

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children

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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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 59/5, 59/4, 60/10, 52/4, 53/12, 52/36, 51/15 and 53/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning recent amendments to the Transgender Persons (Protection of Rights) Act of 2019, hereafter "principal Act", as introduced in the *Transgender Persons (Protection of Rights) Amendment Act 2026 (introduced in the legislature as Bill No. 79 of 2026)*, hereafter "amendment Act", introduced in the Lok Sabha on 13 March 2026, passed in the Lok Sabha on 24 March 2026 and in the Rajya Sabha on 25 March 2026, and given Presidential assent on 30 March 2026.

Following a review of the aforementioned amendment Act with regard to international human rights standards and rule-of-law principles, we would like to provide the following observations:

General comments

It is the opinion of the signatory Special Procedures that the amendments to the principal Act run counter to the national and international human rights legal obligations of India not to discriminate in the protection of human rights based on any status, and its passage through the Lok Sabha and the Rajya Sabha and the granting of Presidential Assent raises both procedural and substantive concerns.

Following the introduction of the draft amendment Act on 13 March 2026 by the Minister of Social Justice and Empowerment, there was reportedly no period of

prior consultation regarding the draft amendment Act with the public, persons affected by this legislation, or other stakeholders, in violation of the Pre-Legislative Consultation Policy of 2014, which prescribes a minimum period of 30 days for public review and particular efforts to ensure that persons directly affected by the legislation in question are able to review it. While members of the public and members of both the Lok Sabha and the Rajya Sabha requested the draft amendment Act be referred to a Parliamentary Standing Committee or Select Committee for further study of its potential impact, these requests were not heeded, and no justification was provided by the Government or the Minister of Social Justice and Empowerment as to why the draft amendment Act could not be referred to such a Committee.

The Transgender Persons (Protection of Rights) Act of 2019 which the amendment Act aims to modify established a National Council for Transgender Persons mandated *inter alia* “to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons” (Section 16, Section 17(a)). However, there was reportedly no consultation with this Council prior to the introduction of the draft amendment Act and its passage by the Lok Sabha and the Rajya Sabha. According to the information received, members of this Council were not invited to participate in the process until 22 March 2026, nine days after the draft amendment Act’s introduction in Parliament, and even then were not given an opportunity to engage with the Minister who introduced the draft amendment Act. These procedural irregularities have reportedly led to the resignation of multiple members of the Council.

The passage of the amendment Act could also have implications for judicial independence, as it appears to circumvent judicial oversight of legislation and preemptively nullify legislative guidance to be issued by the Supreme Court of India. In its judgment of 17 October 2025 in *Jane Kaushik v. Union of India* (hereafter “Jane Kaushik judgment”), the Supreme Court established an Advisory Committee to address the concerns of trans and gender-diverse persons related to the implementation of the principal Act and identify legislative omissions therein in view of the fact that trans and gender-diverse persons continued to experience various forms of violence and discrimination five years after the principal Act’s passage. The Jane Kaushik judgment mandated the Advisory Committee to issue a report or draft policy addressing these legislative gaps within six months of the judgement, that is, by 17 April 2025, with said report or draft policy intended to inform development of an equal opportunity policy for trans and gender-diverse persons by your Excellency’s Government within three months of its issuance by the Committee.

The amendment Act appears to contradict the principles of the Supreme Court’s ruling in the Jane Kaushik judgment and render moot several aspects of the legislative guidance to be issued by the Advisory Committee, as will be discussed in the subsequent sections of this analysis. In this context, we note that the amendment Act was introduced and adopted on an expedited timeline prior to the issuance of the Advisory Committee’s report or draft policy. The timing of the amendment Act’s adoption, less than a month before the Advisory Committee’s guidance was anticipated, appears intended to pre-empt this guidance, thereby nullifying judicial oversight, in apparent violation of Article 4 of the Basic Principles on the Independence of the Judiciary.

