

## **Country Information and Guidance**

Pakistan: Sexual orientation and gender identity

# Preface

This document provides guidance to Home Office decision makers on handling claims made by nationals/residents of Pakistan as well as country of origin information (COI) about Pakistan. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether - in the event of a claim being refused - it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Within this instruction, links to specific guidance are those on the Home Office's internal system. Public versions of these documents are available at <https://www.gov.uk/immigration-operational-guidance/asylum-policy>.

## Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office's research guidelines, Country of Origin Information report methodology](#), dated July 2012.

## Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please email: [CPI@homeoffice.gsi.gov.uk](mailto:CPI@homeoffice.gsi.gov.uk).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>

It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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# 1. Guidance

Updated 14 July 2014

## 1.1. Basis of claim

- 1.1.1 Fear of persecution by the Pakistani authorities or by non state actors due to their sexual orientation, or perceived sexual orientation, or gender identity.

See Asylum Instruction on [Considering the asylum claim and assessing credibility](#)

## 1.2. Summary of issues

- Do lesbian, gay, bisexual or transgender (LGBT) persons from Pakistan form a particular social group (PSG)?
- Is the person at real risk from the Pakistan authorities or non state actors due to their sexual orientation or gender identity?
- Is there effective protection?
- Is the person able to internally relocate within Pakistan to escape that risk?

See country information on [Sexual orientation](#)

See asylum instructions on [Sexual orientation issues in the asylum claim and Gender identity issues in the asylum claim](#)

## 1.3. Consideration of issues:

### Do LGBT persons from Pakistan form a particular social group (PSG)?

See country information on [Sexual orientation](#)

- 1.3.1 In the [Court of Justice of the European Communities judgement for the joined cases of C-199/12 to C-201/12, dated November 2013 \(\[2013\] WLR\(D\) 427, \[2013\] EUECJ C-199/12\)](#), the Court held that ‘the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.’ (Court (Fourth Chamber): paragraph 1).

See [Caselaw](#)

See Pakistan: Country Information and Guidance [Actors of protection](#)

- 1.3.2 Therefore, given the existence of such laws, LGBT persons in Pakistan are members of a particular social group.

- 1.3.3 Further, LGBT persons are considered members of a particular social group because they share a common characteristic that cannot be changed and, based on an assessment of the country information, they have a distinct identity in Pakistan which is perceived as being different by the surrounding society.

See Asylum Instruction on [Considering the asylum claim and assessing credibility](#)

### Is the person at real risk from the Pakistan authorities or non state actors due to their sexual orientation?

- 1.3.4 The Court of Justice of the European Communities, case [\[2013\] WLR\(D\) 427, \[2013\] EUECJ C-199/12](#), ruled that ‘the criminalisation of homosexual acts per se does not constitute an

act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.’ When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation (Ruling point 2 and 3).

1.3.5 Lesbian, gay and bisexual (LGBT) persons in Pakistan can be subject to societal and state discrimination, harassment and violence and, depending on the facts of the case, would not be able to seek effective protection from the authorities.

1.3.6 Transgender persons (hijras) are often rejected by society and experience discrimination, intimidation and abuse, despite being granted equal rights as Pakistani citizens by the Supreme Court in 2012.

1.3.7 Same-sex sexual acts are illegal in Pakistan. The Penal Code does not explicitly refer to homosexuality. However, ‘carnal intercourse against the order of nature’ (see paragraph 2.2.2) is punishable by a fine and/or imprisonment for a period of two years to life. The Hudood Ordinance provides punishment for sodomy and extra-marital sex. In practice the authorities rarely prosecute cases, but police use the laws for harassment and extortion.

1.3.8 LGBT persons from privileged backgrounds enjoy some degree of openness and some level of acceptance from their family and close friends provided they live discreetly, but this does not cover the vast majority of the population and most same-sex relationships tend to remain secret due to the social stigma attached.

