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National Commission for Human Rights of Pakistan

**REPORT TO THE REGIONAL NATIONAL HUMAN RIGHTS  
INSTITUTIONS PROJECT ON INCLUSION, THE RIGHT TO  
HEALTH AND SEXUAL ORIENTATION AND GENDER IDENTITY**

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This Report was prepared for the Regional National Human Rights Institutions Project on Inclusion, the Right to Health, and Sexual Orientation and Gender Identity (SOGI), implemented by the International Development Law Organization (IDLO) and the United Nations Development Program (UNDP) in partnership with the Asia Pacific Forum and SAARCLAW (the Regional NHRI SOGI Project). The Project was designed to build an understanding of the response of National Human Rights Institutions (NHRIs) in South Asia and Southeast Asia to SOGI-related human rights issues.

The Project advocates for greater employment of the Yogyakarta Principles; builds upon the outcomes of the South Asia Roundtable Dialogue: Legal and Policy Barriers to the HIV Response (Kathmandu, 2011); and supports the commitments of the Economic and Social Commission for Asia and the Pacific (ESCAP) under Resolutions 66/10 and 67/9.

The Project is a direct response to the recommendations of the Report of the Asia Pacific Forum (APF) Advisory Council of Jurists: Human Rights, Sexual Orientation and Gender Identity, 2010 (ACJ Report). Specifically, the ACJ Report recommends that NHRIs:

- undertake an internal dialogue on issues relating to the human rights of people of diverse SOGI and build the capacity of the institution to understand the issues and to react appropriately;
- build relationships with people of diverse SOGI, including civil society organizations, in order to inform the work of the NHRI; and
- research, identify and document human rights violations against people of diverse SOGI, and the impact of discriminatory laws and practices.

The NHRI SOGI Project selected Pakistan for a parallel analysis of rights reporting mechanisms. Pakistan has a relatively well connected community of people of diverse SOGI with strong capacity in implementing HIV-related initiatives. While the National Commission for Human Rights was established in mid-2012 (and was not yet operational at the time of this Project) there are alternative state and non-state pathways to address human rights violations. In addition to this, the Supreme Court's recognition of transgender rights in a series of judgments between 2009 and 2012, indicates a degree of tolerance for initiatives promoting the rights of people of diverse SOGI.

National report prepared by: Ms Samina Choonara, Consultant.

## 1. INTRODUCTION

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This report reviews rights reporting mechanisms and organizations with a mandate to address human rights in Pakistan, with a view to considering the availability and accessibility of such mechanisms for the community of people of diverse sexual orientation and gender identity (SOGI).

This report will consider the newly established National Commission for Human Rights, State institutions with a human rights mandate and a small number of non-governmental bodies with a human rights mandate. The scope of this report does not extend to consider rights reporting mechanisms to the extent they are available through police and law enforcement agencies.

## 2. BACKGROUND

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Pakistan is a recent signatory to both the International Covenant on Economic, Social and Cultural Rights (2008) and the International Covenant on Civil and Political Rights (2010). These treaties contain protective provisions that are equally applicable to people of diverse SOGI. The application of these provisions to people of diverse SOGI is clarified under the Yogyakarta Principles, which affirm the primary obligation of States to implement human rights.<sup>1</sup>

Article 377 of the Pakistan Penal Code criminalizes carnal intercourse as 'against the order of nature.' This article is interpreted to include same sex behaviour. Article 496 of Pakistan Penal Code criminalizes fraudulent marriage ceremonies and is enforced to apply to same sex marriage. Penalties for these offences range from two year jail terms to life sentences.<sup>2</sup>

## 3. THE NATIONAL COMMISSION FOR HUMAN RIGHTS

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### A. Establishment of the National Commission for Human Rights

On 31 May 2012, President Asif Ali Zardari signed the National Commission for Human Rights Bill 2012 into power (the *National Commission for Human Rights Act 2012* (the NCHR Act)), formally creating the National Commission for Human Rights (NCHR or Commission).<sup>3</sup> In October 2012, the Government of Pakistan participated in the second review of the States' efforts to fulfill its obligations under human rights treaties, under the Universal Periodic Review (UPR) process. The establishment of the NCHR was presented to the Human Rights Council as verification of the State's compliance with international human rights standards.<sup>4</sup>

The NCHR Act is intended to comply with international commitments, particularly the Paris Principles (UN General Assembly Resolution 48/134 outlining international guidelines on NHRIs). The Paris Principles provide for the formation of an independent human rights body as an integral part of the commitment made by a State for the protection of human rights.

