

UNITED NATIONS SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR
ARBITRARY EXECUTIONS

June 2024

**INTERNATIONAL COMMISSION OF JURISTS' RESPONSE TO THE CALL FOR
INPUTS INTO THE UN SPECIAL RAPPORTEUR'S REPORT ON THE KILLING
OF LGBTIQ+ PERSONS**

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INTERNATIONAL COMMISSION OF JURISTS' RESPONSE TO THE CALL FOR INPUTS INTO THE UN SPECIAL RAPPORTEUR'S REPORT ON THE KILLING OF LGBTIQ+ PERSONS

1. The International Commission of Jurists (ICJ) welcomes the opportunity to share information under the call for inputs launched by the Special Rapporteur to contribute to his report to the 79th session of the UN General Assembly on the killing of LGBTIQ+ persons.
2. Based on two specific situations in Pakistan and Uganda that the ICJ monitors, the present submission considers several points raised in the call for inputs and offers examples of laws, institutions, policies and practices that may violate international human rights law obligations in relation to the right to life of LGBTIQ+ persons; of laws, institutions, policies and practices that govern the investigation and prevention of potentially unlawful deaths of LGBTIQ+ persons, including those likely the result from hate crimes; of existing laws, institutions, policies and practices that fail to, or appear to fail, in protecting the right to life of LGBTIQ+ persons; and failures to respect and protect the right to life of LGBTIQ+ persons during 2020-2024.

Pakistan

3. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Pakistan are highly vulnerable to human rights violations and abuses on the basis of their sexual orientation, gender identity and expression and sex characteristics (SOGIESC) by State and non-State actors, including the police and members of other law enforcement agencies, as well as gangs, community members, intimate partners, and their families.
4. According to data collected by the ICJ and its partner organizations, at least 45 transgender people were killed in Pakistan from August 2019 to March 2024 in the provinces of Punjab and Khyber Pakhtunkhwa alone. In such cases, there is a culture of impunity in the country, and perpetrators have not been brought to justice in the majority of these cases. Transgender people were also subjected to rape, sexual harassment, abduction, blackmail and other serious crimes.¹

¹ In addition to killings, the ICJ and its partner organizations have documented a number of other human rights violations and abuses against LGBT people, including sexual violence, sexual harassment, intimate partner violence, threats/blackmail, hate speech, public shaming, assault, evictions from their homes and bullying. These violations and abuses are rarely reported to the authorities, as a large number of LGBT people believe that if they report these violations or abuse, their sexual orientation will be used as a reason to blackmail, threaten, "out" them before their families and media, and further persecute them.

5. There are a number of reasons why perpetrators of crimes against transgender people, including murder and other violent offences, are rarely brought to justice. One reason is underreporting. Killings of transgender people in many instances are not even reported to the police. With respect to the human rights violations and abuses against transgender people documented by the ICJ and its partner organizations between August 2019 to May 2022, complaints were filed with the police or other relevant authorities in only 17 per cent of the cases. Another reason is the profoundly negative experience that transgender individuals have of the police as they are routinely threatened, blackmailed, or even abused by the police because of their SOGIESC status. In most instances, members of the transgender community are thus deterred from pursuing cases. The police and law enforcement officials, more generally, end up being perceived as abusers of the transgender community, and not as institutions capable of providing justice or protection.
6. Another reason is that a large number of transgender people in Pakistan, particularly those who belong to the socio-historically constituted khawaja sirah community,² live in poverty. Many are engaged in informal or criminalized activities, such as begging and sex work. As a result, they face a greater risk of blackmail, threats and coercion, which can escalate to assault and murder. These groups are also least likely to report cases of violence to the authorities due to fear of discrimination, increasing chances of persistent victimization.
7. Additionally, perpetrators are rarely brought to justice in cases involving the killing of LGBTI people because the victims' families and the members of the community are pressurized into "compromising"³ with those responsible due to harassment, threats, influence of the perpetrators and lack of resources. These "settlements" and "compromises" ultimately deny justice for the victims, embolden perpetrators, and do little to deter the perpetration of killings and other violent offences against LGBTI people.
8. Finally, even when cases are pursued, the police either fail to register complaints or carry out prompt, thorough, competent and effective investigations that could eventually lead to the prosecution and conviction of the perpetrators. As a result, even in the few and far between cases that end up before courts, perpetrators are often exonerated due to technicalities, such as errors in framing of charges, procedural irregularities in the investigation, and because of an overall lax attitude by the prosecuting authorities.
9. In May 2018, Pakistan enacted the Transgender Persons (Protection of Rights) Act (TG Act). The TG Act is an affirmative federal law that, among other things, allows

² Khawajasiras are socially, politically and historically constituted community of gender diverse people. Nowadays, they are often referred to as transgender women.

