



ASIA PACIFIC  
TRANSGENDER  
NETWORK



**Joint Submission on the Situation of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in the Islamic Republic of Pakistan**

**For the Fourth Cycle of Universal Periodic Review (UPR) of the Islamic Republic of Pakistan (January – February 2023)**

**July 24, 2023**

The Asia Pacific Transgender Network (APTN) is a regional network that is working towards the advancement of Trans and gender diverse people rights in the Asia Pacific region through research and evidence generation, legal, policy and programmatic advocacy, and public campaigning.

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GATE is an international advocacy organization working towards justice and equality for Trans, gender diverse and intersex communities. Rooted in our movements, we work collaboratively with strategic partners at the global level to provide knowledge, resources and access to UN mechanisms and bodies. We give voice to and empower communities affected by issues of gender identity, sex characteristics and bodily diversity by creating critical knowledge, providing organizational resources and forging connections with UN bodies, networks and key organizations.

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INTERNATIONAL  
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**Joint Submission on the Situation of Lesbian, Gay, Bisexual, Transgender and Intersex People in the Islamic Republic of Pakistan for the Fourth Cycle of UPR (January – February, 2023)**

This report is submitted to the OHCHR by the **Asia Pacific Transgender Network (APTN)** and **Global Action for Trans Equality (GATE)**, in association with **Queer Chitai (QC)**, herein referred to as ‘we’, ‘our’.

## Part I: Overview

### Methodology

1. This submission is made on behalf of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community of Pakistan.
2. This submission has been authored by a working group of LGBTI activists based in Pakistan, in direct consultation with over 100 community members, activists and organizations nationally, and with the review and feedback of legal experts and policy practitioners, civil society allies and members of regional and international LGBTI networks.
3. The information presented here has been collected from the following sources: the existing provisions of the Pakistani Constitution, laws and policies, court judgments, reports of civil society organizations and media, as well as primary data collected through focus group discussions, interviews and testimonies.

### Recommendations from the Third Cycle of the Universal Periodic Review (Oct – Nov, 2017)

4. In the third UPR cycle, the rights of LGBTI people of Pakistan were highlighted for the first time through stakeholder submissions. The National Report merely referenced state measures for the legal recognition of transgender and intersex persons.<sup>1</sup>
5. The UPR Working Group noted that the Committee on Economic, Social and Cultural Rights recommended to Pakistan to *decriminalize same-sex relations between consenting adults and take the measures necessary to combat discrimination based on sexual orientation and gender identity*. The Human Rights Committee made a similar recommendation.<sup>2</sup> The Committees further recommended revising Articles 25 to 27 of the Constitution to ensure *prohibition of discrimination on all grounds, including sexual orientation and gender identity*.<sup>3</sup>
6. Pakistan ‘noted’ recommendations from reviewing states to *decriminalize consensual same-sex sexual relations and ensure protection from discrimination and violence for LGBTI people*.<sup>4</sup>

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<sup>1</sup> See paragraphs 12 and 13, A/HRC/WG.6/28/PAK/1.

<sup>2</sup> See paragraph 14, A/HRC/WG.6/28/PAK/2.

<sup>3</sup> See paragraph 9, A/HRC/WG.6/28/PAK/2.

<sup>4</sup> Pakistan ‘noted’ the following set of recommendations on the rights of LGBTI people from reviewing states: “Protect the rights of lesbian, gay, bisexual, transgender and intersex persons and take the necessary measures to guarantee their protection and a life free from discrimination.”

Mexico

Noted

See para 152.88, A/HRC/37/13

“Accelerate the enactment of laws for the protection of lesbian, gay, bisexual, transgender and intersex persons, in particular the Transgender Persons (Protection of Rights) Bill.”

France

Noted

See para 152.90, A/HRC/37/13

“Enact and enforce legislation to afford legal protection from violence and discrimination to all its citizens, including women, girls, the lesbian, gay, bisexual, transgender and intersex community and religious minorities, including through effective prosecutions in accordance with the rule of law.”

Australia

Noted

See para 152.93, A/HRC/37/13

7. Pakistan ‘accepted’ recommendations from reviewing states to *ensure the protection of the rights of transgender men and women by passing the draft bills being reviewed by the Parliament*.<sup>5</sup>

## General Background

### Law and Policy

8. The Constitution of Pakistan guarantees the rights to life and liberty to all citizens. Article 14 ensures dignity of person and privacy of home. Articles 25-27 provide for equality of citizens and prohibit discrimination in access to public places and services. However, LGBTI people are denied these rights and equal protections of the law due to punitive laws and discriminatory practices.
9. Section 377 of the Pakistan Penal Code criminalizes ‘carnal intercourse against the order of nature’, which penalizes specific sexual acts between adults of any sex involving penetrative intercourse, consensual or otherwise, although convictions are rare.<sup>6</sup> Section 496-B also criminalizes ‘wilful sexual intercourse’ outside of marriage between a man and a woman.<sup>7</sup>
10. The Constitution of Pakistan does not recognize sexual orientation, gender identity and expression (SOGIE) as protected grounds on the basis of which discrimination is prohibited; the prohibition is limited to discrimination ‘on the basis of sex’.<sup>8</sup>

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“Adopt effective measures to prevent and punish all forms of discrimination against minority groups by adding clear provisions to articles 25 to 27 of the Constitution to ensure the prohibition of discrimination on all grounds, including sexual orientation and gender identity, as well as by adding clear protection provisions in criminal laws concerning public assembly, obscenity and public nuisance.”

Netherlands

Noted

See para 152.86, A/HRC/37/13

“Adopt legislative measures to decriminalize homosexuality and consensual sexual relations between persons of the same sex.”

Chile

Noted

See para 152.89, A/HRC/37/13

<sup>5</sup> Pakistan ‘accepted’ the following recommendations on the rights of LGBTI people from reviewing states:

“Rapidly adopt and implement the two draft bills recently tabled in the National Assembly to ensure the rights of transgender persons.”

Spain

Accepted

See para 152.91, A/HRC/37/13

“Ensure that the 2017 law, which is presently being reviewed, on the recognition of the rights of intersex and transgender persons pays the necessary attention to both transgender women and men.”

Albania

Accepted

See para 152.92, A/HRC/37/13

<sup>6</sup> **Section 377** of the *Pakistan Penal Code, 1860*, reads “**Unnatural offences:** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

<sup>7</sup> **Section 496-B** of the *Pakistan Penal Code, 1860* reads “**Fornication:** (1) A man and a woman not married to each other are said to commit fornication if they wilfully have sexual intercourse with one another. (2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.”

<sup>8</sup> **Article 25** of the Constitution of Islamic Republic of Pakistan reads (1) All citizens are equal before law and are entitled to equal protection of law (2) There shall be no discrimination on the basis of sex.

11. Accepting recommendations from the last cycle, Pakistan passed the *Transgender Persons (Protection of Rights) Act, 2018* (TPA, 2018) that prohibits discrimination on the basis of ‘sex, gender identity and expression’ and provides for welfare measures for transgender people. Following the 18<sup>th</sup> Constitutional Amendment, a number of subjects, such as education, health and welfare, stand devolved to provincial governments.<sup>9</sup> Although Khyber Pakhtunkhwa, Punjab and Sindh assemblies have been considering proposed bills, no province has enacted a legislation so far.<sup>10</sup> This has in effect limited the implementation of *TPA, 2018* to Islamabad Capital Territory.
12. LGBTI children are generally not recognized by the law in Pakistan which impedes their ability to access protection measures instituted for children by the state. There are no laws to protect LGBTI minors from coercive medical or psychotherapeutic interventions intended to modify or conceal their sexual orientation, gender identity or expression and sex characteristics (SOGIESC).
13. There are no laws to ensure that same-sex couples can equally enjoy the right to marry and found family without persecution in Pakistan. The right to take on the family name, partake in inheritance and be safe from discrimination is not protected by law for children with same-sex parents.
14. The rights to freedom of assembly and association are regularly denied to LGBTI people. There are no policies to protect human rights defenders and organizations advocating for the rights of LGBTI people from the excesses of law enforcement and security agencies.
15. Although no law specifically prohibits free expression of one’s SOGIE, vague provisions of Sharia, among other laws, are invoked to censor any debate on the human rights of LGBTI people and deny LGBTI people the freedom to express their SOGIE in public. On the other hand, hate speech targeting LGBTI people is not prohibited or punishable by law.

### **Situation of LGBTI Rights Defenders**

16. The OHCHR has voiced concern over numerous cases of incitement to violence against journalists and human rights defenders in Pakistan, particularly against women and minorities.<sup>11</sup> LGBTI rights activists are particularly vulnerable to harassment and threats. In a span of two months in 2020, three transgender rights defenders were attacked in the capital.<sup>12</sup> An Amnesty International investigation uncovered an elaborate network of attackers who use ‘sophisticated’ and ‘sinister’ methods to target activists online.<sup>13</sup>

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<sup>9</sup> With the 18<sup>th</sup> Constitutional Amendment, all subjects, with the exception of those mentioned in the Federal Legislative List, are devolved to provincial governments. See Articles 141-159 of the Constitution for further details. The *Punjab Local Government Act, 2022* further devolved primary health, primary education and social welfare to local governments in the province.

<sup>10</sup> The Khyber Pakhtunkhwa Assembly passed a resolution on May 29, 2018 to adopt the *Transgender Persons (Protection of Rights) Act, 2018* under Article 144 of the Constitution that allows a provincial assembly to adopt an Act passed by the Parliament.