The NCHR Act indicates the headquarters of the National Commission for Human Rights will be located in Islamabad. The Commission has the power to open offices in other places as it sees appropriate.<sup>5</sup> Regional offices would increase the accessibility of the NCHR to complainants, including those from diverse SOGI.

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<sup>1</sup> Yogyakarta Principles, *The Application of Human Rights Law in relation to Sexual Orientation and Gender Identity*; Yogyakarta, Indonesia, 2006.

<sup>2</sup> Article 496 Penal Code of Pakistan: Marriage ceremony fraudulently gone through without lawful marriage: Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

<sup>3</sup> <http://tribune.com.pk/story/386288/zardari-endorses-formation-of-national-human-rights-commission/>

<sup>4</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Pakistan, 6 August 2012. Para 23-24

<sup>5</sup> NCHR Act Chapter II Article 3(4)



## B. Powers and Functions of the NCHR

The NCHR is intended to monitor the general human rights situation in the country, inquire into complaints of violations, visit places of detention, review laws and recommend new legislation, and develop a national plan of action for the promotion and protection of human rights.<sup>6</sup>

The NCHR Act provides the NCHR shall perform the following functions, amongst others:<sup>7</sup>

- i. intervene in any proceedings involving any allegation of violation of human rights pending before a court by making application for becoming a party to the proceeding before such a court;
- ii. undertake and promote research in the field of human rights;
- iii. maintain a data base on the complaints of violations (sic) of human rights received; and
- iv. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, print and electronic media, and other available means in all major languages of the country.

The NCHR also has the mandate to conduct direct investigation and inquiry in respect of any incident of violation of human rights.<sup>8</sup>

The NCHR has the power to investigate incidents of human rights violations suo motu, or at the behest of the complainant, and the authority to visit places of detention that may be administered by the military and intelligence agencies.

When inquiring into complaints under the NCHR Act, the Commission has the powers of a civil court to:

- i. summon and enforce the attendance of witnesses and examine them on oath;
- ii. discover and produce documents;
- iii. receive evidence on affidavits;
- iv. requisition any public record or copy thereof from any court and office;
- v. issue commissions for the examination of witnesses or documents; and
- vi. any other matter which may be prescribed.<sup>9</sup>

Articles 14 and 15 of the NCHR Act limit the Commission's powers of investigation by stipulating distinct and more limited powers and procedures for investigations related to complaints of human rights violations by the military and intelligence agencies. The military and intelligence agencies play a notable role in governance and administration across Pakistan, accordingly this provision has the potential to substantially impede the power of the NCHR to pursue complaints.

Under Article 20 of the NCHR Act, the Commission has the power to give directions prohibiting disclosure of the identity of a person involved in certain aspects of the Commission's work, where it considers it is necessary to protect the privacy or human right of any person. Examples of such persons include complainants, people who provide evidence or make submissions. This provision may be of value to people of diverse SOGI, as it would enable a person to make a complaint without publicly disclosing their identity.

6 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Pakistan, 6 August 2012.

7 NCHR Act Chapter III, Article 9

8 NCHR Act Chapter III, Article 9(i)

9 NCHR Act Chapter IV, Article 13

The Commission also has the power to conduct speedy trials of offences related to human rights, as a court of law.<sup>10</sup> This provision may also be of value to people of diverse SOGI, providing a faster, alternative manner in which to have a human rights matter held. This power has the potential to be slowed or impeded by the requirement for such trials to be 'in consultation' with the Chief Justice and through notification in the Gazette.