³ Pakistani law allows legal heirs of the victim in murder cases to "compromise" with the perpetrator upon the payment of compensation (diyat).

for self-identification as the basis of legal gender recognition.⁴ In May 2023, the Federal Shariat Court ruled that a number of provisions of the law, including the definition of transgender person and legal gender recognition based on self-identification, were contrary to Islam. The judgment has been challenged before the Supreme Court whose decision is pending.

10. More generally, while the Pakistani Constitution guarantees the right to equal treatment before the law, the specific prohibition related to discrimination is limited to discrimination on the “basis of sex”. Furthermore, there is no anti-discrimination legislation to protect people/groups who are at a heightened risk of human rights abuses as a result of discrimination on the grounds of their gender expression, gender identity, race, ethnicity, etc. The TG Act does not provide any definition of what constitutes discrimination. It also provides no penalties, remedies or enforcement mechanisms in case of a violation of the anti-discrimination provisions.
11. In 2021, Pakistan also amended Section 375 of the Penal Code to make rape a gender-neutral offence in terms of victims and perpetrators, and widen the scope of non-consensual sexual acts that constitute rape. While this is a positive step, it remains to be seen how the law will be implemented in practice with respect to the commission of sexual offences perpetrated against transgender people.
12. While there is at least some legal protection for transgender and intersex people in the country, Pakistan still remains one of the most vocal opponents to greater recognition and protection of human rights on the basis of sexual orientation. Section 377 of the Pakistan Penal Code criminalizes “carnal intercourse against the order of nature”, and is used as a tool to persecute LGBTI people in a number of ways, including blackmailing and harassment by the police. The law also reinforces discourse that considers LGB people “unnatural” and “perverted”, with the effect of legitimizing violence against them and criminalizing their identities.
13. In light of the above, the ICJ considers that the following measures would go some way towards reducing the risk of human rights violations and abuses, including unlawful killings, faced by LGBTI people in Pakistan.
 - Review Qisas and Diyat laws to ensure murder is considered a crime against the State, and bar “compromise” by legal heirs as an alternative to prosecution by the State;

⁴ *International Commission of Jurists*, “The ICJ releases briefing paper on Pakistan’s Transgender Persons (Protection of Rights) Act, 2018”, March 2020, accessed at: <https://www.icj.org/the-icj-releases-briefing-paper-on-pakistans-transgender-persons-protection-of-rights-act-2018/>

- Ensure prompt, thorough, independent and impartial investigations and prosecutions into all allegations of unlawful killings and other violent offences on the basis of SOGIESC;
- Conduct periodic sensitization of investigating officers, prosecutors and judiciary on SOGIESC and the specific needs and risks of human rights violations and abuse of persons marginalized on the basis of SOGIESC, including the impediments they face in accessing justice;
- Enact a comprehensive anti-discrimination law, following transparent, meaningful and broad-based nationwide consultations with relevant stakeholders, with the aim of prohibiting discrimination on protected grounds including gender identity, gender expression, sexual orientation and sex characteristics, in line with international law and standards; and
- Review Pakistan’s legal framework to ensure that other laws, including provisions of the Pakistan Penal Code, do not violate the human rights of LGBT people. In particular, repeal section 377 of the PPC.