<sup>11</sup> Rupert Colville, Spokesperson for the UN High Commissioner for Human Rights, statement on September 8, 2020. “Press Briefing” accessed 6 May 2022 at: <https://www.ohchr.org/en/press-briefing-notes/2020/09/press-priefing-notes-pakistan?LangID=E&NewsID=26216>

<sup>12</sup> The European Parliament’s LGBTI Intergroup wrote to the Pakistani government to carry out impartial investigations on a series of attacks on LGBTI activists. The group also urged the Pakistani authorities to ensure effective protection be provided to transgender rights defenders in order to allow them to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions. “Members write to the government of Pakistan regarding the rights of trans human rights defenders, in particular the case of Nayyab Ali.” *The European Parliament LGBTI Intergroup*, December 07, 2020. Accessed May 5, 2022 at: <https://lgbti-ep.eu/2020/12/07/members-write-to-pakistani-government-regarding-the-rights-of-trans-human-rights-defenders-in-particular-the-case-of-nayyab-ali/>

<sup>13</sup> Amnesty International. *Human Rights under Surveillance: Digital Threats against Human Rights Defenders in Pakistan*. London: Amnesty International Ltd, 2018. Accessed May 6, 2022 at: <https://www.amnesty.org/en/documents/asa33/8366/2018/en/>

17. In December 2018, eighteen INGOs were denied registration and told to shut down their operations. Additional Secretary of the Interior Ministry alleged that “INGOs promote homosexuality” to justify further regulations in a Senate meeting.<sup>14</sup> The Government has since institutionalized policies requiring NGOs (receiving funds from foreign sources) to get a No Objection Certificate (NOC) from the Economic Affairs Division (EAD) in order to open bank accounts. A Memorandum of Understanding between an NGO and EAD bars the organization from engaging in rights-based advocacy and mandates regular disclosure of all organizational activities to representatives of state security agencies. Provincial commissions often delay or deny renewal of registration to LGBTI rights organizations. These restrictions have exposed LGBTI rights organizations to invasive surveillance, censorship and direct hurdles in their work.

### **Social Context of LGBTI People**

18. While there is cultural familiarity with the indigenous *Khawaja Sira* people, transgender identities have become recognized by the state and society more recently.<sup>15</sup> Intersex persons face stigma and societal pressure to conform. There is also little tolerance for diverse sexualities.<sup>16</sup>

## **Part II: Specific Issues**

### **Discrimination on the basis of SOGIESC**

19. Discrimination on the basis of SOGIESC (actual or perceived) is widespread in public and private spaces. In three years, 511 instances of discrimination were noted in documented cases of human rights abuses and the fear of discrimination was reported 724 times (77% cases) by LGBTI people as a reason to not file a complaint;<sup>17</sup> 68% transgender persons say that they are fearful of and actively avoid going to a police station.<sup>18</sup>
20. There is no comprehensive anti-discrimination law in Pakistan to protect people who are at a heightened risk of human rights abuses as a result of discrimination on the grounds of their SOGIESC.<sup>19</sup> A notable exception is the *TPA, 2018* that prohibits discrimination on the basis of ‘sex, gender identity and gender expression’ in access to public services and fundamental rights.

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<sup>14</sup> Junaidi, Ikram. “Senate panel recommends allowing INGOs to operate.” *Dawn*. November 6, 2018. <https://www.dawn.com/news/1443844> (accessed May 6, 2022).

<sup>15</sup> The cultural familiarity with gender outside the binary of ‘man’ and ‘woman’ is owed largely to the historical presence of indigenous groups such as *hijra* and *Khawaja Sira* in South Asia. While there is widespread familiarity with trans-femininity, there is little recognition of transgender men. There is a common misperception of congenital sexual ambiguity associated with the *Khawaja Sira*, however, the lived realities of people born with intersex variations are generally misunderstood in the society.

<sup>16</sup> Lesbian, gay and bisexual men and women keep their sexuality hidden due to threats or fear of backlash. Transgender and intersex men and women who identify as lesbian, gay or bisexual face even more stigma.

<sup>17</sup> As per the findings of Project ADAL, victims self-reported (i) fear of going to the police station alone, (ii) fear of being blackmailed, threatened or abused by the police, and (iii) fear of their complaint being rejected and not taken seriously by the police as reasons to not report human rights abuses in 77% cases. Similarly, fear of SOGIESC status being disclosed to media and family was another concurrent reason reported in 31% cases by victims for choosing to not report a violation. From 2019 – 2022, only 17% cases of human rights abuses were reported to the authorities. See Annex-2: *Human Rights Abuses and Violations on the basis of SOGIESC in Pakistan: A Briefing Paper*. Lahore: Project ADAL, 2022, p. 20.

<sup>18</sup> Jameel, M. & M. Osama. *In the Eyes of the Law: Legal Challenges to being transgender in Pakistan*. Lahore: Naz Male Health Alliance, 2018, p. 67.

<sup>19</sup> For further information see, International Commission of Jurists. *Pakistan: Transgender Persons (Protection of Rights) Act, 2018 – A Briefing Paper*. Geneva: International Commission of Jurists, March 2020, p. 18. Accessed May 05, 2022 at:

<https://www.icj.org/the-icj-releases-briefing-paper-on-pakistans-transgender-persons-protection-of-rights-act-2018/>

However, the Act neither specifies what constitutes discrimination nor provides penalties or remedies in case of a violation, except for a general enforcement provision.<sup>20</sup>

## Violence against LGBTI People

21. Pakistan's National Security Policy mentions protection of women and transgender persons from gender-based violence as a policy objective for human security.<sup>21</sup> However, violence against LGBTI people has seen an unprecedented rise in Pakistan recently. In the documented cases of abuse, reports of physical violence (up to 33%) and sexual violence (up to 36%) are frequent.<sup>22</sup> Twenty transgender people were killed in Pakistan in 2021; in some murder cases, family members were found to accept 'blood money' in return for pardoning the accused.<sup>23</sup> Procedural irregularities allow the perpetrators of violent crimes against transgender people to evade justice.<sup>24,25</sup>

### Gang Violence

22. There has been increased gang activity in various cities targeting young and vulnerable transgender women, particularly those who earn a living through sex work and performance.<sup>26,27</sup> Around 90 transgender people have been killed in Khyber Pakhtunkhwa since 2015.<sup>28</sup> In March 2022, six attacks on transgender people were documented with five casualties.<sup>29</sup> Local activists

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<sup>20</sup> **Section 18** of the *Transgender Persons (Protection of Rights) Act, 2018* enlists the National Commission on Human Rights (NCHR), National Commission on the Status of Women (NCSW) and Federal Ombudsman as redress mechanisms for complaints in addition to remedies available under civil and criminal laws.

<sup>21</sup> National Security Division. *National Security Policy of Pakistan: 2022-26*, Islamabad: National Security Division, 2022, p. 47. Accessed May 6, 2022 at: <https://static.theprint.in/wp-content/uploads/2022/01/NSP.pdf>

<sup>22</sup> See Annex-2: *Human Rights Abuses, 2022*, p. 17.

<sup>23</sup> Under amendments made through *Criminal Law (Second Amendment) Ordinance of 1990*, provisions existed in the law for heirs of a murder victim to accept financial compensation (*diyat*) as 'blood money' in return for pardoning the accused. Although significant amendments have been made in the criminal laws to address lacunae in matters of so-called 'honor killings' in 2004 and 2016, legal loopholes persist. As per reports received by us, murders of transgender people are still not investigated by the police as 'honor crimes'.

<sup>24</sup> The case of 23-year old Alisha, a transgender woman from Peshawar, is particularly illustrative of this. Alisha was taken to Lady Reading Hospital in Peshawar with multiple gun wounds in May 2016. She reportedly faced discrimination by the hospital staff and as a result of not receiving emergency care in time, succumbed to her wounds. One of the accused, Rehmatullah, was acquitted by the Sessions Court due to lack of evidence in 2019. The second and main accused, Fazzal Gujjar, was convicted in July 2019 by the Sessions Court, however, he was acquitted by the High Court in February 2021 when the prosecution failed to prove its case, as the prescribed rules and procedure for recording the statements were not followed by the investigation officers. For more information see "Man acquitted in transgender person murder case." *Dawn*, February 24, 2021. <https://www.dawn.com/news/1609109> (accessed May 6, 2022).

<sup>25</sup> Khan, Ahtisham. "No Respect for Life, No Path to Justice." *The Express Tribune*. March 23, 2019. <https://tribune.com.pk/story/1935811/no-respect-life-no-path-justice> (accessed May 6, 2022).

<sup>26</sup> Survivor accounts indicate that these groups of men are highly organized and they target vulnerable transgender women in a distinct pattern of abuse. If a transgender woman complains to the authorities, they perpetrate a well-coordinated attack on her that may end in murder. In some cases, gang members throw acid on or shoot the targeted woman in the legs. See further in Annex-2: *Human Rights Abuses, 2022*, p. 32.

<sup>27</sup> Shah, Hassan Bin Usman et al. "Challenges faced by marginalized communities such as transgenders in Pakistan." *The Pan African medical journal* 30, no. 96 (2018), doi:10.11604/pamj.2018.30.96.12818

<sup>28</sup> As per Blue Veins, 90 transgender people have been killed in Khyber Pakhtunkhwa since 2015 and 150 others subjected to various forms of physical violence. Mohmand, Arshad. "Trans persons are Soft Targets in Khyber Pakhtunkhwa." *Voice PK*. March 19, 2022. <https://voicepk.net/2022/03/transpersons-are-soft-targets-in-khyber-pakhtunkhwa/> (accessed May 6, 2022).

<sup>29</sup> Our working group monitored at least six incidents of targeted violence against transgender persons with five casualties in Khyber Pakhtunkhwa in less than three weeks in March, 2022. See further details in Annex-2: *Human Rights Abuses, 2022*, p. 36.

report that gangs operate with impunity in Peshawar and Mardan. Even when victims or their families pursue cases with the authorities, the police fail to either register proper complaints or carry out prompt, thorough and competent investigations that could lead to convictions.<sup>30</sup> The police have threatened harm to the activists who highlight the direct or indirect complicity of police in these attacks.<sup>31</sup>

### Sexual Violence

23. In three years, 180 cases of rape of LGBTI people were documented in Punjab and Khyber Pakhtunkhwa; majority went unreported.<sup>32</sup> Nearly 56% transgender people report being tricked, lied to or physically forced into having sex;<sup>33</sup> 35% experience drug-facilitated assault, including gang rape.<sup>34</sup> Transgender women engaged in informal or criminalized professions are least likely to report rape. The perception that rape cases involve a prolonged and arduous process is a major deterring factor for victims. On average, it takes up to 16.8 months for a rape case to reach conclusion, as opposed to the legally mandated 3 months.<sup>35</sup> The conviction rate in rape cases was 0.3% nationally in 2021.<sup>36</sup> Major factors behind acquittals in rape cases are resiling of victims (58%) or witnesses (52%),<sup>37</sup> resulting in out-of-court settlements (up to 76%).<sup>38</sup> Due to delayed medical examination,<sup>39</sup> incomplete forensic evidence,<sup>40</sup> and an unfriendly environment in courts

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<sup>30</sup> International Commission of Jurists. "International Transgender Day of Visibility: End impunity for attacks against transgender people." Geneva: International Commission of Jurists. March 31, 2022. <https://www.icj.org/international-transgender-day-of-visibility-end-impunity-for-attacks-against-transgender-people/> (accessed May 7, 2022).