1.3.9 Gay rights activists and other persons who openly campaign for gay rights in Pakistan would be at real risk from non-state societal actors and would not be able to seek effective protection from the authorities.

### **Is there effective protection?**

1.3.10 LGBT persons would not generally be able to seek and obtain effective protection from the state against acts perpetrated against them by non-state actors.

### **Is the person able to internally relocate within Pakistan to escape that risk?**

1.3.11 Given that homophobic attitudes are prevalent throughout the country, there is unlikely to be any place in Pakistan to which an

See Pakistan: Country Information and Guidance [Prison conditions](#)

See Pakistan: Country Information and Guidance [Actors of protection](#)

LGBT person could safely relocate without making fundamental changes to their behavior.

1.3.12 If an individual chooses to live discreetly to avoid persecution then, following [HJ \(Iran\)](#), they are a refugee.

See [Pakistan: Country Information and Guidance Internal relocation](#)

See [Caselaw](#)

## Policy summary

**Although same sex sexual acts per se are criminalised in Pakistan, in practice the authorities rarely prosecute cases and in general gay men, lesbians and transgender people are not under any real threat of prosecution.**

**Widespread and systematic discrimination against LGBT persons in Pakistan does, however, persist, including harassment and violence. This treatment may, in individual cases, amount to persecution. No effective protection is provided by the authorities.**

**LGBT persons from privileged backgrounds do however enjoy some degree of openness in some circles provided they live discreetly. Each case must therefore be considered on its individual facts.**

**Gay rights activists and other individuals who openly campaign for gay rights in Pakistan would be at real risk of persecution from societal actors. They would not be able to seek or obtain effective protection from the authorities or internally relocate to escape any such threat. They are therefore likely to qualify for a grant of asylum.**

**Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.**

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## 2. Information

Updated 8 May 2014

2.1.1 The information in this section refers to the situation of lesbian, gay, bisexual and transgender (LGBT) persons in general. Where possible information specifically relating to gay and bisexual men, lesbians and bisexual women, and transgender persons, has been provided under discrete subheadings. In looking at the position of lesbians, bisexual women and transgender women, consideration should be given to the status of women in Pakistan society generally – see Pakistan: Country Information and Guidance – Women. No specific information could be found on intersex persons in Pakistan at the time of publication.

2.1.2 The International Gay and Lesbian Human Rights Commission (IGLHRC) noted in its report Human Rights and Transgender People in Pakistan, published February 2008 (IGLHRC Report 2008), that:

‘There is no known grassroots activism among lesbians, gays, bisexuals, transsexuals and transgender (zenana) communities in Pakistan. This lack of activism, the silences around sexualit(ies), and deeply closeted status of most gays and lesbians in Pakistan (many of whom live double lives to avoid revealing their sexual orientation) makes it difficult to accurately assess their living conditions and human rights situation. Anecdotal information from Pakistani gay people who have left the country describes fear, secrecy, isolation, suicides, forced marriage and family and community pressure to conform to heterosexual norms.’<sup>1</sup>

### 2.2. Legal rights

2.2.1 There were no laws prohibiting discrimination on the basis of sexual orientation or gender identity.<sup>2</sup> There was no legal recognition regarding same-sex relationships, and lesbians, gay men and same-sex couples cannot adopt children.<sup>3</sup>

#### Gay and bisexual men

2.2.2 Sexual relations between men are illegal.<sup>4</sup> The full text of Section 377 of the Pakistan Penal Code (PPC) reads:

‘377. 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

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<sup>1</sup> International Gay and Lesbian Human Rights Commission (IGLHRC) <http://www.iglhrc.org/>, Human Rights and Transgender People in Pakistan – Submission to the UN Universal Periodic Review, published February 2008, <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/73-1.pdf>, date accessed 4 February 2014

<sup>2</sup> U.S. Department of State, Country Report on Human Rights Practices for 2013: Pakistan, 27 February 2014, section 6, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220402>, date accessed 28 February 2014