### C. Independence of the NCHR

Article 16 of the NCHR Act provides the Commission and its staff will be independent and separate from the government, however the Commission's independence may be limited by financial control and reporting requirements. The NCHR Act prescribes that a fund will be created for the NCHR which is to be determined by appropriations from the Majlis-e-Shoora (Parliament).<sup>11</sup> The NCHR Act further provides the Commission may accept funds from national NGOs and donors 'in a transparent manner.' Grants from foreign actors are prohibited unless they are first approved by federal government.

Pursuant to Article 28 of the Act, the NCHR will prepare an annual report within the fiscal year, and special reports on matters of urgency or importance; to submit to the government. The government is bound to put such reports before the Majlis-e-Shoora; within 90 days for the annual report and within 30 days for a special report. Once reports reach the Majlis-e-Shoora, they will be put on the NCHR website for public access.<sup>12</sup>

### D. The NCHR and International Human Rights Mechanisms

The NCHR Act provides that the Commission will submit independent reports to the government on the state of human rights in Pakistan for incorporation in reports to the United Nations bodies or committees.<sup>13</sup> This article provides a useful pathway for the NCHR's voice and priorities to be heard and an opportunity to bring human rights issues to the attention of the international community. Notably, the NCHR may choose to utilize this pathway to advance sensitive human rights issues, such as those related to SOGI.

As mentioned above, in October 2012, the Government of Pakistan participated in 14<sup>th</sup> Session of the UPR, the second review of the State's efforts to fulfill its obligations under international human rights treaties. Human rights commentators suggest increased engagement by the government in this review, relative to the 2008 UPR process.<sup>14</sup>

### E. Commentary on the NCHR Act

There was some criticism of last minute amendments made to the National Commission for Human Rights bill (NCHR Bill), which occurred shortly before it was passed into law.<sup>15</sup> Criticism focused on amendments made to the Bill that provided that the military, intelligence agencies of the State, and government functionaries (the police), were exempt from investigation and beyond the purview of judicial action. Late amendments also reduced the number of seats reserved for women and minorities, from two to one; and three to two, respectively.<sup>16</sup>

Notably, there were also some late amendments to the Bill with positive effects. The definition of the post of Chairman was broadened to include 'a person having demonstrable knowledge or practical experience in

10 NCHR Act Chapter V, Article 21

11 NCHR Act Chapter VI, Article 23

12 NCHR Act Chapter VII, Article 29(3)

13 NCHR Act Chapter III, Article 9(j)

14 <http://dawn.com/2012/11/08/focus-on-human-rights/>

15 See Asad Jamal, 'Missing the Mark' 10 May 2012, Dawn and 'Legislation in Haste', 17 May 2012, *The Tribune*; see also: <http://tribune.com.pk/story/386288/zardari-endorses-formation-of-national-human-rights-commission/> and <http://dawn.com/2012/05/17/hrw-urges-zardari-not-to-sign-human-rights-commission-bill/>

16 The final version of the bill reduced the number of representatives from minorities on the Commission from two to one, and the number of women representatives from three to two.

matters relating to human rights.<sup>17</sup> In earlier drafts, the post could be filled only by a person who has been or is qualified to be a judge of the Supreme Court.<sup>17</sup>

The inclusion of the Chairperson of the National Commission on the Status of Women as a permanent member of the Commission, and the requirement for at least two women to be members, are also a positive outcomes of amendments to the Bill.

The Government of Pakistan should be commended for its substantial work on human rights legislation concerning women's rights in 2011 and 2012;<sup>18</sup> and recognized for efforts to reserve seats in central and provincial legislatures for minorities (including the fixing of a quota of 5 per cent government employment to members of such communities). At present, sexual minorities are not included in this agenda of inclusion and quotas.

#### **F. Operation of NCHR**

The Pakistan National Report to the UPR, of August 2012, indicated that the nomination process for the members of the Commission is underway (members will be appointed by a bipartisan Parliamentary Committee). In October 2012, media reported the Foreign Minister commenting only that legislation had been enacted to put the NCHR into effect, in the context of the UPR process.<sup>19</sup>

Accordingly, as at the date of this report, five months after the NCHR Act was signed into law, there is little evidence of progress in respect of the practical establishment and operations of the Commission.