<sup>31</sup> Shah, Bukhar Syed. "DSP enters Peshawar press club, threatens transgender persons." *The News International*. October 13, 2021. <https://www.thenews.com.pk/print/899936-dsp-enters-peshawar-press-club-threatens-transgender-persons> (accessed May 7, 2022).

<sup>32</sup> See Annex-2: *Human Rights Abuses, 2022*, p. 17.

<sup>33</sup> National AIDS Control Program. *Integrated Biological and Behavioral Surveillance in Pakistan, 2016-17*. Islamabad: National AIDS Control Program, 2017, p. 24.

<sup>34</sup> Kirmani, Nida & Rahul Hasnain. *The Hidden Crisis: The Causes and Consequences of Sexualised Drug Use ('Chemsex') amongst Key Populations in Pakistan*. Lahore: Dostana Male Health Society and Dareecha Male Health Society, 2022, p. 21.

<sup>35</sup> In Islamabad Capital Territory, it takes an average of 8.8 months and in Sindh it takes 16.8 months for a rape case to reach conclusion. See infra notes 37 and 38.

<sup>36</sup> War Against Rape. "Fact Sheet. Sexual and Gender-based Violence (SGBV) (Jan-2020 to Dec-2021)." Karachi: *War Against Rape (WAR)*, 2022. Accessed May 8, 2022 at: <http://war.org.pk/wp-content/uploads/2022/05/WARs-SGBV-Factsheet-Jan-2020-to-Dec-2021-1.pdf>

<sup>37</sup> Lari, Maliha Zia et al. *Gap Analysis on Investigation and Prosecution of Rape and Sodomy Cases: Strengthening the Criminal Justice System's Response to Sexual Violence in Sindh*. Karachi: Legal Aid Society, 2021, p. 15.

<sup>38</sup> The out-of-court settlement rate in Sindh is 53% and in Islamabad it is as high as 76%. See Ashraf, Adil et. al. *Gap Analysis of Investigation and Prosecution of Rape and Sodomy Cases in Islamabad Capital Territory*. Islamabad: Legal Aid Society, 2022, p. 76.

<sup>39</sup> Warraich, Sohail Akbar. *Access to Justice for Survivors of Sexual Assault: A Pilot Study*. Islamabad: National Commission on the Status of Women (NCSW), 2015 (2<sup>nd</sup> Edition), 2017.

<sup>40</sup> An analysis of 50 rape cases by the Legal Aid Society (see supra note 37; pp. 27-28) in Sindh also found that in 42% of the cases medical examination of the victim was conducted after a period of 72 hours of the occurrence of crime which essentially means that the medical evidence lost its conclusiveness or weakened. The average delay was 47 days. In 50% cases, no chemical analysis was conducted and in 60% cases, no DNA analysis was conducted or the police failed to submit samples of the victim and accused for the analysis. An analysis of 54 cases in Islamabad by Legal Aid Society (see supra note 38, p. 52) revealed that it took an average of 121.4 days to return a forensic report as opposed to legally required 14 days. See also Annex-6: *Access to Justice for Transgender People in Pakistan: A Report*. Karachi: Subrang Society, 2022, p. 5.

<sup>41</sup> It has also been reported that rape kits are not available in hospitals for conducting medico-legal examinations of rape victims in a timely manner, See Rasool Muzzamal & Nauman Rasool. "DNA evidence in

and police stations<sup>42</sup> (where women and transgender people are largely absent),<sup>43</sup> there is little trust in the justice system. The threat of retaliation by perpetrators is often used to coerce victims into ‘compromising’ on complaints, if filed, despite rape being a non-compoundable offence.

24. We appreciate the Government for passing the *Criminal Law Amendment (Anti-Rape) Act, 2021* which amends the definition of rape, expanding its scope and making it a ‘gender neutral’ offence.<sup>44</sup> This has major implications, especially for transgender victims of rape, in that it allows for rape cases to be tried under Sections 375-76 of the Pakistan Penal Code instead of Section 377 whose vague language and lack of distinction on consent is exploited as a blackmailing tool.<sup>45</sup>
25. The *Anti-Rape (Investigation and Trial) Act, 2021* amends and centralizes key procedural aspects regarding investigation and trial methods in rape cases.<sup>46</sup> The Government did not engage in a broad consultative process while passing this law and the Ministry of Law and Justice argued against including transgender people in the ambit of the law citing ‘medico-legal and administrative complications.’<sup>47</sup> This has essentially created two legal channels for processing of rape cases: women and children are directed to a joint investigation team and special courts, whereas the cases of men and transgender people are referred to regular police stations and district sessions courts. Not only is the exclusion of transgender people from such protections highly

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sexual assault cases in Pakistan”. *Medicine, Science and the Law* 60, no. 4 (2020): 270-277.  
doi:10.1177/0025802420934240

<sup>42</sup> The cases reported to our working group indicate that a culture of victim blaming is fairly common at police stations. For instance, in January 2018, the police refused to register the FIR of an 18-year-old transgender woman gang-raped by nine men. The Station House Officer rejected the victim's claim, counter-accusing her of trying to "settle scores" with a friend "by using the allegations of gang rape." See further at Akbar, Ali. "Transgender person allegedly gang-raped in Peshawar." *Dawn*. January 23, 2018.  
<https://www.dawn.com/news/1384776> (accessed May 22, 2022).

<sup>43</sup> As per Law and Justice Commission of Pakistan, in 2020 only 6 out of 113 judges of high courts across the country were women; and out of 198 members of 7 bar councils across the country, only 6 were women. See further at <http://ljcp.gov.pk/>

<sup>44</sup> The *Criminal Law (Amendment) Act, 2021 (Act no. LVI of 2021)* was passed by the Parliament on December 1, 2021. Previously, **Section 375** of the *Pakistan Penal Code, 1860* defined rape as an offense committed by a man (or a group of men) against a woman or a minor girl. The rape of men and transgender people, specifically involving anal penetration, often did not fall into this category and was therefore tried under **Section 377** as “carnal intercourse against the course of nature”. Notably, Section 377 does not make any distinction on the basis of consent and prescribes a lower penalty for rape.

<sup>45</sup> Although there is not enough consolidated data on this in Pakistani context, multiple accounts of transgender people and gay men over the years suggest that the police regularly use Section 377, among other laws, to harass people found engaging in intimate contact in public. This includes gangs (and in some cases, police officers) forcibly entering private spaces and recording sexual acts between consenting adults in order to extort money or sexual favors. Several cases have been documented in which gang members rape transgender women and record videos of the act, later threatening to leak the videos on social media or report the victim to authorities as a ‘sex worker’. It is to be noted that Section 377 requires a particular level of evidence for conviction. Therefore, while convictions and even written complaints are rare (leaving little to no paper trail), the law is readily and widely used as blackmailing tool. A similar pattern has been seen in other jurisdictions like India. For more information see International Commission of Jurists. *Unnatural Offences: Obstacles to Justice in India Based on Sexual Orientation and Gender Identity*, Geneva: International Commission of Jurists, 2017. Accessed May 8, 2022 at:

<https://www.icj.org/wp-content/uploads/2017/02/India-SOGI-report-Publications-Reports-Thematic-report-2017-ENG.pdf>

<sup>46</sup> The *Anti-Rape (Investigation and Trial) Act, 2021 (Act No. XXX of 2021)* was passed by the Parliament on December 01, 2021. It provides for creation of anti-rape cells at district level, in-camera testimony during trial in special courts and additional protections for witnesses. Notably, some of these provisions have already been in effect since the passage of the *Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016*.

<sup>47</sup> The Act defines victim as “woman or child subjected to scheduled offenses.” For further information on decision to not include transgender people under the ambit of the law, see the “Press Release” of the meeting of Senate Standing Committee on Law and Justice, dated September 01, 2021.  
<https://senate.gov.pk/com/pressreleasedetail.php?id=152&pressid=4010> (accessed May 7, 2022).



misguided, this legal segregation in rape cases on the basis of sex and gender identity of the victim has created ground for discrimination and harm against LGBTI victims of rape, thus inhibiting their access to justice.

### **Familial Abuse**

26. Familial control on women's sexuality and mobility is common. In the case of lesbian, bisexual and queer (LBQ) women, this extends to domestic violence, forced marriage and corrective rape.<sup>48,49</sup> Despite legal prohibition of domestic violence and forced marriages, these practices are quite prevalent; 70-90% women experience domestic violence at least once in their lives.<sup>50</sup> In some cases, family members have murdered transgender women in the name of 'honor'.<sup>51</sup>
27. The provincial laws on domestic violence lack effective implementation;<sup>52</sup> the conviction rate is 1-2.5% in Punjab.<sup>53</sup> An adult transgender person facing abuse cannot access most protection measures under these laws; a minor may qualify if they are living with natal or foster family.<sup>54</sup> That these laws don't recognize the specific circumstances of LGBTI people, who suffer from familial abuse and are more vulnerable to violence due to homelessness, is a major oversight.<sup>55</sup> To date, only one protection centre has been established in Pakistan for transgender persons.<sup>56</sup>

### **Intimate Partner Violence**

28. In 18% violence cases against LGBTI people, the perpetrators are intimate partners of victims; LBQ women in forced marriages are especially vulnerable.<sup>57</sup> Transgender women are also frequently subjected to acid attacks and murder by spurned or jealous partners. As a signatory to

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<sup>48</sup> O Pakistan. *Where I Can Actually Be Me: Experiences of Violence and Discrimination*. In *Violence: Through the lens of Lesbian, Bisexual Women and Transgender People in Asia*. New York: The International Gay and Lesbian Human Rights Commission (IGLHRC), 2014. pp. 141-160.