Uganda

14. Uganda’s Anti-Homosexuality Act (AHA), 2023 is one of the most extreme anti-LGBTI laws in the world both in scope and penalties. Uganda’s President, Yoweri Museveni, approved the AHA on 30 May 2023. Among other things, the AHA introduces an offence of “aggravated homosexuality”, making those convicted liable to capital punishment. In December 2023, human rights groups filed a petition in the country’s Constitutional Court to challenge the constitutionality of the law. The petitioners argued that the law violates rights guaranteed in Uganda’s constitution, including freedom from discrimination and rights to privacy as well as freedom of thought, conscience and belief. Uganda’s Constitutional Court, however, largely dismissed the petitioners’ challenge, refusing to strike down most of the Act.⁵
15. As far back as 2004, in its Concluding Observations, the Human Rights Committee raised concern about the broad array of crimes for which the death penalty may be imposed in Uganda. It found mandatory death sentences for murder, aggravated robbery, treason and terrorism resulting in the death of a person as incompatible with the International Covenant on Civil and Political Rights; and concluded that the same was the case with respect to the imposition of death sentences by field courts-martial without the possibility of appeal or to seek pardon or commutation of the sentence. The Committee urged Uganda to limit

⁵ On 3 April 2024, the Court largely dismissed the petitioners’ challenge to the AHA, albeit it did strike down certain provisions pertaining to: restricted access to housing and healthcare for “homosexual people” pursuant to the criminalization of renting premises to them (s 9 and 11(2)(d)); the creation of an obligation to report alleged “acts of homosexuality” (s 14) and the criminalization of transmission of a “terminal illness” as a result of a “homosexual act” (s 3(2)(c)).

the number of offences for which the death penalty was provided and to ensure that it was not imposed except for the most serious crimes. The Committee also recommended that Uganda should abolish mandatory death sentences and ensure the possibility of full appeal in all cases, as well as the right to seek pardon or commutation of the sentence.⁶

16. Not only has Uganda failed to abolish the death penalty, but the Ugandan Parliament and President Museveni have expanded the reach of the death penalty through the AHA.⁷
17. Prior to the passage of the Act, Uganda claimed to have repealed mandatory death penalty sentencing, and the State claimed to construct a rigorous review process for the exceptional cases still resulting in the imposition of the death penalty by requiring approval from the Supreme Court and President before an execution.⁸
18. However, the enactment of the AHA disregards this purported progress and imposes the death penalty for an offence whose enactment and enforcement violates several rights under the International Covenant on Civil and Political Rights, including, in particular, the right to life⁹ and the right to freedom from discrimination¹⁰, and the Ugandan Constitution¹¹.
19. In the days following the passage of the Act, Human Rights Awareness and Promotion Forum (HRAPF), a Ugandan NGO, documented 55 arrests under the law, three death penalty cases forwarded to the Director of Public Prosecutions, eight forced anal examination cases, 254 evictions of persons accused to be or associate with LGBTI people and 202 other cases of actual or threatened violence.¹²
20. Uganda has long been a particularly hostile country to LGBTI persons. Even before the passage of the AHA, the Penal Code already violated a range of human rights. People convicted of and sentenced for consensual same-sex activities are already liable to extremely harsh punishments. For example, section 145 of the Penal Code carries a maximum penalty of life imprisonment and seven years' imprisonment for attempts to commit any of the acts prohibited by it. To additionally impose the death penalty is cruel and unnecessary.

⁶ CCPR/CO/80/UGA, para 13.

⁷ Anti-Homosexuality Act, 2023, Parliament of Uganda, As signed by President Museveni, 26 May 2023, <https://www.parliament.go.ug/sites/default/files/The%20Anti-Homosexuality%20Act%2C%202023.pdf> .

⁸ CCPR/C/UGA/RQ/2, paras 44-45.

⁹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, 173, art. 6.

¹⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, 173, art. 2, 17, 19, 20, 26.

¹¹ Constitution of Uganda, Article 21, accessed at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>.

¹² <https://www.amnesty.org/en/latest/news/2024/04/uganda-court-fails-to-repeal-callous-anti-lgbti-law-puts-people-at-risk/#:~:text=In%20the%20days%20following%20the,persons%20accused%20to%20be%20or>

21. In light of the above, the ICJ considers that repealing the Anti-Homosexuality Act in its entirety, and repealing the discriminatory and hateful provisions in the Penal Code would go some way towards reducing the risk of human rights violations and abuses, including unlawful killings, faced by LGBTI people in Uganda.