

# Universal Periodic Review of Pakistan

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Joint Submission by:

Forum for Dignity Initiatives



[www.fdiPakistan.org](http://www.fdiPakistan.org)

and

NAZ Pakistan



1. This report is submitted by Forum for Dignity Initiatives (FDI) and NAZ Pakistan to highlight human rights violations committed against Transgender Women, Men and other marginalized minorities in Pakistan. The report includes recommendations to the State on how to protect and promote rights of Transgender Women, Men and other marginalized minorities in Pakistan.

**Key Words:**

2. Transgender women – Transgender Men – Intersex people and other marginalized minorities. Discrimination against gender minorities and denial of their Civil rights - Right to health, education and employment - other basic human rights.

**Executive Summary**

3. Human rights violations and discrimination on the basis of gender identity is still prevalent and implies a big challenge for Pakistan. The Transgender community and other marginalized minorities face stigma, discrimination and violence much more than non-marginalized groups. Transgender people, in particular transgender women, face harassment, mistreatment and exclusion from society and the public health care system, education system and employment and other institutions of Government. They face different forms of abuse starting with exclusion from society to brutal murder. They are subjected to trafficking, extortion, and forced prostitution., After the 2009 Supreme

Court Ruling that made provision for a third category on the National Identity Cards for transgender people, things have slowly started to change but for their proper inclusion in the society and the acknowledgment of their basic human rights the government will have to take a number of measures to address the gravity of the situation.

### **General Background**

4. Pakistan is a signatory to several International Human Rights Conventions that are of relevance to Transgender people and other marginalized minorities' issues/rights that the country has systematically failed to guarantee and protect. As a consequence, Transgender people and other marginalized minorities suffer discrimination and violence in many spheres of their lives.
5. The Forum for Dignity Initiatives and NAZ Pakistan conducted consultation workshops with activists and organizations working for the rights of transgender people and other marginalized minorities in Pakistan. A total of 19 organizations and 37 activists participated in these consultations.
6. In Pakistan Transgender people and other marginalized minorities are mostly ostracized by the society and sometimes disowned by their families. Transgender women, in particular, live in groups for protection and survival.
7. General population is mostly ignorant about Transgender people and other marginalized minorities, which creates exclusion. They are not accepted as equal citizens and are widely discriminated against in most spheres of life including education, housing, employment and health care. Renting a house is particularly challenging as landlords usually refuse to accept them as tenants. Those who do usually extort higher rent and refuse to sign a legal contract<sup>1</sup>.
8. Historically, in South Asia, Transgender people were respected as caretakers of royal harems, masters of art and culture, and trusted as messengers, watchmen and guardians. Over the time, however, their social status diminished significantly. Transgender people now live on the margins of the society as entertainers, beggars and commercial sex workers. Often denied the access to education, healthcare and protection, they face extreme discrimination, poverty, abuse and other violations of basic human rights. Currently there is no authentic data available to determined numbers or percentage of transgender people in the total population. However, in 2015 National AIDS Control Programme estimates TG population to be somewhere around 150,000, which many people deem as being a highly conservative estimate.
9. After the landmark ruling of the Supreme Court in 2009 that permitted a third gender category on the National Identity Cards, recognized transgender legal status in the family tree<sup>1</sup>, things have started to slowly change in favour of the transgender community. There is a two percent reserved quota in the government jobs and a right to vote was also established in the said ruling. Special funds (Rs.200 million) were allocated to the provincial budget 2016/17 of Kyber Pakhtoonkhwa for the welfare of the transgender. In 2017 the Lahore High Court ordered the federal government, National Database and Registration Authority and the Ministry of Interior for the inclusion of transgender in the upcoming census<sup>2</sup>. However, the Supreme Court judgment doesn't grant social security, welfare and protection of human rights to "eunuchs". As a result many feel that the judgment has failed to address all issues.