<sup>49</sup> See further in Annex-4: *Familial Control over Female Sexuality in Pakistan: Survey Report and Case Studies*. Karachi, 2022. See also, Annex-2: *Human Rights Abuses*, 2022, p. 44.

<sup>50</sup> Perveen, Rakhshinda. *Beyond Denial: Violence Against Women in Pakistan A qualitative review of reported incidents*. Karachi: Aurat Foundation, 2012. Accessed May 8, 2022 at:

<https://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/Annual%20Report%202012%20VAW%20pdf.pdf>

<sup>51</sup> Neengar Society. *Cruel Numbers: A research on reported incidents of murder, rape and hate crimes against LGBT community of Pakistan*. Multan: Neengar Society, 2015. See also Shah, Sadia Qasim. "Like women, transgender persons too honour killing victims." *Dawn*. August 28, 2018.

<https://www.dawn.com/news/1429344> (accessed May 22, 2022).

<sup>52</sup> Abdullah, Tahira; Malia Zia Lari and Naeem Mirza. *Deeds Not Words: Civil Society's Alternate Report on CEDAW 2020*. Karachi: Aurat Publication & Information Service and Legal Aid Society, 2020. Accessed May 8, 2022 at:

<https://www.af.org.pk/Reports/Civil%20Society%20Alternative%20Report%20on%20CEDAW%20Pakistan%202020.pdf>

<sup>53</sup> Tanwir, Maryam; Shailaja Fennel; Hafsa Rehman Lak; and Salman Sufi. "Not Accepting Abuse as the Norm: Local Forms of Institutional Reform to Improve Reporting on Domestic Violence in Punjab". *Journal of International Women's Studies* 20, no. 7 (2019): 129-153.

<sup>54</sup> Under the *Punjab Protection of Women against Violence Act, 2016*, girls under 18 years and boys up to the age of 12 years qualify for such protection. The *Sindh Domestic Violence (Prevention and Protection) Act, 2013* extends protection to minors regardless of gender as long as they are living with their natal or foster family. Adult transgender persons can launch a First Information Report at a police station for acts of physical violence committed against them by their family members. For 'less serious wounds', they may require the permission of a magistrate in order to launch a criminal complaint. This does not include acts of psychological abuse.

<sup>55</sup> Noor, M. Naveed. "Violence against homeless gay and transgender youth in Pakistan – a short report." *Vulnerable Children and Youth Studies* 17, no. 2 (2022): 159-164. doi: 10.1080/17450128.2022.2058135

<sup>56</sup> "First Transgender Protection Centre opens in Islamabad." *Dawn*. October 14, 2021.

<https://www.dawn.com/news/1651873> (accessed May 8, 2022).

<sup>57</sup> See Annex-2: *Human Rights Abuses*, 2022, p. 19.

CEDAW, Pakistan has undertaken initiatives on protection of women from violence. The Punjab Government established a task force on SDG Goal 5. However, the lack of an inclusive approach has left women marginalized on the basis of SOGIESC vulnerable. Activists point out that faulty investigation methods lead to perpetrators walking free in violence cases.<sup>58</sup> Since relationships with male partners are not legally recognized or socially accepted,<sup>59</sup> and may even face criminal charges, transgender women cannot access state protection mechanisms available under domestic violence laws.

### **Cyber Abuse**

29. In Karachi, more than 200 threatening video and audio messages were sent to transgender people in a month;<sup>60</sup> a 70% overall increase in cyber harassment was seen in 2020.<sup>61</sup> LGBTI victims of cyber abuse report facing hostility and threats of reverse victimization when filing a complaint.

### **Police Abuse**

30. Sections 292–94 of the Pakistan Penal Code on the offense of ‘obscenity’ are broad and vague in their language and are used by the police to intimidate and harass LGBTI persons in public. Section 144 of the Code of Criminal Procedure Code and other colonial era laws on ‘unlawful assembly’ give wide-ranging powers to the police and are regularly used to disrupt citizen’s right to peaceful assembly.<sup>62</sup> Laws banning the use of alcohol and recreational drugs have also been used as a pretext to conduct raids and arrests at LGBTI social gatherings and create an environment of fear for LGBTI persons. Around 35 incidents of police abuse were documented in 2021–22 alone.<sup>63</sup>
31. The arbitrary application of laws that empower the police to arrest without warrant and penalize persons engaged in ‘vagrancy’ or ‘begging’ create an environment of harassment for vulnerable

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<sup>58</sup> Ali, Manzoor. “Men’s jealousies drive murders of trans persons in Khyber Pakhtunkhwa.” *Dawn*. March 27, 2022. <https://www.dawn.com/news/1682017> (accessed May 9, 2022).

<sup>59</sup> See Paragraph 53 for further details.

<sup>60</sup> Human Rights Commission of Pakistan. *State of Human Rights in Pakistan in 2021, Lahore: Human Rights Commission of Pakistan, 2022*, p. 19. Accessed May 9, 2022 at: <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2022-State-of-human-rights-in-2021.pdf>

<sup>61</sup> Digital Rights Foundation. *Cyber Harassment Helpline Report: January 2020 – December 2020*. Lahore: Digital Rights Foundation, 2021. Accessed May 9, 2022 <https://digitalrightsfoundation.pk/wp-content/uploads/2021/05/Helpline-Report-2020.pdf>

<sup>62</sup> Human Rights Commission of Pakistan. *Freedom of Peaceful Assembly in Pakistan: A Legislative Review*. Lahore: Human Rights Commission of Pakistan, 2022. Accessed June 22, 2022 at: <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2022-Freedom-of-peaceful-assembly-in-Pakistan.pdf>

<sup>63</sup> See Annex-2: *Human Rights Abuses, 2022*, pp. 23-25.

groups such as poor and homeless transgender youth engaged in sex work.<sup>64</sup> Laws criminalizing prostitution are used to harass and arbitrarily detain gay men and transgender women suspected of engaging in sex work. Several cases of physical and sexual abuse in police custody have been documented in the past three years and in the absence of a law banning torture, despite Pakistan being a signatory to Convention against Torture, perpetrators are able to evade accountability.<sup>66</sup>

32. The police regularly conduct raids or otherwise interfere in private spaces of LGBTI people, often demanding bribes or blackmailing persons found engaging in ‘illicit activities’, including, but not limited to, intimate contact. A lot of such raids are conducted illegally (e.g. by using back-dated or false warrants), however, victims are forced to comply due to fear of being arrested or ‘outed’ to their family or neighbours.<sup>68</sup> In some cases, victims lost their housing or suffered trauma.

### Abuse in Prisons

33. In hearing the appeal of a transgender inmate assaulted by other prisoners in Landhi Jail, Karachi, the Sindh High Court noted that the Government had failed in discharging its obligations under

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<sup>64</sup> In addition to special laws like the *Punjab Vagrancy Ordinance, 1958* and *Khyber Pakhtunkhwa Vagrancy Restraint Act, 2020* to restrain begging, the **Sections 55 and 109** of the *Criminal Procedure Code, 1898*, that empower the police to arrest ‘habitual offenders’ and ‘vagabonds’, are regularly used by officers to arrest persons engaged in begging and subject them to harassment and abuse. Furthermore, **Sections 107 and 151** of the *Criminal Procedure Code*, in conjunction with **Section 22.49, Subsection (g)** of the Police Rules, are used to arrest persons who are ‘suspected’ of disrupting public peace and require a surety or bond from them as security for good behaviour. These colonial era laws give wide ranging powers to the police and create an environment of fear for LGBTI persons in public places.

<sup>65</sup> Evidence collected by Justice Project Pakistan indicates that poor people are most likely to fall prey to police torture, including daily wage workers, domestic workers and farmers. See Justice Project Pakistan. *Policing as Torture: Data Analysis of Punjab Police’s Use of Unlawful Torture*. Lahore: Justice Project Pakistan, 2019. Accessed May 22, 2022 at:

[https://www.jpp.org.pk/wp-content/uploads/2019/02/2019\\_01\\_13\\_PUB\\_Policing\\_as\\_Torture.pdf](https://www.jpp.org.pk/wp-content/uploads/2019/02/2019_01_13_PUB_Policing_as_Torture.pdf)

See also, Noor, Naveed M., Joanne Bryant, John de Wit & Martin Holt. “Resourcefulness of homeless young people who practise sex work in Pakistan: a qualitative study.” *Sexual Health*, 18 no. 5 (2021): 378–384. doi:10.1071/SH21024.

<sup>66</sup> Pakistan ratified the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment in 2008, however, no law has been passed in Pakistan to criminalize torture. The *Torture and Custodial Death (Prevention and Punishment) Bill 2021* has only been passed by the Senate. See Justice Project Pakistan (JPP) & World Organization Against Torture (OMCT). *Criminalising Torture in Pakistan: The Need for an Effective Legal Framework*. March, 2021. Accessed May 22, 2022 at:

[https://www.jpp.org.pk/wp-content/uploads/2021/03/2021\\_03\\_11\\_Criminalising-Torture\\_JPP-OMCT-final.pdf](https://www.jpp.org.pk/wp-content/uploads/2021/03/2021_03_11_Criminalising-Torture_JPP-OMCT-final.pdf)

<sup>67</sup> Police torture is widespread and systemic in nature. A total of 3687 cases were documented by Justice Project Pakistan in Lahore and Faisalabad districts (out of 1867 MLCs in Faisalabad, over 76% indicated torture). See Justice Project Pakistan. *Policing as Torture*, 2019, p. 1. In 2021-22, thirty-five incidents of police abuse were documented by Project ADAL in Punjab and Khyber Pakhtunkhwa with 40% indicating physical abuse. At least five incidents of torture in police custody were reported in Lahore city alone. In these cases, the victims were all transgender people engaged in begging and sex work. Some victims were stripped naked and beaten at the police stations or in public. In September 2021, an organized campaign was launched in Abbottabad district to arrest transgender people engaged in sex work and expel them from the district. First-hand reports received by us indicate that several people were stripped naked and beaten at police stations. See also Annex-2: *Human Rights Abuses, 2022*, pp. 22-25.