<sup>3</sup> International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) <http://ilga.org/>, Asia, Pakistan, Law, undated, <http://ilga.org/ilga/en/countries/PAKISTAN/Law>, date accessed 5 February 2014

<sup>4</sup> International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) <http://ilga.org/>, Asia, Pakistan, Law, undated, <http://ilga.org/ilga/en/countries/PAKISTAN/Law>, date accessed 5 February 2014



sufficient to constitute the carnal intercourse necessary to the offence described in this section.’<sup>5</sup>

2.2.3 ILGA reports that ‘The Hudood Ordinance of 1979 provides punishment for offences such as adultery, drinking alcohol and sodomy. Punishment can extend to life imprisonment or death by stoning.’<sup>6</sup>

2.2.4 The President of the Neengar Society, a youth-led NGO in Pakistan promoting rights for LGBT persons, and religious minorities, cited a 2012 case in which two young men in Punjab were arrested and charged under Section 377. Following up the case in 2013, the Neengar Society was informed that the men were released on bail and that the charges were later dropped due to a lack of available witnesses.<sup>7</sup> In 2011 the same organisation was aware of ten cases in Punjab prosecuted under Section 377 of the PPC, two of which resulted in ten-year prison sentences.<sup>8</sup>

2.2.5 The President of Neengar Society also noted that Section 294 – Obscene Acts and Songs – of the PPC, was also sometimes applied to transgender persons and male sex workers<sup>9</sup>, and stated:

‘Whoever to the annoyance of others – a) does any obscene act in any public place, or b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.’<sup>10</sup>

See Legal rights: [Transgender persons](#)

2.2.6 The President of Neengar Society stated that, although Section 377 and 294 laws were rarely enforced, they were ‘used to threaten and blackmail people. Since social stigma and discrimination against LGBT community is more severe in Pakistan, police and other community members threaten the members of LGBT community that they will have them arrested and thrown in jail.’ The President of Neengar Society stated that LGBT people are mostly arrested for extortion purposes and that cases may be altered after the police are bribed. The IGLHRC concurred, stating that police raids on gay “cruising areas” may be a “common phenomenon,” but charges are rarely pressed as it is common for the police to be bribed with money or sexual favours.<sup>11</sup> See Pakistan: [Actors of protection](#)

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<sup>5</sup> Pakistan Penal Code (Act XLV 1860), Section 377, accessed via <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>, date accessed 4 February 2014

<sup>6</sup> International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) Asia, Pakistan, Law, undated, date accessed 11 April 2014

<sup>7</sup> Immigration and Refugee Board of Canada, Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>8</sup> IRB, Immigration and Refugee Board of Canada, Pakistan: Treatment of sexual minorities by society, government and religious authorities; recourse and protection available (2009-2011), PAK103862.E, 30 November 2011, accessed via <http://www.unhcr.org/refworld/country,COI,IRBC,,PAK,,5072d0a92,0.html>, date accessed 4 February 2014

<sup>9</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>10</sup> Pakistan Penal Code (Act XLV 1860), Section 294, accessed via <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>, date accessed 4 February 2014

<sup>11</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013)



## Lesbians and bisexual women

2.2.7 The law on sexual relations between women is unclear. The President of Neengar Society explained that since Section 377 of the Penal Code cites “carnal intercourse,” it is not applicable to lesbian couples.<sup>12</sup> According to ILGA, ‘The penal code provision, 377, may not apply, but the Hudood Ordinance of 1979 apparently applies.’<sup>13</sup> The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, criminalizes Zina, which is defined as extra-marital sex.<sup>14</sup> ILGA further reports that ‘the punishment is up to 10 years in prison, but that this can be extended and death by stoning can be imposed. This suggests that the normal punishment is imprisonment for up to 10 years.’<sup>15</sup> A country advisor at ILGHRC stated that the issue of sexual relations between women was “still a very unexplored territory” in Pakistani law.<sup>16</sup>