In addition to the aforementioned procedural aspects, the proposed amendments to the *Transgender Persons (Protection of Rights) Act of 2019* introduced by your Excellency's Government appear to contravene international human rights standards regarding equality, non-discrimination, freedom of expression, the right to privacy, and bodily autonomy and have the effect of reducing the scope of the important protections the principal Act provides by eliminating the right to self-determine one's gender identity, promoting a narrow and exclusionary definition of transgender persons, conflating gender identity with intersex variations, introducing arbitrary medical requirements to qualify for protection and perpetuating harmful stereotypes about trans- and gender-diverse persons and communities that may lead to the criminalization of these individuals and communities as well as organizations and individuals that represent their interests or provide them with services. A summary of the relevant changes of concern is set out below:

Right to a self-determined gender identity, the right to health, and the right to privacy

Section 3 of the amendment Act abrogates Section 4(2) of the principal Act, which guaranteed transgender persons the right to self-perceived gender identity. Eliminating the right to self-determination of gender identity in such a manner is in direct conflict with the 2014 decision of the Supreme Court of India in *National Legal Services Authority vs. Union of India (UOI) and Ors.*, (hereafter "NALSA judgment") in which the Supreme Court interpreted Article 19(1)(a) of the Constitution of India, which guarantees all citizens the right to freedom of speech and expression, as inclusive of the right to expression of one's self-identified gender (paras. 63, 66). In the same ruling, the Supreme Court also held that self-determination of gender is an integral part of personal autonomy and self-expression and is as such protected by Article 21 of the Constitution, which guarantees the right to protection of life and personal liberty (para. 69, 74). Transgender persons' right to decide their self-identified gender is also explicitly upheld, and the Central and State Governments are directed to grant legal recognition of their gender identity whether male, female, or third gender (para. 129(2)).

The amendment Act proposes to replace self-identified gender with a medical certification framework, introducing the term "authority", referring specifically to "a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration" (Section 2(ii)). The amendment Act introduces a requirement for the District Magistrate responsible for issuing certificates of identity that reflect the applicant's correct gender identity to consult with this authority or other medical experts before issuing the revised certificate (Section 4(a)). Whereas the principal Act allowed persons who had pursued medical gender affirmation procedures to seek issuance of a certificate from medical authorities reflecting their correct gender identity, the amendment Act imposes this as a requirement, forcing trans and gender-diverse persons to share sensitive medical information with the Government regardless of their ability or willingness to do so (Section 5(b)). The amendment Act removes the right of persons who have not undertaken medical procedures to affirm their gender or persons who have undertaken such procedures but do not wish to share the results thereof to change their legal first name (Section 5(d)). These modifications are in conflict with the NALSA judgment, which states that "each person's self-defined sexual orientation and

gender identity is integral to their personality and is one of the most basic-aspects of self-determination, dignity, and freedom and no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity” (para. 20)., incorporating the exact language of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (hereafter “Yogyakarta Principles”).

These proposed amendments appears to contravene the Supreme Court’s ruling in the Jane Kaushik judgment, which mandated the Advisory Committee established by that judgment to issue a report or draft policy addressing *inter alia* how to ensure changes in documentation for trans and gender-diverse persons may be implemented without causing humiliation (para. 206(v)), increased inclusivity for trans and gender-diverse persons in medical settings (para. 206(vi)), and strengthened protections for gender non-conforming and gender-diverse persons, in view of the fact that “the 2019 Act focuses on the aspect of ‘medicalisation’ of gender and does not give preponderance to the right to self-perceived identity”. The Jane Kaushik judgment further directs the Committee to examine “how the State, without excessive bureaucratization, can guarantee rights provided under the 2019 Act to genderqueer and non-binary persons, especially those who do not undergo gender affirmative surgeries” (para 206(vii)).

While the Advisory Committee established under that judgment was mandated to advise the Government on strengthening protections for the rights of gender non-conforming, genderqueer, non-binary, and other gender-diverse persons, the amendment Act eliminates these groups as protected persons. The Advisory Committee was also mandated to examine how to strengthen inclusivity in medical settings and reduce reliance on medicalization as a requirement for recognition of one’s gender identity in favour of recognizing self-perceived gender identity, yet the amendment Act eliminates the right to self-perceived gender identity, institutes a rigid medicalized system for recognition of gender identity, and renders medical settings less inclusive for trans and gender-diverse persons, who are obliged under the terms of the amendment Act to share confidential medical information and engage in a potentially adversarial process with medical authorities and institutions to have their gender identity recognized.

