

UNIVERSAL PERIODIC REVIEW 2017: RECOMMENDATIONS TO THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN



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Introduction:

The Islamic Republic of Pakistan consists of a legal system characterized by a combination of laws that are remnants of colonial period and provisions from Sharia law. Gender and sexual minorities constitute one of the most vulnerable population under this system that relies on punitive laws and state-sanctioned discrimination that contribute to an environment of fear, persecution and marginalization with regards to minorities. Although a signatory of several treaties/conventions on human rights, Pakistan has continued to ignore what they have signed and no steps have been taken to ratify them.

This brief reflects the issues and recommendations raised in the UPR Shadow Report which was submitted by an alliance of community based organizations and activists working for LGBTI+ rights in Pakistan. Since submission of the shadow report, thanks to the hard work and persistence of many of the organisations that endorsed the Shadow Report, a Transgender Health and Rights bill has been introduced into the Senate and National Assembly for a vote. The Transgender Persons (Protection of Rights) Bill 2017 and Criminal Law Amendment (2017) cover all of the recommendations that were highlighted in the Shadow Report. Therefore, the alliance has made a collective decision to focus on getting recommendations on wider LGBTI human rights issues.

Need for anti-discrimination legislation:

Article 25 of the Constitution is the core provision on equality of citizens and states, “All citizens are equal before law and are entitled to equal protection of law”. It prohibits discrimination on the grounds of race, colour, religion, language or sex be it men, women or children. The non-discrimination provisions provided in articles 2(1), 3, and 26 of ICCPR¹, articles 2(2), 3, 6, 7, 12 (1) and 13 (1) of ICESCR² have been addressed in Articles 25- 27 of the Constitution. While drafting or approving any new legislation, particular attention is given to include non-discrimination clauses so as to address all forms of discrimination recognized by the Constitution and also as Pakistan’s international human rights obligations. However, the legal provisions regarding non-discrimination within the State party, including articles 25 to 27 of the Constitution, only prohibit discrimination on grounds of race, religion, caste, sex, residence or place of birth, as well as appointment in the service of Pakistan and *do not* address discrimination based on gender identity and/or expression and sexual orientation. It is a concern that despite Pakistan being a signatory to the aforementioned treaties, comprehensive anti-discrimination legislation has not been adopted to guarantee fundamental rights, equal opportunities and protection to gender and sexual minorities.

Recommendations:

- The Government should immediately ensure smooth and prompt passage and subsequent implementation of the Transgender Persons (Protection of Rights) Bill, 2017 and Criminal Law Amendment (2017) Bill through the National Assembly and the Senate to be written into law.
- The State party should revise articles 25 to 27 of the Constitution, with clear provisions to ensure that the Constitution prohibits discrimination on all grounds, including colour, language, political or other opinion, national or social origin, property, disability, sexual orientation and gender identity or other status.
- Adopt comprehensive anti-discrimination legislation prohibiting all direct, indirect and multiple forms of discrimination on any ground and provide for effective remedies for victims of discrimination, including within judicial and administrative proceedings.

Repeal of Punitive Laws that affect sexual and gender minorities

Article 35 (Protection of Marriage and Family) in the Constitution of Pakistan allows for discrimination on the basis of gender identity and sexual orientation. It is also concerning that same-sex relations between consenting adults are criminalized under section 377 of Pakistan Penal Code (Act XLV of 1860) which creates no distinction regarding consent, hence enabling the law enforcement agencies and extortion gangs to exploit the vague language of the law to harass,

¹ International Convention on Civil and Political Rights (ICCPR), signed by Pakistan, 17 Apr 2008

² International Convention on Economic, Social and Cultural Rights (ICESCR), signed by Pakistan, 03 Nov 2004

blackmail, imprison or sexually/physically assault gender and sexual minorities, particularly rape victims. Rape of men and transgender people is not recognized in Pakistani law, as of the writing of this note. The protections guaranteed under articles 10, 11 and 12 of CAT³ (of which Pakistan is a signatory) have not been fully implemented in current laws with regards to prohibition of torture, physical and/or sexual abuse and coercive medical examinations of gender and sexual minorities in police custody.

Recommendations: The State party should:

- Take all necessary measures to repeal Section 377 of the Pakistan Penal Code and the Hudood Ordinance under the Sharia law for consenting adults and take necessary measures to raise public awareness to combat discrimination based on SOGIE including the adoption of comprehensive anti-discrimination legislation.
- Include men and transgender persons in the existing rape legislation.

Freedom of assembly and expression and right to privacy:

Laws concerning restriction on public assembly (Section 141-144 PPC), public nuisance (Section 290-91 PPC), obscenity (Section 292, 294 PPC) and beggary (Punjab Vagrancy Ordinance 1958) are regularly employed against gender and sexual minorities (particularly to criminalize communal rituals of marginalized communities such as hijras) due to absence of anti-discrimination legislation concerning gender and sexual minorities. The application of vague concept of “public morality” in the law allows for law enforcement agencies to harass, imprison and sexually assault gender and sexual minorities that are offered little or no protection under the Pakistani law. Article 14 (1) of the Constitution of Pakistan reaffirms the individual’s right to privacy in their home, however, the Pakistan Penal Code (Act XLV of 1860) and Criminal Procedure Code (1898) make no distinction regarding consent in same-sex relationships. Therefore, sections 100 and 377 criminalize “unnatural lust” imposing restrictions on right to privacy of consenting adult relationships.

Recommendations: The State party should:

- Ensure immediate and effective implementation of the National Action plan on Human Rights, including marginalized minority rights, to sensitise judiciary, law enforcement officers and police in order to eradicate transphobia and other forms of discrimination and violence in these institutions.
- Immediately reform laws concerning public assembly, obscenity and public nuisance (section 141-144, 290-91, 292, 294) as well as beggary (Punjab Vagrancy Ordinance 1958) to prevent violence and discrimination against marginalized communities.
- Provide provisions for protection of gender and sexual minorities in public and private spaces.

Universal Access to Health, Education and Employment Opportunities:

Transgender people, particularly transwomen/hijras and other marginalized minorities, face discrimination and stigma in seeking health care services and information as most health agents are not trained about transgender issues and their unique needs. This is also coupled with lack of confidentiality and inadequate access to trans specific health care needs like necessary hormones for transitioning. Hormone profile tests are not available in public sector institutions and in private sector they are very expensive. Gender reassignment surgeries are not common in Pakistan.

Discrimination against gender and sexual minorities, particularly transgender people, hinders access to educational institutes and employment opportunities, coupled with a lack of inclusive facilities in public and private institutes. The regulatory provincial bodies for higher education emphasize equal access to education (article 25), however, access of gender minorities remains restricted due to absence of anti-discrimination policies and inclusive admission procedures in addition to discriminatory hiring practices. The absence of redress mechanisms and limited access to judicial bodies exacerbates such discrimination.

Recommendations:

- The Government should take steps to develop laws and policies to ensure universal access to medical services, which are free of stigma/discrimination and judgment are offered to all, including sexual and gender minorities
- Sensitize medical professionals regarding specific health care needs of gender and sexual minorities, particularly transgender people, to combat discrimination and promote inclusive services that are equally accessible to all people.

ENDORSEMENTS:

1. NAZ Pakistan
2. Forum for Dignity Initiatives
3. Khawaja Sira Society
4. Dostana Male Health Society
5. Dareecha Male Health Society
6. Humraz Male Health Society
7. Sub Rang Society
8. GIA Foundation
9. Wajood
10. Pireh Male Health Society
11. HYPE Multan and Karachi

³ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, signed by Pakistan, 17 Apr 2008