### **Legal Situation**

10. The Constitution of Pakistan does not explicitly make mention of sexual orientation or gender identity. It does contain provisions that may impact the constitutional rights of these minorities. Article 25 of the Constitution is the core provision on equality of citizens and it states "All citizens are equal before law and are entitled to equal protection of law". It prohibits discrimination on the grounds of race,

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<sup>1</sup> NADRA database confirm legal status of a citizen.

<sup>2</sup> A petition was filed in the Lahore High Court by Waqir Ali , November 2016.

colour, religion, language or sex be it men, women and children. The non-discrimination provisions provided in articles 2(1), 3, and 26 of the Covenant have been guaranteed by Article 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."

11. Pakistani law is a mixture of both Anglo-Saxon colonial law as well as Islamic law, both which prescribe criminal penalties for same-sex sexual acts. Section 377 of Pakistan Penal Code of 1860, originally developed under colonialism, punishes [sodomy](#) and sex outside marriage with a possible prison sentence and for having sex outside marriage the Hudood Ordinances punishes offenders by stoning till death sentences these provisions impact the human rights of Transgender Pakistanis, under the guise of protecting public morality and order.

#### **UPR**

12. In the last two cycles of the UPR Pakistan received several recommendations concerning the human rights of women and religious minorities but none on the rights of transgender people and other similar minorities.

#### **Problem identification for specific issues and recommendations**

##### **Violations of health rights of transgender people and other marginalized minorities**

13. Transgender people particularly woman 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 hormones for transitioning. Hormone profile tests are not available in public sector institutions and in private sector they are very expensive. Sex reassignment surgeries are not common in Pakistan. Transgender women and other marginalized minorities in Pakistan are also at high risk of infection from HIV other STIs due to their involvement in risky sexual and social behaviors like sex work and drug abuse, that in most cases start at teenage age. The case of a transgender woman, Alesha<sup>ii</sup>, made headlines because she was shot six times and the hospital staff wasted precious hours trying to decide whether to put her in male or female ward. She was finally put in a male ward despite her community's protests where she passed away due to delay in treatment. However, when it comes to right to inheritance the transgender women are sometimes treated like women and given half a share in property compared to their male siblings.
14. **Violence against transgender women.**
15. Blue Veins, a Trans Action Alliance, has documented 46 killings and 300 violent attacks on Transgender women across the province of KP from January 2015 to July 2016, 70 instances of domestic abuse in 2015 in Punjab and a study in Sindh found that 82 percent of transgender people suffered sexual abuse in their childhood. Due to wide spread stigma and discrimination majority of transgender women end up in sex work in extremely unsafe environment and circumstances. Their clients or male sex partners feel that sexual abuse of a transgender woman is permissible therefore when they solicit their services they invite friends over for gang rape. These abuses cause severe emotional distress and mental agony for many transgender women. To cope with these realities many transgender women start indulging in drugs and alcohol or resort to self-harm which is common among them especially after facing sexual assault.
16. Transgender individuals are often responsible for financially supporting their biological families who often resort to abuse, violence and torture to maintain their control over them. Forced marriages, physical and emotional torture are the common forms of abuses against them, recorded by many studies done by various organizations.

17. The only support for a transgender is usually provided by her peers. In the absence of medical care sensitive to her needs the relief often comes from the community members looking after them using traditional methods and wisdom.
18. **Discrimination against transgender women and other marginalized minorities.**
19. Transgender persons and other marginalized minorities in Pakistan are at high risk of discrimination, stigma and violation when accessing various social services. There is not a single respectable word in the local languages that can be used to refer to these communities or allow them the freedom to define their identity.
20. Transgender people generally do not seek admission in schools, those who do become victims of transphobia and homophobia. They are bullied and ridiculed in educational institutions and sometimes even dismissed from school because of their gender identity. Same is the case for feminized boys.
21. Transgender women and other marginalized minorities are discriminated when seeking employment. The existing policies and laws which provide for special treatment of special/vulnerable population groups like, women, people living with disabilities , children and indigenous communities do not recognize or take into account vulnerability based on gender identity. This leaves transgender women not being recognized as a special interest group regardless of the stigma discrimination and human rights violations they face. They are forced into sex work due to lack of options . Although small measures are being taken like Punjab University and Defense Ministry has announced quota for Transgender people in their recent advertisements., much more needs to be done.
22. Disaster management plans both at provincial and federal levels do not include transgender people which denies them the right to humanitarian assistance.