We recall the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/73/152), which affirmed that “self-determined gender is a fundamental part of a person’s free and autonomous choice in relation to roles, feelings, forms of expression and behaviours, and a cornerstone of the person’s identity.” As such, States are compelled to “provide access to gender recognition in a manner consistent with the rights to . . . freedom of expression” (A/73/152). We reiterate the heightened harm the measures pose to the rights of transgender, gender diverse, and intersex persons and underscore how creating an environment of “legal prohibition, hostile rhetoric and social stigma” can lead transgender individuals and others to conceal their identities, infringing on their right to self-expression (A/HRC/56/49). Subsequent restrictions may have a “cumulative effect of stifling expression and further render invisible the experiences of LGBT persons.” Eliminating the right to self-identified gender identity is at odds with these

principles, as well as with the NALSA judgment and the express intent of the principal Act.

We would like to specifically draw the attention of your Excellency's Government to article 17 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which prohibits any "arbitrary or unlawful interference" with the right to privacy. As noted by the Special Rapporteur on the right to privacy, privacy includes gender identity and, "[g]ender identity is integral to personality and important to self-determination, dignity and freedom. Everyone, irrespective of their biological sex, sex characteristics, sexual orientation or gender identity or expression, is entitled to the full enjoyment of the right to privacy" (A/HRC/43/52 paras. 15, 20(d)(iii)). Further, States should "take all measures necessary to provide a safe environment by protecting the right to privacy to enable the child to develop freely" (ibid., para. 33(b)). Obliging trans and gender-diverse persons to share highly sensitive medical information with local political officials in order for their gender identity to be official recognized imposes an undue infringement on the right to privacy of those affected. Furthermore, imposing specific requirements for trans and gender-diverse persons to have their identity legally recognized that are not applicable to other citizens appears to violate the right of all persons to recognition as persons before the law, as enshrined in article 6 of the UDHR and article 16 of the ICCPR and to equal protection under the law, as enshrined in article 7 of the UDHR and article 14 of the ICCPR.

We emphasize the right to health, as enshrined in article 25 of the Universal Declaration of Human Rights (UDHR), article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by India on 9 July 1993, and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India on 10 April 1979, entitles individuals to bodily autonomy, freedom from non-consensual medical treatment, and access to a system of health that provides equal opportunity to enjoy the highest attainable level of health (E/C.12/2000/4, general comment No. 14, para. 8). We wish to remind your Excellency's Government that non-discrimination is an immediately enforceable obligation associated with this right (as opposed to a duty to be progressively realized). Obliging trans and gender-diverse persons to seek medical procedures they may not otherwise wish to undertake in order to obtain civil documentation is a violation of their bodily autonomy and right to freedom from non-consensual medical treatment. Further, such treatment is discriminatory insofar as such requirements are not imposed on other citizens, and such treatment also discriminates against trans and gender-diverse persons who do not have the means to pay for such medical procedures.

The NALSA judgment calls on the Government and all stakeholders to abide by the Yogyakarta Principles (para. 53). In addition to affirming the importance of self-defined sexual orientation and gender identity and prohibiting the imposition of medical procedures for recognition of one's gender identity, the Yogyakarta Principles affirm the right of all LGBT persons to recognition as a person before the law (Principle 3). States are obliged under Principle 3 to *inter alia* "take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity" and "ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned." In realizing the right to privacy, States also have an obligation to "ensure the right of all

persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others” (Principle 6). Further, no person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation and gender identity (Principle 18).

Equality and non-discrimination

We observe that the amendment Act proposes to redefine “transgender person” in a manner that appears narrow, inaccurate, and discriminatory in comparison with the definition provided under the principal Act. Section 2(k) of the principal Act defines a transgender person as “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*”. The principal Act defines “person with intersex variations” as “a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body” (Section 2(i)).

Section 2(k(i)) of the amendment Act aims to reduce the scope of protected persons under the principal Act by redefining “transgender person” as:

“A person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:

- (a) primary sexual characteristics;
- (b) external genitalia;
- (c) chromosomal patterns;
- (d) gonadal development;
- (e) endogenous hormone production or response, or such other medical conditions.”