<sup>68</sup> In some cases, local media channels are also complicit in harassment. Multiple cases of crime reporters and citizen journalists harassing transgender people and gay men (especially those perceived as involved in sex work) on camera, in public spaces as well as in their homes, in order to expose ‘homosexual activity’, have been documented. Such harassment of LGBTI people is particularly widespread at/following the annual Aurat March (Women’s March). There are no national/local media regulatory guidelines on privacy of a person’s SOGIESC. See further at COC Nederland. *A Country Context Analysis on the State of LGBTI Movement in Pakistan*, Amsterdam: COC Nederland, 2022.

*TPA, 2018* by not establishing separate prisons for transgender inmates.<sup>69</sup> Notably, the prison in question held an inmate population twice its capacity; the national overcrowding rate is 133.7% with over 70% prisoners awaiting or on trial.<sup>70</sup> The Court held that ‘capacity issue’ is not a sufficient excuse when it comes to fundamental rights. Section 6 of *TPA, 2018* holds that transgender men and women will be held in separate cells, irrespective of the gender they identify as. In other contexts, protective custody has been found to be synonymous with isolation or solitary confinement so that individuals subject to it are ‘punished’ as a result of their vulnerable status.<sup>72</sup> While safety has been cited as a concern by Pakistani authorities to justify separate cells for transgender inmates (instead of undertaking a thorough assessment of specific safety needs of transgender inmates that takes into account their own viewpoint about their safety and strengthening security systems within prisons),<sup>73</sup> it is to be noted that the Government has taken no steps to train or educate prison authorities on the needs and vulnerabilities of transgender people.

### Right to Recognition

34. The *TPA, 2018* allows for recognition of ‘self-perceived’ gender identity on all identity documents, including National Identity Card (NIC) and passport, for citizens above the age of 18 years.<sup>74</sup> The law, hailed by human rights groups as ‘progressive’, offers Legal Gender Recognition

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<sup>69</sup> In a reply to the Court, the Senior Superintendent, Central Prison, Karachi admitted that there were no separate barracks established for transgender persons, as mandated by the law, due to a ‘capacity issue’ at the prison. Case file: MA No.8156/2020, CR. Appeal no.371/2020, Sindh High Court.

<sup>70</sup> Institute for Crime and Justice Policy Research. “World Prison Brief.” September, 2021.

<https://www.prisonstudies.org/country/pakistan/> (accessed June 22, 2022).

<sup>71</sup> International Crisis Group. *Reforming Pakistan’s Prison System*. Islamabad/Brussels: International Crisis Group, 2011. Accessed May 10, 2022 at:

<https://www.crisisgroup.org/asia/south-asia/pakistan/reforming-pakistan-s-prison-system>

<sup>72</sup> American Civil Liberties Union. *End the Abuse: Protecting LGBTI Prisoners from Sexual Assault*. New York: American Civil Liberties Union, 2014. Accessed May 10, 2022 at:

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/prison-rape-elimination-act-prea-toolkit-end-abuse-protecting-lgbti>

<sup>73</sup> In MA No.8156/2020, CR. Appeal no.371/2020, Senior Superintendent Central Prison, Karachi argued that the transgender inmate in question was being held in a separate cell under constant CCTV surveillance, as mandated by **Sections 38(d)** and **39(c)** of the *Sindh Prisons Rules and Correction Services Act, 2019*. The Court, however, noted that the Government failed in discharging its duties under **Section 6** of the *Transgender Persons (Protection of Rights) Act, 2018* and found that the Senior Superintendent was entirely unaware of the Act itself. See supra note 69.

<sup>74</sup> **Section 3(1)** of the *Transgender Persons (Protection of Rights) Act, 2018* states, “a transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.” **Section 3(2)** states that transgender persons shall have the right to have their “self-perceived gender identity registered with all government departments including, but not limited to, NADRA.”

(LGR) as a matter of right without medical or diagnostic requirements.<sup>75</sup> A distinct gender marker of ‘X’ (in addition to ‘M’ and ‘F’) has been made available on identity documents since at least 2016.<sup>76</sup>

35. Despite clear legal provisions allowing for recognition of ‘self-perceived’ gender identity, the state departments, including National Database and Registration Authority (NADRA), regularly ask for ‘medical certificates’ for gender verification,<sup>77</sup> most frequently from persons changing their gender marker from ‘Male’ to ‘Female’ or ‘Female’ to ‘Male’.<sup>78</sup> The NADRA policy also prohibits a transgender person from changing their gender marker to ‘Male’ or ‘Female’.<sup>79</sup> These centres remain inaccessible for most transgender people, especially in smaller towns.<sup>80</sup> It is advised that LGR processes must be “quick, transparent and accessible” and effectively uphold the rights of transgender people, including their right to self-determination.<sup>81</sup> However, by mandating transgender people to choose ‘X’ gender marker on their identity documents, NADRA has effectively stripped away the citizen’s right of self-determination of gender guaranteed in the law.
36. The Rules of Business for the *TPA, 2018* notified in 2021 are in direct contravention to the parent Act and reduce the ambit of the law to individuals opting for an ‘X’ gender marker on NIC, thus depriving a significant proportion of transgender population from accessing public services.<sup>82</sup> By creating a third gender category in state systems and practically requiring any individual who

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<sup>75</sup> See Amnesty International. “Pakistan: Historic rights advances for tribal areas and transgender people.” May 25, 2018.

<https://www.amnesty.org/en/latest/news/2018/05/pakistan-historic-advances-for-rights-tribal-areas-transgender-people/> (accessed May 5, 2022).

Also, Human Rights Campaign. “Historic: Pakistan Enacts Monumental Legislation Protecting Transgender People from Discrimination.” May 22, 2018.

<https://www.hrc.org/news/pakistan-enacts-legislation-protecting-trans-people-from-discrimination> (accessed May 5, 2022).

Also, Mathur, Samidha. “Pakistan’s New Transgender Law: Lessons to be learnt.” Oxford Human Rights Hub. July 10, 2018. <https://ohrh.law.ox.ac.uk/pakistans-new-transgender-law-lessons-to-be-learnt/> (accessed May 5, 2022).

And International Lesbian, Gay, Bisexual, Trans and Intersex Association Asia. “Statement in response to the Transgender Persons (Protection of Rights) Act in Pakistan.” June 12, 2018.

<https://www.fasia.org/news/2018/6/9/statement-in-response-to-the-transgender-persons-protection-of-rights-act-in-pakistan> (accessed May 5, 2022).

<sup>76</sup> The National Database and Registration Authority (NADRA) policy on issuing CNICs to transgender persons with an ‘X’ gender marker was developed following a writ petition filed in Lahore High Court in 2016 and subsequently reported in the judgment, *Mian Asia v. Federation of Pakistan*, W.P. No.31581/2016. See Annex-3: Jameel, M. & Hussain Zaidi. *Legal Gender Recognition in Pakistan*, 2022, p. 5 for the full policy. The first passport with an ‘X’ gender marker was issued in 2017. See further at: <https://www.dawn.com/news/1341545>

<sup>77</sup> Transgender people having undergone the process have reported that the medical superintendents at designated government hospitals is authorized to issue such a certificate after a physical examination of the body of a person to determine their gender status. The certificate also mentions the status of any surgical procedures performed on the person. There is no written policy specifying the criteria or protocols for conducting such medical examinations. The application is, therefore, also entirely arbitrary. See infra note 78.

<sup>78</sup> Jameel, M. & Hussain Zaidi. *Legal Gender Recognition in Pakistan: the hurdles and limitations*. Lahore: Have Only Positive Expectations – HOPE, 2022.

<sup>79</sup> Ibid. See also NADRA policy available on its website: [https://www.nadra.gov.pk/Registration\\_Policy\\_Urdu.pdf](https://www.nadra.gov.pk/Registration_Policy_Urdu.pdf)

<sup>80</sup> Fatmah M. & Hajrah Yusaf. “The (In)Accessibility of NADRA and Union Council Processes for Women and Gender Minorities.” *Gender Bi-Annual* 3(2022), Saida Waheed Gender Initiative, Lahore University of Management Sciences (LUMS), 2022.

<sup>81</sup> Parliamentary Assembly of the Council of Europe. “Discrimination against Transgender People in Europe, Resolution 2048”, 2015, paragraph 6.2.1.

<sup>82</sup> According to a study by Naz Pakistan, only 3% individuals surveyed obtained an NIC with an ‘X’ gender marker in 2018, and less than 10% of the respondents said that they were able to obtain an NIC as per their preferred option. One of the key reasons to not opt for an ‘X’ gender marker on documents was fear of discrimination. See Jameel M. & M. Osama, *In the Eyes of the Law*, 2018, p. 41.

appears gender non-conforming to opt for nothing except this category on identity documents in order to access their basic rights as a citizen,<sup>83</sup> a condition of legalised discrimination on the basis of sex and gender has been created in Pakistan.

37. In October 2021, the *Transgender Persons (Protection of Rights) Amendment Bill* was introduced in the Senate to establish medical boards for determining the gender of transgender persons (instead of self-perceived gender identity) and prohibit “sex reassignment surgery or any other treatment to change the genital features... on the basis of any psychological disorder or gender dysphoria.”<sup>84</sup> The central premise of the 2018 Act is the concept of ‘gender sovereignty’, as noted by the International Commission of Jurists,<sup>85</sup> therefore, this Bill is not only in contravention to international human rights law on the subject and Pakistan’s obligations under various treaties and conventions, it contradicts the fundamental rights of dignity, privacy and bodily autonomy of citizens. Simultaneously, Sections 2 and 3 of *TPA, 2018* have been challenged in the Federal Shariat Court for being ‘contrary to injunctions of Islam’.<sup>86</sup> Although the case is *sub judice*, it is concerning that the Government has expressed reluctance toward adopting international standards on LGR.<sup>87</sup>

### Right to Health

38. The Sehat Sahulat national health insurance program is accessible for citizens through registration of family, thereby excluding refugees and same-sex couples. The program is open to transgender people, albeit enrolment is conditional on having an NIC with ‘X’ gender marker.
39. The *Code of Ethics of Practice for Medical and Dental Practitioners, 2011* prohibits discrimination on the basis of sex, gender and sexual orientation. However, discrimination is widespread – 92% transgender people report discrimination in healthcare access in Khyber

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<sup>83</sup> It is to be noted that NADRA policy on gender, colloquially referred to as ‘appearance and desire policy’, empowers its data entry clerks (and zonal officers in charge) to evaluate the gender of a candidate applying for NIC on the basis of their physical appearance and their preferred gender option. If a person presents with an ambiguous gender expression or there is a discrepancy in the gender status on the documents presented, the candidate is required to present medical evidence to substantiate their gender status. The candidate may also be referred to an internal complaint resolution board that has the power to deliver a decision on their case and its proceedings remain confidential.