## Transgender persons

2.2.8 In September 2012 the Supreme Court (SC) ruled that transgender persons, specifically the Khawaja Sarra, had equal rights with all citizens of Pakistan, including right to life, dignity, property, inheritance and voting rights.<sup>17</sup> In 2009 the SC ordered that a third gender category be included on national identity cards. Despite these gains, discrimination still occurs, limiting employment opportunities, and the transgender community still faces intimidation, discrimination, humiliation, and abuse.<sup>18</sup>

2.2.9 The President of the Neengar Society noted that Section 294 – Obscene Acts and Songs – of the PPC, was also sometimes applied to transgender persons and male sex workers.<sup>19</sup>

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## 2.3. Treatment by, and attitudes of, state authorities

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[PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>12</sup> Immigration and Refugee Board of Canada, Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014

<sup>13</sup> International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) Asia, Pakistan, Law, undated, date accessed 11 April 2014

<sup>14</sup> The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979, Article 4, [http://www.pakistani.org/pakistan/legislation/zia\\_po\\_1979/ord7\\_1979.html](http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html)

<sup>15</sup> International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) Asia, Pakistan, Law, undated, date accessed 11 April 2014

<sup>16</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>17</sup> Aurat Foundation <http://www.af.org.pk/>, NGO Alternative report on CEDAW, 2012, [http://www.af.org.pk/pub\\_files/1358697993.pdf](http://www.af.org.pk/pub_files/1358697993.pdf), date accessed 5 February 2014

<sup>18</sup> Radio Free Europe/Radio Liberty <http://rferl.org/>, Despite Gains, Pakistan's Transgender Community Under Attack, 26 October 2013, <http://www.rferl.org/content/pakistan-transgender-eunuchs/25148690.html>, date accessed 5 February 2014

<sup>19</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

- 2.3.1 According to the US State Department 2013 Human Rights Report for Pakistan, gay men and lesbians rarely revealed their sexual orientation. Systematic discrimination against lesbian, gay, bisexual, and transgender persons was widely acknowledged privately, but insufficient data existed for accurate reporting on these forms of discrimination, due in part to severe societal stigma and fear of recrimination for those who come forward.<sup>20</sup>
- 2.3.2 The Immigration and Refugee Board of Canada (IRBC) noted in January 2014 that the IGLHRC country advisor considered that, if an LGBT person who faced threats from family or community members went to the police, that the police ‘may become an accomplice rather than protector.’ The IRBC further reported that ‘According to the President of Neengar Society, incidents of threats or violence from family members against LGBT people are usually unreported and are resolved within the family; there is usually an unspoken agreement that no one will involve the police, and an LGBT person will not report incidents, even if they are “badly beaten”.’<sup>21</sup> The BBC indicated that LGBT issues were usually addressed within the family.<sup>22</sup>
- 2.3.3 In March 2012, all 57 countries belonging to the Organisation of Islamic Cooperation (OIC), including Pakistan, opposed a UN Human Rights Council’s resolution on sexual orientation and gender identity and subsequent discussion on discrimination and violence against LGBT persons. In an open letter to the UN Human Rights Council, Pakistani Ambassador to the UN, Zamir Akram, stated that LGBT rights had “nothing to do with fundamental human rights”, declared same-sex relationships as “abnormal sexual behaviour” and that “the issue of sexual orientation is unacceptable to the OIC.” The letter concluded by saying that “the Member States of the OIC would like to place on record their opposition to the holding of this panel and will not accept its considerations and recommendations.”<sup>23</sup>
- 2.3.4 A representative of the Women Employees Welfare Association (WEWA) reported, in 2011, that discrimination by the state of Pakistan against LGBT persons is “encoded, institutionalized and enforced”, due to legal provisions that criminalise same-sex relationships, and the fact that there were no laws prohibiting discrimination on the basis of sexual orientation. The WEWA added that LGBT persons were not accepted legally or socially at either local or national levels, and their rights were infringed within daily existence, employment and education.<sup>24</sup>