The amendment of the principal Act appear to be of a regressive nature that aims to reduce the scope of its protection, by explicitly removing protections for trans men and genderqueer persons as well as trans women, non-binary and other gender-diverse persons whose identities may not be captured under the narrow definition of protected persons presented by the amendment Act, including the gender-diverse identities that exist among the Indigenous Peoples of India, or other socio-cultural categories mentioned in the NALSA judgment including *kothis*, *jogappas*, and *shiv-shakthis*. This also appears to be at odds with the NALSA judgment, wherein the Supreme Court of India explicitly ruled that legal recognition of transgender identity could extend to self-identified gender whether male, female, or of a third gender (paras. 70, 129(2)). The amendment Act also introduces ambiguity as to whether trans and gender-diverse persons who have not undergone medical therapies would qualify for protection. It also appears to inappropriately conflate intersex conditions with gender identity, by

subsuming variations in sex characteristics under the term “transgender person”, whereas the principal Act provided separate definitions of “person with intersex conditions” (Section 2(i)) and “transgender person” (Section 2(k)), making it clearer that the two groups would only be collectively considered for purposes of combating discrimination against them.

It also appears contrary to the principles of universal human rights that the amendment Act introduces overtly discriminatory language into an Act meant to combat discrimination. As part of the definition of “transgender person” the amendment Act states that the protected identities covered by this term “shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities” (Section 2(iv)). This appears to be in direct conflict with the decision of the Supreme Court of India in the NALSA judgment, which established the right to self-defined gender identity, as previously highlighted. The Statement of Objects and Reasons associated with the draft amendment Act further develops this argument, stating that the “intent, object, and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination” and “was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities, or gender fluidities” (para. 4). This appears to be a factually and legally spurious argument, given that the principal Act explicitly protected self-perceived gender identity and gender fluidity under the term “genderqueer”.

The Statement of Objects and Reasons further justifies the narrowed definition of “transgender person” by stating that “it is of prime importance that the enactment is utilised and works towards only those who are in actual need of such protection” (para. 2). No justification or rationale is provided as to why, in this context, your Excellency’s Government has concluded that persons with various gender identities, including self-perceived sex and gender identities, different sexual orientations, and genderfluid identities do not require protection. Such a conclusion is also at odds with the heightened levels of violence and discrimination these groups face globally. In the NALSA judgment, the Supreme Court specifically recognized the heightened risk of violence and discrimination faced by trans men (para. 46), yet they are also removed from the list of protected persons by the amendment Act.

The Statement of Objects and Reasons also argues that the restricted definition of “transgender person” is necessary as the current definition renders “the operation and enforcement of several provisions under penal, criminal, and personal laws unworkable” (para. 4) and is “not compatible with several statutory provisions of several enactments enacted both by the Parliament and the State Legislatures” (para. 4). However, your Excellency’s Government does not provide any concrete example of how the existing definition of “transgender person” inhibits the enforcement of existing, penal, criminal, and personal legislation, nor of how this definition is incompatible with enactments of Parliament or State Legislatures. Reportedly, no such example was provided during discussion of the draft amendment Act during its passage through Parliament. Furthermore, any deviation in Parliamentary or State-level laws from the definition of “transgender person” used in the principal Act is legally irrelevant, as the NALSA judgment obliges both the Centre and State Governments to recognize transgender persons’ right to self-identified gender (para. 129(2)).

Discriminatory treatment of individuals who diverge from expectations based on biological sex undermines the very foundation of protection against discrimination on the basis of sex. In this case, the proposed amendments have the effect of proactively legalizing discrimination against a vast swathe of transgender, intersex, and gender-diverse persons, in stark contrast with India's obligations under domestic and international human rights law. This includes Article 14 of the Constitution of India, which guarantees all citizens equality before the law and equal protection of the laws. The Supreme Court of India specified in the NALSA judgement that "discrimination on the ground of sexual orientation or gender identity...impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India" (para. 55).