<sup>84</sup> The *Transgender Persons (Protection of Rights) (Amendment) Bill, 2021* submitted by the Jamaat-e-Islami Senator, Mushtaq Ahmad, specifically seeks to amend Section 3 of the 2018 Act to add provisions for recognizing transgender persons ‘as per the advice of the medical board’. It does not add any corresponding provision, or clarify procedure, for determining the gender for non-transgender persons. The text of the Bill is available here: [https://senate.gov.pk/uploads/documents/1637142412\\_739.pdf](https://senate.gov.pk/uploads/documents/1637142412_739.pdf) (accessed May 22, 2022).

<sup>85</sup> See International Commission of Jurists, *Pakistan: Briefing Paper*, 2020, p. 4.

<sup>86</sup> An openly anti-LGBTI campaign launched by the proponents of the petitions and amendment Bill, associated with the Jamaat-e-Islami, particularly on social media, has created a sense of fear and distress among the LGBTI community. Social critic and TV personality, Orya Maqbool Jan, is among those who have directly targeted transgender activists on their platforms, in a broader attack on the rights of transgender people in Pakistan claiming it as a ‘Western conspiracy’ to threaten family values.

<sup>87</sup> In the hearing on March 03, 2022 the Chief Justice Federal Shariat Court criticized the Ministry of Human Rights reply to the court which referenced Yogyakarta Principles. Consequently, the Ministry of Human Rights decided to amend its response to exclude all such references to LGBTI rights. For further information see: “Ministry to amend ‘response’ on law for eunuchs.” The Express Tribune. March 04, 2022. <https://tribune.com.pk/story/2346329/hr-ministry-to-submit-amended-response-over-transgender-act> (accessed May 22, 2022).

Pakhtunkhwa,<sup>88</sup> 74% transgender people in Punjab prefer not going to public hospitals due to fear of discrimination.<sup>89</sup>

## Sexual and Reproductive Health and Rights (SRHR)

40. Wilful denial of contraception and health services by partners and families, particularly in cases of forced marriages of LBQ women, is not recognized as a form of domestic violence. Pakistani women have limited access to birth control (23.6%);<sup>90</sup> nearly 46% pregnancies are unintended and 54% end in induced abortions. Women are forced to access back-alley or self-induced abortions due to denial of legitimate services by medical practitioners.<sup>91</sup> The family planning initiatives are not LGBTI-inclusive and Comprehensive Sexuality Education is not part of any curriculum. LGBTI people report facing prejudice from healthcare providers while accessing SRHR at public hospitals.

## HIV/AIDS

41. The epidemic of AIDS continues to threaten the lives and wellbeing of LGBTI people. An 84% increase in new infections was reported in Pakistan in 2021.<sup>92</sup> The prevalence rate for HIV among transgender people stands at 7.1% (for sex workers, it is 7.5%) and for men who have sex with men at 5.4% (for sex workers, it is 5.6%).<sup>93</sup> Sex workers in both subsets also report higher rates of discrimination and violence.<sup>94</sup> Services utilization rate is still 13-15% whereas less than 4% HIV+ people are able to seek treatment in these key populations.<sup>95</sup>

42. As per UNAIDS, the HIV response in Pakistan has been shaky post-devolution due to weak coordination, inadequate inter-provincial information sharing, collation reporting and utilization mechanisms, variations in HIV interventions and lack of effective community engagement.<sup>96</sup> The *Sindh HIV and AIDS Control, Treatment and Protection Ordinance, 2013* outlaws discrimination

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<sup>88</sup> RHRN Young Omang. *Health and Access to Care and Coverage for Transgender Individuals in Pakistan: A Call for Action*. Peshawar: Young Omang, 2017, pp. 3-4.

<sup>89</sup> Good Thinkers Organization. *Recognition of Third Gender: Realizing the Plight and Rights of Transgender Community in Punjab*, Kasur: Good Thinkers Organization, 2016, p. 18.

<sup>90</sup> United Nations Department of Economic and Social Affairs. *World Fertility and Family Planning: 2020 Highlights*. New York: UN DESA, 2020. Accessed May 07, 2022 at: [https://www.un.org/en/development/desa/population/publications/pdf/family/World\\_Fertility\\_and\\_Family\\_Planning\\_2020\\_Highlights.pdf](https://www.un.org/en/development/desa/population/publications/pdf/family/World_Fertility_and_Family_Planning_2020_Highlights.pdf)

<sup>91</sup> Sathar, Zeba et al. "Induced Abortions and Unintended Pregnancies in Pakistan." *Studies in family planning* 45, no. 4 (2014): 471-91. For first-hand accounts, see also Siddiqui, Zuha. "Is abortion legal in Pakistan?" *Soch Writing*. February 13, 2020. <https://www.sochwriting.com/is-abortion-legal-in-pakistan/> (accessed May 9, 2022).

<sup>92</sup> Joint United Nations Program on AIDS. "Country Snapshot: Pakistan, 2021". Accessed May 09, 2022 at: <https://www.aidsdatahub.org/resource/pakistan-country-snapshot-2021>

<sup>93</sup> Globally, transgender women are 34 times more likely and gay men are 25 times more likely to become infected with HIV as compared to others. See further at: <https://www.unaids.org/en/resources/fact-sheet> (accessed May 9, 2022).

<sup>94</sup> National AIDS Control Program. *Integrated Biological and Behavioral Surveillance in Pakistan, 2016-17*. Islamabad: National AIDS Control Program, 2017, pp. 73-74 and 126-27.

<sup>95</sup> Ibid, pp. 97, 150.

<sup>96</sup> Joint United Nations Program on AIDS. "Country progress report – Pakistan: Global AIDS Monitoring 2019." Accessed May 04, 2022 at: [https://www.unaids.org/sites/default/files/country/documents/PAK\\_2019\\_countryreport.pdf](https://www.unaids.org/sites/default/files/country/documents/PAK_2019_countryreport.pdf) (accessed May 9, 2022).

against people living with HIV (PLHIV). However, PLHIV still report facing discriminatory attitudes at Antiretroviral Therapy Treatment centres.<sup>97</sup>

43. The growing practice of ‘chemsex’, especially the use of crystal meth, among gay men and transgender women has been linked to a variety of high-risk sexual behaviours. According to a study in Punjab, 37.4% gay men and transgender women reported contracting STIs, including HIV, after engaging in ‘chemsex’; 63% were unable to seek help. A majority reported fear of being arrested by the police as the reason to not seek help.<sup>98</sup>

### **Mental Health**

44. LGBTI people face ‘minority stress’ due to the emotional and psychological abuse they suffer, particularly from their families. Four out of every five LGBTI persons in Pakistan face psychological health issues and two out of five take refuge in drugs of different kinds;<sup>99</sup> around 70% LGBTI meth users reported deteriorating mental health in 2022.<sup>100</sup> Only a small fraction is able to seek professional help, even less among drug users, and half of them say that they find their healthcare provider not trained or sensitized to address their needs.<sup>101</sup>
45. LGBTI faced a crisis of mental health during COVID-19 lockdowns. For 35% LGBTI people, consumption of addictive substances increased in the first six months of the pandemic; only 19% had access to professional support.<sup>102</sup> Transgender people living with hostile families faced added stress and compromised health.<sup>103</sup> Nearly two-third LGBTI people reported facing conflict with family and one-third reported intimate partner violence; only 6% were able to obtain help.<sup>104105</sup>

### **Gender Affirming Healthcare**

46. There are no formal guidelines or protocols on provision of gender affirming healthcare to transgender persons, despite *TPA, 2018* obligating the Government to review medical curriculum.<sup>106</sup> When asked if their medical education adequately prepared them to provide care for transgender patients, 46% healthcare providers said they were unprepared and 34% said they were partially prepared.<sup>107</sup> The provision of transition-related healthcare is severely neglected; few

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<sup>97</sup> See Annex-5: *Impediments to Effective HIV/AIDS response in Punjab and Sindh: A report on the status of Key Populations in Pakistan*, Lahore & Karachi, 2022.

<sup>98</sup> Kirmani, Nida & Rahul Hasnain. *The Hidden Crisis*, 2022, p. 25.

<sup>99</sup> Baloch, Raheem. *A Silent Battle: Bullying and Harassment of Sexual and Gender Minorities in Pakistan*. Islamabad: Dareecha Male Health Society, 2019, p. 25.

<sup>100</sup> See Kirmani, Nida & Rahul Hasnain. *The Hidden Crisis*, 2022, p. 18.

<sup>101</sup> See Baloch, Raheem. *A Silent Battle*, 2019, p. 25.

<sup>102</sup> Baloch, Raheem & Raza Haider Tirmizi. *The Forgotten Humans: Effects of COVID-19 on Transgender Community and Key Population in Pakistan*, Lahore/Islamabad: Dareecha Male Health Society & Dostana Male Health Society, 2020, pp. 24-29.

<sup>103</sup> United Nations Development Program Pakistan. “Social inclusion of vulnerable transgenders in times of COVID-19.” *UNDP*, August 6, 2022. Accessed May 10, 2022 at:

<https://www.pk.undp.org/content/pakistan/en/home/stories/social-inclusion-of-vulnerable-transgenders-in-times-of-covid-19.html>

<sup>104</sup> See supra note 102.

<sup>105</sup> Aurat Foundation. *Violence against Women and Girls in the Times of COVID-19 Pandemic*. Karachi: Aurat Publication and Information Service Foundation, 2021. Accessed May 10, 2022 at:

<https://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/VAWG%20Report%202020.pdf>

<sup>106</sup> **Section 12(a)** of the *Transgender Persons (Protection of Rights) Act, 2018* obligates the Government to review medical curriculum and improve research for doctors and nursing staff to address specific health issues of transgender persons in cooperation with Pakistan Medical and Dental Council (now, Pakistan Medical Commission under *Pakistan Medical Commission Act No. XXXIII of 2020*).