See also [Legal rights – Transgender persons](#)

<sup>20</sup> [U.S. Department of State, Country Report on Human Rights Practices 2013: Pakistan, 27 February 2014, section 6](#)

<sup>21</sup> [Immigration and Refugee Board of Canada, Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\], 13 January 2014](#)

<sup>22</sup> BBC News, Gay Pakistan: Where sex is available and relationships are difficult, 27 August 2013, <http://www.bbc.co.uk/news/23811826>, date accessed 3 June 2014

<sup>23</sup> UN Watch, Outrage at UN as 56 Islamic States Slam Gays for "Abnormal Sexual Behaviour," Warning UN to Ignore Anti-Gay Violence, 17 February 2012, (Letter to the UN Human Rights Council, 14 February 2012), <http://blog.unwatch.org/index.php/2012/02/17/letter-from-uns-islamic-group-to-unhrc-president-opposing-panel-on-violence-against-gays/>, date accessed 5 February 2014

<sup>24</sup> Immigration and Refugee Board of Canada, Pakistan: Treatment of sexual minorities by society, government and religious authorities; recourse and protection available (2009-2011) PAK103862.E, 30 November 2011, accessed via [http://www.unhcr.org/refworld/country\\_COI\\_IRBC\\_PAK\\_5072d0a92\\_0.html](http://www.unhcr.org/refworld/country_COI_IRBC_PAK_5072d0a92_0.html), date accessed 4 February 2014

2.3.5 In September 2013, the website Queer Pakistan, Pakistan's first gay website, providing advice and information to the LGBT community, was blocked by Pakistan's Telecommunication Authority (PTA) due to its "forbidden content".<sup>25</sup>

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## Transgender persons

2.3.6 Radio Free Europe/Radio Liberty reported on police storming the homes of members of the transgender community in Peshawar in October 2013, smashing belonging and shouting threats. One victim reported "Nobody listens to our outcry. Now look at how these locals, along with police, have attacked our homes. They destroyed our household items and beat us badly. Some of our friends are now in the hospital."<sup>26</sup> In February 2014, it was reported that in Bannu City elders and government officials decided the police would crackdown against transgender people and force them to leave if they continued dancing and singing for their livelihood.<sup>27</sup>

2.3.7 Gay Star News reported in December 2013 that a Pakistani TV news reporter from the Abb Takk news station invaded the home of a couple she claims are in a 'gay' relationship, headlining the story 'Male and she-male living as husband and wife'. Afterwards the pair were taken away by what appeared to be the police – though, as of December 2013, sources in Pakistan did not know what charges they were arrested on or what had happened to them.<sup>28</sup>

2.3.8 The Aurat Foundation reports that nothing has been done to facilitate transgender people's access to education and health services or to protect them from sexual exploitation and violence. At the same time social prejudice combined with poor implementation procedures are instrumental in denying Khawaja Sarra individuals their inheritance rights.<sup>29</sup> In Pakistan's national elections, held in May 2013, a small number of transgender persons, commonly know as hijras in Pakistan, stood as candidates for election in the provincial assemblies.<sup>30</sup>

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## 2.4. Societal treatment and attitudes

2.4.1 The Immigration and Refugee Board of Canada reported in January 2014 that, according to Inter-Press Service, Pakistan's "conservative Muslim society" views homosexuality as a sin. According to a survey conducted by the Washington-based Pew Research Center published in June 2013, 87 percent of respondents in Pakistan said that homosexuality should be rejected by society. The IRBC further noted that, according to several sources, gay men and lesbians are rarely open about their sexual orientation and that "it is difficult for a member of the LGBT community to access housing, a good job, or health care

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<sup>25</sup> BBC News, Pakistan blocks first gay website Queerpk.com, 25 September 2013, <http://www.bbc.co.uk/news/world-asia-24276142>, date accessed 6 February 2014

