

Input for the The Independent Expert on SOGI will discuss the types of data relevant to assess violence and discrimination based on sexual orientation and gender identity.

To assess violence and discrimination based on sexual orientation and gender identity; map what data are already being collected, by whom, and for what purpose; highlight key human rights safeguards that must be taken into consideration when collecting and using data; and formulate recommendations to States and other relevant stakeholders.

LGBT community holds no legal recognition by government of Pakistan. A common misperception prevalent in Pakistani society is that LGBT community is part of Transgender community. All SOGIE based issues are included under transgender umbrella. Government has done nothing to clear this misperception. Due to religious context, LGB community members can't come out; however acceptance of transgender community in society is gradually on rise. This rise can be attributed to active role played by Transgender activists. Questions about sexual orientation and gender identity are not included in government surveys. Surprisingly in the recent census held by Government of Pakistan, population of transgender population in Pakistan is reported as 10,418. This statistics is questionable as the total population of Pakistan is almost 22 million.

However due to untiring efforts of Transgender activists like Ms. Bindya Rana, Ms. Neeli Rana, Ms. Ashi Jan, Ms. Nadra Khan, Ms. Saima Rajpoot & Ms. Jannat Ali and feminist collective civil society members following positive developments have occurred:

- These activists were successful in sensitizing community members about their rights, to speak against violence and report/register their grievances.
- Secondly due to collaborative efforts, Transgender community have gained legal recognition on self identification under Transgender Person Protection of Rights Act which was passed in May 2018.
- Anti-discriminatory and anti-harassment clauses are included in this Act.

The movement gained momentum after historic 2009 Supreme Court judgment, the roots of the movement can be traced back to at least three decades ago. In 2009, the Supreme Court of Pakistan legally recognized a third gender category under the term 'eunuch'. The Interior Department was subsequently given orders to issue ID cards to this group. Interpreting the 2009 judgment to apply to 'khwaja siras', NADRA created three sub-categories within the third gender category and mandated medical examinations for issuing of ID cards. However, upon protests from the community, the Supreme Court of Pakistan issued a notification in 2011 adding to its judgment that medical examinations will not necessary for issuing ID cards to khawaja siras. In 2010, another case emerged where a man and a transgender person were arrested for allegedly marrying each other. Laws often allow for violence and harassment against transgender people by the police and gangs. Although section 377 has rarely been used in legal cases, but it allows for more indirect violence against the community.

When talking about the 2012 Supreme Court ruling, The categories used by NADRA were themselves vague and on the ground these had a very different impact as opposed to what was thought of by policy makers. For instance, the category of 'Khwajasira Mard' on ID cards is commonly interpreted as applying to transgender men (people assigned female at birth and identifying themselves as men),

however, many khawajasiras (people assigned male at birth) who identify and present feminine also go for male ID cards to protect their share in inheritance and perform hajj pilgrimage.

Due to absence of robust monitoring and data collection mechanism , LGBTQI community members are not included in census, national health surveys, income or other surveys funded or mandated by the State). National Health Surveys mainly conducted surveys targeting transgender and MSM community & HIV/AIDS. UNAIDS also conducted a survey regarding the same.

In Pakistan, there is no authentic data of LGBTQI community as TG children are abandoned at early ages by their parents and due to societal and religious pressures they are not registered in any administrative records (e.g. birth certificates/birth registries, identity Cards). LGBTQI community members experiences stigma and discrimination leading to SOGIE based violence in Pakistan. LGBTQI community members consider SOGIE based violence as part of their life and they are afraid of reporting such cases because of their safety and security.

Due to lack of complaint registration mechanism, lack of awareness due low literacy rate and inaccurate enumeration of transgender community etc, Pakistan Government is shying away from her obligations promised in Transgender Person Protection of Rights Act. Government can't be held accountable in front of local and international stakeholders. It has a knock on impact on policy making as well.

THE COMPALINT CENTRES IN PAKISTAN

In Pakistan, the complaint centers are generally based on:

- Workplace harassment
- Gender discrimination
- Property disputes
- Inheritance rights
- Domestic violence
- Various other socio-economic and legal issues
- Any illegal activity
- Crimes and robberies and etc.

Federal Ombudsman Secretariat for protection against Harassment-FOSPAAH

National commission of Human Rights-NCHR

These complaint centres are either for the general public to enter the complaints for any inconvenience they face regarding any obscene or heinous crime. The IGP has started a complaint program centre 8787. The complainant can view the progress of his complaint online and can send his feedback at any moment, online or through SMS. FIA has a complaint form online to register any complaint against any illegal activity or unlawful act. Customer Complaint Management System (CCMS) has their complaint channels through a help line and an email address. They resolve complaint within 14 days from the day of receipt, they investigate and liaise with the relevant parties

resolve the complaint. Complaint cell by the chief minister of Punjab, they have an online complaint form to register their issues regarding any issues they are facing within the province.

For the safety of the women government of Punjab took an initiative of Punjab women helpline services (1043) in Punjab for the women who face discrimination in their field of work, domestic abuse, inheritance issues, or any other issue regarding their safety and security. This the only gender based complaint centre for the women to submit their complaints against any inconvenience and discrimination they face. This initiative help women for the inquiries, complaints and counselling.

These complaint centres are either for the general public or gender based especially for the women .

3. What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:

A. Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.

B. Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.

Way Forward is :

To prevent SOGIESC-based violations from occurring in Pakistan, and where violations occur, to ensure accountability and redress.

To inform relevant national stakeholders of the impact of discriminatory laws including section 377 of the Penal Code and the Hudood Ordinance, and to engage them on recommendations for change, including through the Transgender Persons (Protection of Rights) Act, 2018 (hereinafter: Transgender Rights Act).

To support LGBTI activists and legal professionals in identifying gaps in the current legal framework providing for the rights of transgender and intersex people and in developing proposals for addressing these gaps through both policy and legal reforms at federal and provincial levels.

To build the capacity of a core group of local LGBTI organizations and activists to clearly understand the concepts of SOGIESC in relation to national and international human rights standards and jurisprudence, and to safely advocate for change using existing national and international protection systems.

Table 1: Snapshot of country contexts with regard to SOGIE concerns

Country	Explicit constitutional recognition	Criminalization of same-sex sexual relations	Transgender rights legal recognition	Laws against sex work
Pakistan	None, negative influence of religious law, but specific articles could be supportive	Yes, Section 377 Pakistan Penal Code	Supreme Court granted several rights from 2009–12 Transgender Persons (Protection of Rights) Act passed by Senate	Sections 371A, 371B criminalize sex work and related activities

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