We further wish to refer your Excellency's Government to its obligations under the ICCPR. Article 2 requires State Parties to take necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR. Article 26 guarantees equality to all individuals under the law, and prohibits discrimination on "any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Similar non-discrimination provisions can be found in article 2(2) of the ICESCR, article 2(1) of the Convention on the Rights of the Child (CRC), acceded to by your Excellency's Government on 11 December 1992, and article 2 of the CEDAW. Additionally, articles 1 and 2 of the UDHR affirm that all individuals are born free and equal in dignity and rights, and prohibit discrimination on status-based grounds, respectively.

Since March 1994, the Human Rights Committee has consistently affirmed, that the reference to "sex" in articles 2(1) and 26 of the ICCPR includes sexual orientation and gender identity (see, *Toonen v. Australia* CCPR/C/50/D/488/1992, and *Mikhail Kudryashov v. Kyrgyzstan*, CCPR/C/138/D/2998/2017). The Committee defines discrimination as "any distinction, exclusion, restriction or preference that is based on the status covered by article 26, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, or equal footing, of all rights and freedoms" (Human Rights Committee, general comment No. 18, CCPR/C/21/Rev.1/Add.1, para. 7). In numerous subsequent concluding observations, the Committee has urged State parties to guarantee equal rights to all individuals under the Covenant, irrespective of sexual orientation and gender identity. In 2016, the Committee clarified that non-discrimination: "encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] States parties also have an obligation to combat homophobia and transphobia, which lead to discrimination". (See E/C.12/GC/22, general comment No. 22, at para. 23.) This interpretation has become a well-established element of the Committee's jurisprudence and has been echoed by other United Nations treaty bodies as well as by regional human rights courts, and also reflects the decision of the Supreme Court of India in the NALSA judgement, which clarifies that "Articles 15 and 16 [of the Constitution of India] prohibit discrimination against any citizen on certain enumerated grounds, including the ground of 'sex'" and that "discrimination on the ground of 'sex' under Articles 15 and 16 includes discrimination on the ground of gender identity" (paras. 56-59).

In relation to the ICESCR, the Committee on Economic, Social and Cultural Rights has affirmed that the Covenant's non-derogable prohibition of discrimination extends to sexual orientation, gender identity, and sex characteristics. Under article 2,

State parties are obligated to ensure the enjoyment of all economic, social and cultural rights without discrimination of any kind, including based on sexual orientation or gender identity. The Committee has elaborated this interpretation in several general comments on States' obligations under the Covenant (see e.g., E/C.12/GC/20, E/C.12/2000/4), and has consistently reaffirmed it in its concluding observations on State party reports. In its concluding observations, the Committee has repeatedly called on States to adopt legislation to protect LGBT and intersex persons from discrimination (see, e.g., E/C.12/HND/CO/2, E/C.12/SDN/CO/2, E/C.12/ITA/CO/5, E/C.12/IRQ/CO/4, E/C.12/UGA/CO/1, E/C.12/1/Add.107, and E/C.12/1/Add.80). The Committee has likewise praised States for the adoption of such legislation (see, e.g., E/C.12/ALB/CO/2-3, E/C.12/1/Add.35, E/C.12/1/Add.70, E/C.12/LIE/CO/1, E/C.12/MCO/CO/1, and E/C.12/CO/BRA/2). In 2016, the Committee clarified that non-discrimination: "encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] States parties also have an obligation to combat homophobia and transphobia, which lead to discrimination". (See E/C.12/GC/22, general comment No. 22, at para. 23).

The proposed legislation is expected to have unequal impacts across different social groups. It is likely to place a disproportionate burden on individuals from historically marginalised castes. Such effects would exacerbate existing inequalities faced by caste-oppressed communities. Therefore, the potential for unequal impact on these groups should be carefully considered.

Propagation of harmful stereotypes and restrictions on civic space

We consider that the amended definition of "transgender person" proposed in the amendment Act risks promoting harmful stereotypes regarding lesbian, gay, bisexual, trans and other gender-diverse (LGBT) persons. The amendment Act expands the definition of "transgender person" to include "any person or child who has been, by force, allurements, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise" (Section 2(iv)). The amendment Act also introduces new criminal penalties for kidnapping or abducting adults or children and subjecting them to acts including "mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedures" or otherwise causing permanent or severe bodily injury "with the intent of, or in the course of compelling [them] to assume, adopt, or outwardly present a transgender identity" (Section 7(e), Section 7(f)). There are also new criminal penalties for compelling "by force, threat, coercion, allurements, deception, inducement, or undue influence" any person or child "whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person" and employing, using or causing "such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting" (Section 7(g), Section 7(h)).