<sup>26</sup> Radio Free Europe/Radio Liberty, [Despite Gains, Pakistan's Transgender Community Under Attack](#), 26 October 2013

<sup>27</sup> The Express Tribune, [Run out of town: Transgenders protest against possible eviction](#), 24 February 2014 (via ILGA)

<sup>28</sup> Gay Star News, [Pakistani TV news hands over 'gay couple' to police, calls for stoning](#), 18 December 2013

<sup>29</sup> Aurat Foundation, [NGO Alternative report on CEDAW, 2012 Transgender Communities- the Khawaja Sarra](#)

<sup>30</sup> The Guardian <http://www.guardian.co.uk/>, [Pakistan's once-ridiculed transgender community fight elections for first time](#), 9 May 2013 <http://www.guardian.co.uk/world/2013/may/09/pakistan-transgender-elections-campaign-trail>, date accessed 6 February 2014

without concealing their sexuality or taking extra precautions with a fear of discrimination.” According to the Neengar Society President, LGBT people in Lahore, Karachi, Islamabad, and elsewhere in Pakistan have been subject to violence and “no one can openly claim to be gay or lesbian in Pakistan as it can still cost them their life to announce their sexuality in public”. According to the IGLHRC country advisor, LGBT people in these cities are commonly subject to harassment and psychological violence from within or outside the family.<sup>31</sup>

2.4.2 Several sources consulted by the Immigration and Refugee Board of Canada reported that the gay community in Pakistan is “underground” and same-sex relationships tend to remain a secret due to the social stigma attached. Although the notion of being gay is taboo, in some circles it is possible to have a gay social life provided it is “discreet and under the radar”, particularly in more affluent urban communities, but for LGBT Pakistanis who are poor, not well-educated, and lack internet access it is difficult.<sup>32</sup>

2.4.3 The President of Neengar Society stated that social media groups and organised meetings in larger cities such as Lahore, Karachi and Islamabad, do exist for LGBT persons; however, this culture exists only among the more socially and intellectually elite classes of Pakistan, and there are no openly gay communities in these cities.<sup>33</sup> Neengar Society provides an emergency shelter to LGBT people who face threats or exclusion. According to the President of Neengar, there were a total of 70 LGBT people seeking shelter in 2013; of these, 10 were lesbians, five were transgender and 55 were gay or bisexual men.<sup>34</sup>

See Pakistan: Country Information and Guidance [Internal relocation](#)

## Gay and bisexual men

2.4.4 The Immigration and Refugee Board of Canada (IRBC) reported that, according to various media sources, Pakistani society and families expect men to get married and have families regardless of sexual orientation. According to The Post, in September 2012, a man in Karachi was killed because of his sexual orientation; acid was thrown on his face and other body parts and he was shot twice.<sup>35</sup> In April 2014, The Express Tribune reported on the murder of three gay men in Lahore by a father of two, who said he wanted to ‘send out a message about the “evils” of homosexuality.’<sup>36</sup> According to the

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<sup>31</sup> Immigration and Refugee Board of Canada, Research Directorate, [Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\]](#), 13 January 2014

<sup>32</sup> Immigration and Refugee Board of Canada, Research Directorate, [Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\]](#), 13 January 2014

<sup>33</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, [Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\]](#), 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>34</sup> International Humanist and Ethical Union <http://iheu.org/>, Homosexuality in Pakistan, 4 February 2008, <http://iheu.org/content/homosexuality-pakistan>, date accessed 4 February 2014

<sup>35</sup> Immigration and Refugee Board of Canada, Research Directorate, [Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\]](#), 13 January 2014

<sup>36</sup> The Express Tribune, Lahore’s serial killer ‘wanted to teach gays a lesson’, 28 April 2014, <http://tribune.com.pk/story/701322/lahores-serial-killer-wanted-to-teach-gays-a-lesson/>, date accessed 7 May 2014