<sup>107</sup> See RHRN Young Omang. *Health and Access to Care*, 2017, p. 7.



doctors agree to provide care due to fear of legal persecution. At present, a court order is required for performing sex reassignment surgery.<sup>108</sup> As a result, most transgender people resort to self-medication and risky back-alley operations for receiving transition-related healthcare.

47. Due to absence of formal guidelines and protocols, informed by international standards, to regulate and monitor the provision of healthcare to LGBTI people, several reports of LGBT persons being subjected to ‘conversion therapy’, mostly without their free will and informed consent, by public and private healthcare providers have been received by us, although there is no conclusive data as of yet to ascertain how widespread this practice is in Pakistan.

### **Intersex Surgeries**

48. In the absence of proper legal recognition and policies to prohibit medically unnecessary treatment on intersex children, the right of children over their own bodies to be secure from non-consensual contact, as upheld in Convention on the Rights of Child ratified by Pakistan is not being realized.<sup>109</sup><sup>110</sup> The UN Special Rapporteur on Torture has expressed concern about unnecessary and irreversible ‘gender normalizing’ surgeries that leave intersex children with permanent infertility and cause severe mental suffering.<sup>111</sup> Coercive genital modification procedures on intersex infants, with irreversible and lifelong consequences, are not recognised as torture or gender-based violence in Pakistan. Although there is not enough data on how widespread this practice is, some reports indicate that hundreds of such surgeries are performed every year in Pakistan.<sup>112</sup>

### **Vaccine Equity**

49. The line of work of 83% transgender people puts them at a higher risk of contracting COVID-19.<sup>113</sup> Homelessness and relocations due to income loss during lockdowns made it hard

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<sup>108</sup> Irshad, Usama; Ali Madeeh Hashmi and John R Adler. “Between a Rock and a Hard Place – Gender Dysphoria and Comorbid Depression in a Young, Low-Income, Pakistani Transgender Man”. *Cureus* 12, no. 9 (2020). doi:10.7759/cureus.10205

<sup>109</sup> The UN Committee on the Rights of the Child has stated that such practices are discriminatory and constitute “harmful practices.” The UN Committee on the Rights of Persons with Disabilities has also expressed concern about “sex assignment” and “sex normalizing” surgeries on intersex children, most recently in its concluding observations on India. See further at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/IND/CO/1&lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/IND/CO/1&lang=en) (accessed May 22, 2022).

<sup>110</sup> The Transgender Persons (Protection of Rights) Act 2018 further conflates the legal recognition of transgender and intersex persons and does not adequately address the needs of intersex children. The International Commission of Jurists has recommended amending the Transgender Persons Act to specifically recognize intersex people. See further in International Commission of Jurists. *Pakistan: Briefing Paper*, 2020, p. 10.

<sup>111</sup> The UN Committee on Torture has also repeatedly recommended to states to ban unnecessary genital surgeries on intersex children that cause health complications and life long suffering. See A/HRC/22/53, para 77.

<sup>112</sup> Our working group has received evidence regarding the practices of one such private clinic operating from a residential colony of Lahore. The clinic has allegedly performed hundreds of medically unnecessary surgeries on intersex infants. Some children have been subjected to counselling for ‘rehabilitation’ in order to make them conform to a gender role. The leadership of the clinic has also received direct and indirect support and endorsement from various government officials. See Annex-2: *Human Rights Abuses*, 2022, p. 39.

<sup>113</sup> See supra note 102, p. 4.

for transgender people to observe social distancing.<sup>114</sup> Despite attempts to facilitate transgender persons at vaccination centres, the immunization rate has remained low, particularly among PLHIV.<sup>115</sup>

## Right to Education

50. Between 68 – 85 % of LGBTI youth report facing abuse from students and teachers in schools.<sup>116</sup><sup>117</sup> The average age at which transgender adolescents drop out of school is 12 – 17 years<sup>118</sup> – this is usually the age at which students enter gender segregated secondary schools. No more than 7% transgender people make it to higher education and even less graduate.<sup>119</sup> The lack of LGR further impedes access to education for transgender people.<sup>120</sup>
51. The provincial school educational departments don't have policies on tackling bullying of adolescents on the basis of (actual or perceived) SOGIESC. While the Higher Education Commission's policy on sexual harassment is comprehensive in its scope and jurisdiction, including prohibition of discrimination on the basis of sex and gender, it does not extend to sexual orientation.<sup>121</sup> It is rare to find educational institutes that have openly undertaken initiatives to make campuses safe and inclusive for LGBTI people.<sup>122</sup>

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<sup>114</sup> Over 75% transgender people in Khyber Pakhtunkhwa reported being unable to manage their finances, some having been driven to debt and homelessness. Only 60% had access to clean water and 30% did not have access to functional toilets See Blue Veins. *Differently Similar: A research on impact of COVID-19 on Transgender Community in Khyber Pakhtunkhwa*. Peshawar: Blue Veins, 2020, pp. 16-17.

<sup>115</sup> "Fear and stigma slow COVID vaccine drive among trans Pakistanis." *Al Jazeera*. August 13, 2021. <https://www.aljazeera.com/news/2021/8/13/fear-stigma-covid-vaccine-transgender-pakistan> (accessed May 8, 2022).

<sup>116</sup> See Baloch, Raheem. *A Silent Battle*, 2019, p. 24.

<sup>117</sup> See Jameel, M. & M. Osama. *In the Eyes of the Law*, 2018, p. 55.

<sup>118</sup> *Ibid.*, pp. 56-57.

<sup>119</sup> AAWAZ Programme. *The Transgender Community in Pakistan: Issues in Access to Public Services*. Islamabad: AAWAZ Programme, 2016. Accessed May 06, 2022 at:

<https://aawaz.org.pk/cms/lib/downloadfiles/1482822154Final%20Transgender%20Report.pdf>

<sup>120</sup> **Section 7** of the *Transgender Persons (Protection of Rights) Rules, 2020* provides for amendment in educational documents on the basis of self-perceived gender identity. Notably, **Section 7(2)** contradicts 7(1) by specifying that designated officials in educational departments shall amend applicant's name and gender on documents upon receipt of "CNIC with gender category 'X'". The *Rules* don't specify a procedure for school-going minors who don't have CNICs. The School Education Department, Punjab notified schools in the province to register transgender children with correct gender status on their documents in 2018, however, no procedure was specified for doing so. As per our reports, some Boards of Intermediate and Secondary Education continue to demand 'medical certificates' specifically from transgender people in order to amend their educational certificates. The Higher Education Commission has likewise not specified an accessible mechanism for transgender people to amend their name and gender on educational certificates and degrees. This directly prevents the access to education for transgender people. See also Annex-3: Jameel, M. & Hussain Zaidi. *Legal Gender Recognition in Pakistan*, 2022, p. 18.

<sup>121</sup> The policy is in line with the *Protection against Harassment of Women at the Workplace Act, 2010* and applies to all institutes registered with the Commission. It can be read here: <https://hec.gov.pk/english/services/Documents/SEXUALHARASSMENT-POLICY.pdf> (accessed May 8, 2022).

<sup>122</sup> There are a few exceptions in public and private sector like Superior Group of Colleges which enacted a policy for protection of transgender employees and students (see <https://www.superior.edu.pk/policy-of-non-discrimination-for-transgender/> (accessed May 8, 2022)) and Government College University, Lahore which is the only government institution to announce reservations in admissions for transgender people (see <https://nation.com.pk/2020/08/09/gcu-lahore-allocates-special-seats-for-transgender-students/> (accessed May 08, 2022)).

52. The Punjab School Education Department and Literacy Department announced opening of schools for transgender adults based on an Accelerated Learning Program models.<sup>123</sup><sup>124</sup> While such initiatives are much needed for empowering transgender adults who could not gain formal education, their efficacy is called into question when these schools segregate transgender people instead of integrating them with the mainstream education system.<sup>125</sup>

### Other Issues

53. In civil matters of marriage, divorce and custody, ‘personal law’ specific to different religious communities prevails e.g. *Muslim Family Law Ordinance, 1961* and *Christian Marriage Act, 1872* etc. Although no law explicitly prohibits same-sex marriage, in practice, marriage is only recognized between a man and a woman and is further regulated through licenses issued by Registrars at union councils, and in family courts, as well as by NADRA that issues family tree and child registration certificates.<sup>126</sup> As per our reports, persons with ‘X’ gender marker on their NICs are explicitly denied the right to contract a marriage, despite no law prohibiting as such. Similarly, persons who are legally married and have children are denied NICs with ‘X’ gender marker.

54. There is no specific law to regulate the adoption of children in Pakistan. Therefore, the application of the *Guardians and Wards Act, 1890*, that allows for a foster parent-child relationship (where the child cannot take on the guardian’s family name or partake in inheritance), remains practically limited to legally married, ergo heterosexual, couples.

55. Due to proactive measures of the Election Commission of Pakistan, the 2018 General Elections saw participation of transgender candidates from all over Pakistan. However, reserved seats for transgender persons have not been instituted in any local, provincial or national government bodies or public service posts, with the limited exception of Sindh.<sup>127</sup>

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<sup>123</sup> For more information see School Education Department South Punjab. “TransEducation – A Historic Project for the Education of Transgenders.” <https://schooleducation.southpunjab.gov.pk/transeducation/> (accessed May 08, 2022).

<sup>124</sup> “Transgender community included in literacy campaign: minister.” *The News International*. January 23, 2021. <https://www.thenews.com.pk/print/778321-transgender-community-included-in-literacy-campaign-minister> (accessed May 08, 2022).

<sup>125</sup> A research study on adult literacy centers established by the government for transgender people found them to be “ineffective”. See Butt, Muqaddas & Humaira Irfan. “Education of Transgender Community in Punjab: Heading the Unheeded.” *Journal of Development and Social Sciences* 2, no. 3 (2021): 9-17.