### **23. High Handedness of Law enforcing agencies**

24. In Pakistan, transgender women and other marginalized minorities face the biggest burden of human rights violations, stigma and discrimination based on gender identity. Transgender women and other marginalized minorities are marginalized and are at heightened risk of experiencing violence and hate crimes. In the last years, many cases have been reported where transgender women in Pakistan have been illegally arrested by the police using provisions of the law that criminalize same sex relationships and they have been charged with cases related to defying the order of nature (unnatural offence against the order of nature), public nescence, unnatural offences and indecent assault.
25. In addition to these arrests, the police stations have no facilities for the detention of transgender/intersex persons and hence the accused are locked up with men or women. This decision is usually based on the genitalia and the police usually ask to confirm the sex of the person through touching or seeing the genitalia, an action that is largely offensive and violates the basic rights to privacy and dignity of the person.
26. The police harass and mock the Transgender complainants, and often make sexual advances. A complaint is rarely registered, and they exhibit an indifferent attitude. The transgender communities feel scared and intimidated by the police and often choose not to report the crimes. The police's reputation is further tarnished in the community because of its pattern of profiling transgenders and harassing them in public spaces. If and when a complaint is registered, the prosecution is weak, and cases take too long to reach completion, as a result of which many people choose not to follow a legal recourse.

## Recommendations

27. Integrate a human rights based approach in all national public policy and programmes and take special measure including legislation to guarantee economic, social and cultural rights to transgender people and other marginalized minorities.
28. Ensure universal access to medical services free of stigma and discrimination to meet the health needs of transgender people and other marginalized minorities.
29. The Government of Pakistan should comply with the Supreme Court judgments of 2009 and 2012 which gave recognition to the transgender men and women. The Government should include the third gender option on all Government forms/ applications.
30. The Government of Pakistan needs to put a system in place which can deal with changed gender identity issues of transgender community irrespective of whether they were able to undergo a gender reassignment surgery or not.
31. All Provinces should develop a transgender people protection policy which includes role of Law and human rights ministries to address violence against transgender men, women and other marginalized minorities.
32. Life skilled based education with specific chapter on transgender and other marginalized minorities should be included in school and college curriculum and the academic staff trained accordingly.
33. Enact an anti-discrimination law that explicitly reflect non discrimination based on gender identity and promote equal rights for all individuals to offer effective and equal protection to all its citizens regardless of their identities.
34. All Provincial and National Disaster management plan should include specific measures to provide humanitarian support to transgender men and transgender women and intersex persons.
35. The Government of Pakistan should reserve quota for transgender people in the National/provincial Assemblies and the Senate.
36. 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 phobias, discrimination and violence in these institutions

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<sup>i</sup> <http://af.org.pk/gep/images/GEP%20Gender%20Studies/Transgender%20Community%20in%20Pakistan.pdf>

<sup>ii</sup> <http://www.telegraph.co.uk/news/2016/05/25/transgender-activist-dies-after-being-denied-treatment-in-pakistan/>

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The submission is endorsed by:

1. **Blue Veins**
2. **Forum for Dignity Initiatives**
3. **Dareecha Male Health Alliance**
4. **Dostana Male Health Alliance**
5. **GIA Foundation**
6. **Humraz Male Health Society**
7. **HYPE- Multan and Karachi Network**
8. **Khawaja Sira Society**
9. **NAZ Pakistan**
10. **Pireh Male Health Society**
11. **Sub Rang Society**
12. **Transaction**
13. **Wajood**
14. **Dr.Fahad Abbasi**
15. **Maya Zaman**
16. **Inaya Zarakhel**