All of the aforementioned acts are already criminalized under India's criminal code, the *Bharatiya Nyaya Sanhita* (BNS), including trafficking in persons for purposes of begging, servitude, and forced labour for adult victims (Section 143(2)) and child victims (Section 143(4)), kidnapping or abducting a person and subjecting them to

grievous hurt (Section 140(4)), and kidnapping and maiming a child and employing them for begging (Section 139(2)). The BNS establishes an extensive criminal framework for sexual offences against women (Sections 63-73), and for other forms of violence against women (Sections 74-87), but as “woman” and “transgender person” have distinct definitions under the BNS, these provisions as written do not sufficiently protect trans and gender-diverse persons, who can only rely on the lesser protections provided under the principal Act as there are no corresponding provisions relating to sexual violence or abuse of trans and gender-diverse persons. The additional criminal penalties introduced by the amendment Act do not address these protection gaps and their inclusion in legislation focused on the rights of trans and gender-diverse persons is concerning, as they are legally superfluous and have the sole practical effect of associating trans and gender-diverse persons with heightened levels of criminality.

The implication that trans and gender-diverse persons systematically commit acts of trafficking in persons and contemporary forms of slavery and other forms of criminality would be a deeply harmful and pejorative stereotype. Such prejudicial stereotype was also present in colonial-era legislation, namely, the Criminal Tribes’ Act of 1871 repealed shortly after independence in 1952; this Act had previously criminalized trans and gender-diverse persons on the basis of their identity, leading to their surveillance and harassment, as recognized in the NALSA judgment (paras. 16-18). The High Court of Telangana struck down State-level legislation incorporating elements of the Criminal Tribes’ Act in 2023 in the case *V. Vasanta Mogli vs the State of Telangana and Ors*, labelling the legislation in question a “discriminatory law that criminalises the transgender community without any legal basis” (para. 6) and concluding that the law in question was “manifestly arbitrary in as much as it criminalizes the entire community [of trans and gender-diverse persons]” (para. 48). Similarly, in its 2009 judgment in the case of *Naz Foundation v. Govt. of NCT of Delhi* which initially decriminalized homosexuality in India, the High Court of Delhi concluded that “Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are” (para. 131).

We consider that the additional criminal offenses introduced in the amendment Act are framed in discriminatory terms that imply LGBT persons are more likely to perpetrate or enable the sexual exploitation of children and youth, and undermine the right of children to an identity, which includes sexual orientation and gender identity, by suggesting that such identities are the result of LGBT adults coercing or compelling children to adopt these identities. Further, the offenses are expressed in such broad terms that they could adversely impact not only trans and gender-diverse persons but also the support networks and services they rely on. Service providers, medical personnel, legal personnel, social workers, community-based organizations and human rights defenders that support, provide, or assist in providing gender-affirming care and services or advocate for the rights of trans and gender-diverse to their self-defined gender identity could potentially be criminalized for their legitimate work under provisions related to “coercion, allurement, inducement, or undue influence” as could supportive family members or alternative kinship structures that exist among trans and gender-diverse communities.

In June 2024, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity presented his report to the 56th session of the Human Rights Council (A/HRC/56/49) on the theme of unlawful

restrictions on the human rights to freedom of assembly, association and expression based on sexual orientation and gender identity. In his report, the Independent Expert observes that “subjective ideas about ‘morality’ are often misused as pretexts to impose illegitimate restrictions on freedoms of expression, as well as freedom of peaceful assembly and association, especially in relation to sexual orientation and gender identity.” He adds that such laws, “many with colonial-era origins, are now repurposed and redeployed by current regimes” including “to clamp down on the public expression of sexual and gender identities and the expression of ideas that allow the construction of diverse gender and sexual identities” by “implying an intrinsic immorality associated with consensual same-sex conduct or diverse gender expression”. These restrictions in turn carry a “stifling effect on the activities of organizations, causing them to be afraid of falling foul of the law by offering specialized services benefiting LGBT persons or including equal rights for LGBT persons within their purview”.