<sup>126</sup> In *Syed Amjad Hussain Shah v. Ali Akash and others, W.P. no. 1421 of 2020*, Ali Akash (a transgender man) was accused of fraudulently changing his gender in order to marry Neha. The judge expressed hostility toward the defendant and the couple was coerced into a divorce. In *Shumail Raj v. State (W.P. 4144 of 2007)*, Shumail, a transgender man, was accused of kidnapping his cousin Shehzina by the latter’s father who contended in court that Shumail was actually a woman. The couple was sentenced to two years in prison for perjury but were released later. In 2016, the Court issued orders for medical examination of a transgender man named Maneel from Taunsa when his marriage to his cousin was challenged by the girl’s mother in the court as a ‘same-sex marriage’. Similarly, a man and a transgender woman were also arrested in 2010 in Peshawar for allegedly contracting a marriage. See Annex-2: *Human Rights Abuses*, 2022, p. 42.

<sup>127</sup> The Sindh Government allocated one reserved seat for transgender people in local governments in January, 2022. See the *Sindh Local Government (Amendment) Act, No. XXXII of 2021*. The Sindh Cabinet also introduced a Bill to amend the *Sindh Civil Services Act, 1973* in December 2021 that aims to introduce a 0.5% quota for transgender people in public jobs under scale 15, however, a condition of medical examination and being certified by a medical board has also been added, in direct contravention with the right to self-determination.

56. We appreciate the Government of Pakistan for rolling out programs for income support and welfare of transgender people.<sup>128</sup> However, limiting these programs to individuals with an NIC with ‘X’ gender marker has significantly limited their outreach and impact.<sup>129</sup>
57. Pakistan Telecommunication Authority (PTA) has banned dating applications, including gay dating application Grindr, citing ‘immoral and indecent content’.<sup>130</sup><sup>131</sup> A vast majority of web content on LGBTI health and rights is blocked from being accessed in Pakistan under Section 34 of *Pakistan Electronic Crimes Act, 2016*, inhibiting free access to information for LGBTI people.<sup>132</sup>

### **PART III: Recommendations**

58. We request the Working Group at the UN Human Rights Council and member states to recommend to the State of Pakistan to:
- 58.1 Amend Articles 25-27 of the Constitution to formally recognize SOGIESC as protected grounds on the basis of which discrimination is prohibited. Enact a comprehensive anti-discrimination law that outlaws discrimination on the basis of protected grounds, including SOGIESC, HIV status, maternity status and ability, in access to services, employment, healthcare, education etc. in all public and private settings, and provides effective redress mechanisms.
- 58.2 Ensure timely, thorough and competent investigation and trial in cases of sexual and gender-based violence (SGBV). Reform criminal codes, reporting procedures and justice delivery mechanisms tackling SGBV (e.g. Women and Child Protection Units, Gender Crime Cells, Gender-Based Violence Courts) to explicitly recognize and incorporate violence on the basis of

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<sup>128</sup> The Punjab government introduced ‘Musawaat’ and ‘Ehsas Kafalat’ programs for conditional and unconditional cash transfers to elderly and disabled transgender persons, in addition to small business loans. See further at: <https://pspa.punjab.gov.pk/masawaat-program> (accessed May 8, 2022). Read the “Transgender Persons Welfare policy” by the Punjab Social Protection Authority here: <http://ljcp.gov.pk/tg/report.pdf?BD1C26FABB74a6d06CG=GCCY> (accessed May 22, 2022).

<sup>129</sup> As per the numbers obtained directly from the Punjab Social Protection Authority by our working group, the total number of transgender people registered under the program (since more than a year of its introduction) is less than 100. The transgender population of Punjab as per 2017 census (which was contested for reporting much lower numbers of transgender population) was around 12,435. See Pakistan Bureau of Statistics. “Final Results. Census 2017.” Accessed May 22, 2022 at: <https://www.pbs.gov.pk/content/final-results-census-2017>. See also Ebrahim, Zofeen T. “Don't we count? Transgender Pakistanis feel sidelined by census.” *Rueters*. October 7, 2017. <https://www.reuters.com/article/pakistan-transgender-census-idUSL8N1ME398> (accessed May 22, 2022).

<sup>130</sup> The Sindh High Court upheld the temporary suspension of TikTok for celebrating ‘Pride month.’ The ban was lifted after TikTok agreed to work with PTA to moderate ‘unlawful content’ locally. For more information see Pakistan Telecommunication Authority. *Annual Report (2021)*, Islamabad: PTA. Accessed May 22, 2022 at <https://www.pta.gov.pk/en/annual-reports>

<sup>131</sup> Notably, PTA has blocked 1 million websites since 2016, with over half a million websites blocked in just the past year over ‘morality and decency’. See Pakistan Telecommunication Authority. *Annual Report 2020*. Islamabad: PTA, p. 36. Accessed May 22, 2022 at: <https://www.pta.gov.pk/en/annual-reports>

<sup>132</sup> There is active censorship of any debate or discussion on LGBTI rights online. The Government is introducing further regulations to suppress free speech online. The *Removal and Blocking of Unlawful Online Content Rules, 2020* enacted by the Government without broad consultation violate the rights to freedom of expression and access to information for citizens. See Digital Rights Foundation. *Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules, 2020: Legal Analysis*, Lahore: Digital Rights Foundation, 2021. Accessed May 22, 2022 at: [https://digitalrightsfoundation.pk/wp-content/uploads/2020/12/Removal-and-Blocking-of-Unlawful-Online-Content-Procedure-Oversight-and-Safeguards-Rules-2020\\_-Legal-Analysis.pdf](https://digitalrightsfoundation.pk/wp-content/uploads/2020/12/Removal-and-Blocking-of-Unlawful-Online-Content-Procedure-Oversight-and-Safeguards-Rules-2020_-Legal-Analysis.pdf) The 2020 Rules have been challenged in the Islamabad High Court by several petitioners. See the “Amicus Curiae Brief” by Digital Rights Foundation here: <https://digitalrightsfoundation.pk/wp-content/uploads/2022/04/Social-Media-Rules-Amicus-Brief-January-2022-1.docx.pdf> (accessed May 22, 2022).

- SOGIESC in their mandate by amending relevant governing laws. Amend *Anti-Rape (Investigation and Trial) Act, 2021* and provincial domestic violence laws to include transgender persons in their ambit.
- 58.3 Ensure that LGBTI people, especially minors, facing abuse have free, equal and non-discriminate access to shelter homes. Establish at least one functional protection centre for transgender people, as mandated by the law, in each province by 2025 and delineate adequate budget, resources and SOPs regarding provision of support and legal assistance at these centres.
- 58.4 Conduct periodic sensitization of investigation officers, prosecutors and judiciary on SOGIESC and the specific needs, vulnerabilities and impediments in accessing justice faced by LGBTI people, PLHIV and people engaged in begging, sex work and substance use.
- 58.5 Train prison authorities on needs of transgender persons and obligate them to develop policies and strategies to ensure the maximum protection and privacy of transgender detainees, with respect to their SOGIESC, in addition to facilitating their social reintegration in an effective manner.
- 58.6 Conduct periodic sensitization of law enforcement agencies (LEAs) on curbing discriminatory practices against LGBTI people, PLHIV and people engaged in begging, sex work and substance use. Establish functional Public Safety Commissions and make redress mechanisms for reporting abuse of power by LEAs more accessible for citizens. Adopt a holistic policy framework that prioritizes provision of care, support and shelter to vulnerable groups instead of imprisonment.
- 58.7 Enact a comprehensive law, following transparent and meaningful consultation, to ban torture and sexual violence in police custody. Recognize and penalize coercive medical and therapeutic examinations, evaluations and procedures intended to expose, conceal or alter a person's SOGIESC without informed consent, including 'conversion therapy' and non-essential genital modification surgeries on infants, as cruel and inhumane treatment in the law.
- 58.8 Repeal all punitive and discriminatory laws that criminalize any or all aspects of consensual sexual relationships between adult persons of any sex or gender.
- 58.9 Decriminalize begging immediately and take measures to increase the registration and enrolment of all persons, regardless of SOGIESC, engaged in begging into state income support, social welfare and microfinance, adult literacy and life-skills based education programs.
- 58.10 Decriminalize drug use and possession immediately and ensure free, equal and non-discriminate access to harm reduction programs and rehabilitation facilities for all persons, regardless of SOGIESC, struggling with substance use.
- 58.11 Decriminalize sex work and provide necessary protections and support, including free, equal and non-discriminate access to sexual and reproductive health services and family planning measures to all persons, regardless of SOGIESC, engaged in sex work.
- 58.12 Amend the governing laws of National Human Rights Institutions to include: (a) independent monitoring and inquiry of human rights violations on the basis of SOGIESC, (b) periodic and public release of data on violations, (c) knowledge-production and research on SOGIESC for legal and policy reform, and (d) facilitating mass awareness on the rights of LGBTI people, in their mandates.
- 58.13 Uphold the right to legal recognition of self-perceived gender identity for all persons, including minors, asylum seekers and refugees residing in the country. Ensure that all persons are able to obtain or amend identity documents as per their self-perceived gender identity in a transparent, quick and accessible manner, and without a medical or diagnostic requirement. Enact legislation in all provinces to protect the rights of transgender people and reform the *Transgender Persons (Protection of Rights) Rules, 2020* to bring in full conformity with the 2018 Act by engaging in broad and meaningful consultations with all stakeholders.
- 58.14 Enact legislation on protection of rights of PLHIV in all provinces. Strengthen and expand the community-based service delivery model by allocating adequate budget and resources to

provincial AIDS control programs for implementing their mandate in an LGBTI-inclusive manner.

- 58.15 Ensure easy, equal and non-discriminate access to gender affirming healthcare for all persons, regardless of SOGIESC, including counselling, hormonal replacement therapies and sex reassignment surgeries, by providing an enabling healthcare environment. Institute policies and guidelines, in line with international standards, for provision of such care with informed consent.
- 58.16 Safeguard the right of LGBTI people to freely and without fear partake in cultural life, in the form of companionship, family or community, by legally recognizing and according an equal status to single-parent households, civil unions and partnerships, as well as by ensuring equal and non-discriminate access to procedures for registration and dissolution of marriage for all consenting adults, regardless of SOGIESC. Ensure children with LGBTI parents are afforded the same rights, opportunities and protections of the law as other children in all walks of life.
- 58.17 Carry out an impartial and competent national census and allocate a reasonable quota for reserved seats for transgender people to facilitate their political representation.
- 58.18 Ensure that human rights defenders and organizations advocating for the rights of LGBTI people have equal protections of the law and a dignified and censorship-free work environment.