IGLHRC country advisor, young men or boys that identify as gay typically face expulsion from the family home if they do not relinquish their sexual orientation.<sup>37</sup>

## Lesbians and bisexual women

- 2.4.5 According to sources consulted by the Immigration and Refugee Board of Canada, lesbians in Pakistan are said to be “invisible”.<sup>38</sup> According to The Independent, lesbians are “completely invisible” in Pakistani society.<sup>39</sup> The President of Neengar Society said that the situation for lesbians in Pakistan is particularly difficult. He explained: “Because of the situation of women's rights in Pakistan, lesbians rarely get access to good education, awareness about human rights or even their own sexuality. Lesbians will be forced to get married and they face pressure from both their in-laws and parent's family.”<sup>40</sup> The ILGHRC observed that it was possible for two women to share a home in Pakistan, though not as intimate partners.<sup>41</sup>

## Transgender persons

- 2.4.6 The 2013 U.S. Department of State Human Rights Report stated, ‘Society generally shunned transgender, eunuchs, and hermaphrodites, referred to as “hijras,” who often lived together in slum communities and survived by begging and dancing at carnivals and weddings. Some also were involved in prostitution. Hijras often were denied places in schools or admission to hospitals, and landlords often refused to rent or sell property to them. Hijras’ families often denied them their fair share of inherited property.’<sup>42</sup>
- 2.4.7 However, according to an April 2011 BBC report, despite suffering from some discrimination, there is some tolerance towards transgender persons as they have “long been accepted as part of the fabric of Pakistani society”.<sup>43</sup>
- 2.4.8 In 2009 the Supreme Court ordered that a third gender category be included on national identity cards. Despite these gains, Radio Free Europe/Radio Liberty reported in October 2013 that discrimination still occurs and that the transgender community still faces

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<sup>37</sup> [Immigration and Refugee Board of Canada, Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection \(2010-2013\) \[PAK104712.E\], 13 January 2014](#)

<sup>38</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>39</sup> The Independent, Pakistani women Rehana Kausar and Sobia Kamar marry in Britain's first Muslim lesbian partnership, 26 May 2013, <http://www.independent.co.uk/news/uk/home-news/pakistani-women-rehana-kausar-and-sobia-kamar-marry-in-britains-first-muslim-lesbian-partnership-8632935.html>, date accessed 3 June 2014

<sup>40</sup> Immigration and Refugee Board of Canada (IRB), Research Directorate, Pakistan: Situation of sexual minorities in Islamabad, Karachi and Lahore, including treatment by society and authorities; state protection (2010-2013) [PAK104712.E], 13 January 2014, accessed via [http://www.ecoi.net/local\\_link/268527/383095\\_en.html](http://www.ecoi.net/local_link/268527/383095_en.html), date accessed 4 February 2014

<sup>41</sup> International Gay and Lesbian Human Rights Commission (IGLHRC) <http://www.iglhrc.org/>, Human Rights and Transgender People in Pakistan – Submission to the UN Universal Periodic Review, published February 2008, <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/73-1.pdf>, date accessed 4 February 2014

<sup>42</sup> U.S. Department of State, Country Report on Human Rights Practices for 2013: Pakistan, 27 February 2014, section 6, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220402>, date accessed 28 February 2014

<sup>43</sup> Immigration and Refugee Board of Canada, Pakistan: Treatment of sexual minorities by society, government and religious authorities; recourse and protection available (2009-2011) PAK103862.E, 30 November 2011, accessed via <http://www.unhcr.org/refworld/country,COI,IRBC,,PAK,,5072d0a92,0.html>, date accessed 4 February 2014



intimidation, humiliation, and abuse. Many also become the victims of extortion, sexual violence, and criminal gangs. This report cited a provincial lawmaker in Peshawar and a member of the ruling Tehrik-i-Insaf political party as equating their lifestyle with homosexuality and saying that the very idea of a “third gender” is un-Islamic.<sup>44</sup> The Aurat Foundation reported in 2012 that transgender people are often abandoned by their families, have low access to education and the jobs market, and are among the most marginalised and sexually vulnerable communities of Pakistan with little or no defence against sexual and other forms of violence.<sup>45</sup>