In her June 2024 report, the Special Rapporteur on freedom of peaceful assembly and of association expressed concerns over findings that activists working in the area of LGBT rights are subjected to hostile stigmatization, including criminalization of their activities under the guise of national security, the protection of morality, or religious values (A/HRC/79/263 paras. 15, 35, 46 and 94).

In his May 2019 report, the former Special Rapporteur on freedom of peaceful assembly and of association furthermore highlighted that States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association, but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (A/HRC/41/41, para. 13). In his June 2024 report, he further specified that all segments of society, including LGBTIQ+ people, must have a voice in decision-making processes, and processes should be put in place to safeguard their democratic participation. This requires dismantling historic and systemic discrimination, marginalisation and other barriers to inclusion. To counter the harmful discriminatory rhetoric employed to further authoritarian and anti-rights agenda, all forms of discrimination, including related to gender and identity, must be addressed (A/HRC/56/50, paras. 86 and 87).

The Committee on the Rights of the Child has emphasised the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy. Moreover, it has clarified that the right of the child to identity, which includes sexual orientation and gender identity, must be respected and taken into consideration when assessing the child’s best interests (CRC/C/GC/14, para. 55). The Committee also highlighted the plights of transgender adolescents, who often face persecution, including abuse and violence, stigmatisation, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (CRC/C/GC/20, para. 33). The Committee urged States to take effective action to protect transgender adolescents from all forms of violence, discrimination or

bullying by raising public awareness and implementing safety and support measures (Ibid., para. 34).

Similarly, in his report (A/HRC/56/49), the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity notes that “when lawmakers justify discriminatory prohibitions on various forms of expression by the invocation of ‘protecting children’ – sometimes evoking the spectre of paedophilia – they are deliberately deploying a false and dangerous narrative that LGBT persons are a threat to children.” Further, such laws imply “that children themselves do not have diverse sexual orientations and gender identities, hence compounding social stigma.” The United Nations Children’s Fund (UNICEF) has identified eliminating such laws as a priority for ending discrimination against children based on sexual orientation or gender identity.

Conclusions

We reiterate the legal obligation of Your Excellency’s Government to ensure that all legislation is free from discrimination on any prohibited ground, including sex, gender, sexual orientation, gender identity, and sex characteristics and to prevent any discriminatory effect that a given legal reform or policy may directly or indirectly produce.

In light of the foregoing observations and in accordance with international human rights law standards, we urge your Excellency’s Government to halt the implementation of this law, re-evaluate its compatibility with the Constitution of India, and address reported procedural irregularities in the adoption of this law by providing an adequate period of public consultation, ensuring review by Parliamentary Standing or Select Committees, and consult with and incorporate the input of the National Council for Transgender Persons as mandated by 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 observations.
2. Please provide details of the process by which this legislation was developed, including clarification as to why the minimum period of public review established by the Pre-Legislative Consultation Policy was not respected, why requests for the amendment Act to be referred to a Parliamentary Standing or Select Committee were not heeded, and why the National Council for Transgender Persons was not substantively engaged in the development of this legislation.
3. Please provide details of any assessment undertaken to ensure that the provisions contained within this legislation comply with India’s obligations under international human rights law, including with respect to the right to privacy, the right to equal recognition before the law, the

right to equality and non-discrimination, the right to health, the right to freedom of expression, and the rights to freedom of peaceful assembly and of association.

4. Please provide details of any assessment undertaken to ensure the amendment Act was compatible with India's domestic legal framework, including the Constitution and relevant jurisprudence including the NALSA and Jane Kaushik judgments.
5. Please clarify with concrete examples how the definition of "transgender person" provided in the principal Act, prior to its amendment, rendered provisions of penal, criminal, and personal laws and/or enactments of the Parliament and State-level Legislatures unworkable as described in the Statement of Objects and Reasons pertaining to the draft amendment Act.
6. Please provide details of how the domestic legal framework safeguards the rights of all persons of diverse sexual orientation, gender identities, and sex characteristics, as well as defenders of their rights, and how consistency with India's domestic and international human rights obligations will be ensured in the context of this 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](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Graeme Reid

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

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

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Special Rapporteur on the independence of judges and lawyers

Ashwini K.P.
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children