the right to education, without any discrimination based on sexual orientation and/or gender identity.
3. With reference to recommendations made by the former Special Rapporteur on the right to privacy on gender identity and legal recognition in (A/HRC/43/52, paras. 35 and 36), please provide information on the measures taken to protect the privacy of all persons (including their personal data) without discrimination based on sexual orientation and/or gender identity, and to prevent attacks and harassment based on these.
4. Please explain the grounds on which trans and other gender diverse persons have not been allowed the opportunity to enlist their gender as “Male” or “Female” in legal identity documents on the basis of self-identification and freedom of expression.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). 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.

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Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Koumbou Boly Barry
Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
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Reem Alsalem

Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in article 2 (1) of the ICCPR. The Human Rights Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

Furthermore, Article 26 of the ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Additionally, Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 19 of the ICCPR, as clarified further by the Human Rights Committee's General Comment 34 implies that States parties should guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers (CCPR/C/GC/34 , para 11). According to the Committee paragraph 2 of the article 19 protects all forms of expression and the means of their dissemination (CCPR/C/GC/34 , para 12).

Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (the Covenant) requires each State party "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Subsequently, the Committee on Economic, Social and Cultural Rights has affirmed in its General Comment 20 that sexual orientation and gender identity is a prohibited grounds for discrimination under international human rights law. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights (para 32).

Article 26 of the UDHR states that everyone has the right to education, and that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. The right to education for everyone is recognized in the ICESCR Article 13. The Committee further elaborates in its General Comment 13 that educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party.

States are required under international human rights law to respect, protect and fulfil the human rights of all persons without discrimination of any kind. This is an immediate and cross-cutting obligation that is contained, inter alia, in the Universal Declaration of Human Rights (articles 2 and 7), the International Covenant on Civil and Political Rights (ICCPR, articles 2 (1) and 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR, article 2), the Convention on the Rights of the Child (CRC, article 2), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, articles 1 and 2), to which Nepal has acceded to.