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Human Rights Commission of Sri Lanka

The Guideline for police officers to protect transgender persons

Introduction

All Human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human beings.¹

The 1978 Constitution of Sri Lanka also recognizes that all are equal before the law and have equal protection of the law. There is a particular group of people who are marginalized, and among them, transgender is one group. Transgender is an umbrella term used to include a diverse group of persons who are not comfortable with their gender identity culturally assigned to them at birth. Therefore, a male person is willing to change his biological sex to a female (male to female – MTF), and in the same way, a female person is willing to change her biological sex to a male (Female to Male – FTM) with a long and a stringent process, could be defined as transition process.

International medical organizations and professionals proved that this is not a medical disorder. These marginalized groups have been living among us since the beginning of human origin. Due to various social factors, they hide their identity and continue to live with numerous sacrifices.

Some transgender persons complain due to their questionable identity and mental unrest. Further, they face social stigma, sexual harassment, discriminatory treatment in recruitment and being thrown out of the family etc.

This has caused the transgender comments to undergo psychological stress and suicidal thoughts, which result in suicidal attempts. Therefore, all should recognize their gender identity; ensure non-discrimination, personal security and the right to privacy of transgender persons.

The transgender community expressly state that law enforcement officials are one group to make aware of their issues. As police officers and as Law enforcement officers, they have a responsibility to ensure transgender persons' identity, non-discrimination, personal security

¹ Principle 1 of the Yogyakarta Principles

and right to privacy when they perform their duties. Also, the police should proactively intervene and protect transgender persons if criminal acts are caused against them.

All citizens should treat transgender persons equally, without discrimination, and support them to secure their rights and freedoms as equals in society.

Guidelines.

Guideline 01: Right to Recognition before the Law

Police officers should recognize transgender persons, their identity and the process, consider the constitutional guarantee that “All are equal before the law and equal protection of the law” as stated under Article 12.1 of the 1978 Constitution.

All police officers in different sectors should be aware of transgender persons and the transgender process and respect their universally recognized rights and freedoms as enshrined in the Yogyakarta Principles.²

Guideline 02: The Right to Equality and Non Discrimination

(a) The police officers should not discriminate the transgender persons based on their gender identity. The constitution has a provision under Article 12.2 that “Nobody should be discriminated based on race, ethnicity, caste, sex, or any such ground” If this is not adhered to by the police officers, it will violate Article 12.2. (b) In addition, disrupting access to law enforcement authorities by means of unequal treatment, inaction, negligence, unnecessary delaying, insensitivity towards the needs of transgender persons, and any such form of actions would amount to a violation of Article 12.1 of the Constitution.

Guideline 03: The Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

(a) Transgender persons face physical attacks, verbal abuse, blackmail and attempts to be sexually harassed or any other form of violence, even at the Police stations, due to their gender identity. If officers use degrading terminology towards transgender persons, it should be regarded as physical and mental torture, inhuman or degrading

² Principle 01, Principle 03

treatment or punishment to transgender persons. This, therefore, amounts to a violation of Article 11 of the Constitution and other prevailing laws.

(b) Police officers, when checking the physical body of transgender persons, they have to understand their gender identity and act accordingly. If there are reasonable grounds to suspect, they must first check the identity card or any other valid document before checking the person's body. Maintaining and respecting that person's privacy is essential as treating him with due dignity. The police are required to formulate guidelines informing the manner of body searches of these individuals. A transgender person is just another person, and he is entitled to all rights every person is entitled to under the Constitution.

Guideline 04: Right to Security of the Person

(a) Transgender persons face stigma, discrimination and violence in public places, such as non-verbal gestures, verbal abuses, threats and physical attacks. In these circumstances, the police should proactively intervene, avoid the situation, and take appropriate legal action against individuals who violate those rights.

(b) Inaction, avoidance or delaying legal actions by police officers for such grievances would violate Article 12.1 of the Constitutions. When transgender persons cross-dress, police tend to criminalise such actions under section 399 of the Penal Code – “Cheating by Impersonation”. Also, the police usually erroneously judge these cross-dressed individuals as Sex-workers. Cross-dressing cannot be considered impersonation concerning transgender persons, and they should not be prejudiced as sex workers. The misapplication of criminal law has severe consequences, the police must be advised of these consequences, and severe action must be taken against such police officers for not adhering to the prescribed regulations.

Guideline 05: The Right to Freedom from Arbitrary Arrest and Detention

Transgender persons are often arrested under the Vagrants' Ordinance merely because they stand on the road. The definition of vagrant must be clearly defined to avoid such arrests wrongfully.

If the police do not follow this legal provision, it would be considered an illegal arrest and will, therefore, violate Article 13 of the 1978 Constitution.

Guideline 06: The Right to Privacy

(a) Personal information of transgender persons must be treated with confidentiality. Disclosure of transgender status and sensitive information should be on a need-to-

know basis and not disclosed to other arrestees, the general public, lawyers, and court staff when they present before courts.

(b) Police officers must recognise the right to privacy when conducting a body check-up of a transgender person. When checking a male-to-female transgender person, an appropriate police officer should be assigned according to the request of a transgender person

Guideline 07: The Right to Treatment with Humanity while in Detention

(a) Police officers, when detaining transgender persons who have committed an offence or are suspected of committing an offence, must consider their gender identity and treat them with humanity.

A male-to-female transgender detainee has to be treated as a female detainee, and a female-to-male transgender detainee has to be treated as a male detainee. Both transgender persons should be detained separately from other detainees to avoid harassment.

(b) If a transgender person is detained without any reason, such detention would be considered illegal and would, therefore, violate Article 13 of the 1978 Constitution. Any sexual harassment, threat, blackmail, beating or attack in a detention place would be considered torture, inhuman, degrading treatment. Therefore, it violates Article 11 of the 1978 Constitution.

Guideline 08: The Right to Enjoy the Family Life

In situations of domestic violence or discrimination by family members, the police should realize the transgender persons' physical and mental situation and act accordingly by minimizing the issues faced by transgender persons because of their respective family members. The police should try and take measures to mediate and make the family members understand the critical situations faced by transgender persons.

Guideline 09: Ensure the Best Interest of Transgender Child

When child transgender persons complaint about the harassment they faced by teachers and fellow students in the schools or the police received complaints from schools against the child transgender persons, the Women and Children Desk in the police stations should pay more attention and act with the best interest of the child. If

necessary, the police should take measures to get the National Child Protection Authority (NCPA) assistance.

Guideline 10: The Right to Access to Law Enforcement Authorities

Police should attempt to build up the inner confidence of transgender people to lodge complaints without fear or harassment and should not refuse or verbally abuse or threaten when they complain. In addition, the personal information of transgender persons should not be misused.

Guideline 11: The Right to Freedom of Expression, Association and Peaceful Assembly

Police should ensure the right to expression, association and peaceful assembly of transgender persons. If this is not adhered to by the police officers, it will violate Article 14.

Guideline 12: The Right to Promote LGBTI Rights

Human Rights Defenders who work to promote and protect the human rights of LGBTI persons are an extremely vulnerable group and frequently become targets for persecutions and human rights violations. Police should recognize the legitimate activities of LGBTI defenders and ensure a peaceful environment for promoting and protecting LGBTI rights.