2.4.9 Gay Star News reported in December 2013 that a Pakistani TV news reporter from the Abb Takk news station had ‘invaded the home of a couple she claimed are in a “gay” relationship, leading to their arrests.’ The story was headlined as ‘Male and she-male living as husband and wife’ and flashed up offensive captions, saying LGBT people are ‘worthy of stoning’ and ‘cause AIDS’.<sup>46</sup>

2.4.10 The Gender Interactive Alliance<sup>47</sup> and the Shemale Rights Foundation<sup>48</sup> both work for the equality and civil rights of Pakistan’s transgender community.

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<sup>44</sup> [Radio Free Europe/Radio Liberty, Despite Gains, Pakistan's Transgender Community Under Attack, 26 October 2013](#)

<sup>45</sup> [Aurat Foundation, NGO Alternative report on CEDAW, 2012 Transgender Communities- the Khawaja Sarra](#)

<sup>46</sup> [Gay Star News, Pakistani TV news hands over ‘gay couple’ to police, calls for stoning, 18 December 2013](#)

<sup>47</sup> Gender Interactive Alliance Pakistan, About, undated <http://genderinteractivealliance.wordpress.com/>, date accessed 6 February 2014

<sup>48</sup> Radio Free Europe/Radio Liberty, Pakistan’s ‘Third Gender’ Demand Rights Protection, 8 June 2010 [http://www.rferl.org/content/Pakistans\\_Third\\_Gender\\_Demand\\_Rights\\_Protection/2065679.html](http://www.rferl.org/content/Pakistans_Third_Gender_Demand_Rights_Protection/2065679.html), date accessed 6 February 2014

# Annex A: Map of Pakistan

Map of Pakistan, dated 2010, extracted from the University of Texas at Austin, Perry-Castañeda Library Map Collection (click on map for full access).<sup>49</sup>



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<sup>49</sup> University of Texas at Austin, Perry-Castañeda Library Map Collection <http://www.lib.utexas.edu/maps/>, Pakistan, 2010, [http://www.lib.utexas.edu/maps/middle\\_east\\_and\\_asia/pakistan\\_pol\\_2010.jpg](http://www.lib.utexas.edu/maps/middle_east_and_asia/pakistan_pol_2010.jpg), date accessed 21 February 2014



# Annex B: Caselaw

## Germany v Y & Z [2012] EUECJ C-71/11 (05 September 2012)

In this case concerning two Ahmadis from Pakistan the European Court of Justice (ECJ) rejected the notion of core and peripheral aspects of religion, dismissing the argument that only an interference with a core right might constitute persecution:

63. Such a distinction is incompatible with the broad definition of 'religion' given by Article 10(1)(b) of the [Qualification] Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a 'severe violation' within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

The ECJ went on to find that the determining factor as to whether an interference with religious freedom will constitute persecution is 'the severity of the measures and sanctions adopted or liable to be adopted against the person concerned' (para 66). Where a person who exercises their freedom of religion runs a genuine risk of being prosecuted or being subjected to inhuman or degrading treatment or punishment then that is likely to constitute persecution (para 67). Specifically, the prohibition of participation in worship in public either alone or in community with others may constitute persecution where there is a genuine risk of prosecution or being subjected to inhuman or degrading treatment or punishment (para 69).

The ECJ held that desire to preserve one's religious identity even where the prohibited religious practice is not a core element of the religion, is a relevant risk factor:

70. In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

The ECJ also rejected the argument that a person can be expected to be discreet in order to avoid persecution:

79. It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

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The Supreme Court established (in paragraph 82 of this judgment) the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

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