Human rights commentators have observed this delay in the set up and commencement of the NCHR, and noted that an independent and fully functioning NCHR could play an important role in Pakistan's efforts to improve rule of law and respect for human rights.<sup>20</sup>

The delay in establishing a functioning Commission means that at this point, there are no further documents, policies and plans available to indicate the Commission's potential sensitivity to minority rights, specifically the rights of sexual minorities.

## **4. OTHER GOVERNMENT BODIES WITH HUMAN RIGHTS MANDATES**

The following State institutions are mandated to address human rights:

### **A. Ministry of Human Rights**

The Ministry of Human Rights (MOHR) was re-established by the Federal Government of Pakistan in 2008, and is the lead department in the administration branch of the government on human rights issues.

Prior to 2008, the MOHR existed in various forms, including as a Human Rights Wing and a Human Rights Division of the Ministry of Law and Justice. It was once again upgraded to an independent ministry in 2008.

The MOHR has directorates in all provincial capitals. Provincial governments also have their own human rights departments or cells to address human rights issues.

The MOHR is headed by the Federal Minister for Human Rights, followed by the Ministry Secretary. The Joint Secretary oversees protocol and special officers, whereas the Director General oversees regional directors.

<sup>17</sup> NCHR Bill, Annexure A passed by the Sub Committee, 4 May 2012, passed by the Senate with changes.

<sup>18</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Pakistan, 6 August 2012. Para 16-18

<sup>19</sup> *Ahmadjiya Times*, 5 November 2012.

<sup>20</sup> <http://dawn.com/2012/11/08/focus-on-human-rights/>



The MOHR's responsibilities include:

- i. Reviewing the human rights situation in Pakistan, including implementation of laws, policies, and measures.
- ii. Leading initiatives for harmonization of legislation, regulations and practices with the international human rights covenants and agreements to which Pakistan is a party; and monitoring the implementation of such laws.
- iii. Obtaining information, documents, and reports on complaints and allegations of human rights violations from Ministries, divisions, provincial governments and other agencies.
- iv. Referring and recommending investigations and inquires in respect of any incident of violation of human rights.
- v. Developing and conducting information programmes to foster public awareness of human rights, laws and remedies available against the abuse of human rights.
- vi. Continuing efforts to address human rights violations throughout the country in collaboration with human rights NGOs.

In recent years, the MOHR have been involved in the development and passing of the NCHR Act; the establishment of the National Human Rights Coordination Committee; the installation of complaint boxes at the District and Tehsil Courts and in the Ministry of Human Rights; and the facilitation of a number of human rights seminars.

The MOHR website indicates that 11,004 cases related to human rights have been reported the MOHR.<sup>21</sup> All complaints are referred to relevant authorities and agencies.

A review of publicly available documents failed to reveal documents which demonstrate the MOHR's position on SOGI rights or a disaggregation of case data.

## **B. The Senate Standing Committee on Human Rights and the National Assembly Standing Committee on Human Rights**

The Senate and the National Assembly each have a Standing Committee on Human Rights. These committees are mandated to provide oversight on public policy, monitor the human rights situation in the country, receive complaints on violations, conduct inquiries, hold hearings, and make recommendations. Legislative bills and other important issues which warrant in depth discussion are referred to the committees.

The Senate Functional Committee on Human Rights (Senate Committee) was first constituted in 1993 and is the youngest committee of the Senate. The Senate Committee reviews the overall position of human rights violations in the country and receives representation from the affected persons, organizations and international agencies, regarding human rights violations in Pakistan.

According to the Senate website, the Senate Committee also ascertains if any violation of human rights has taken place and identifies problem areas. The Senate Committee undertakes studies and makes recommendations for redressing human rights violations, and can make proposals for legislation.<sup>22</sup>

21 Regional Directorates of Lahore, Karachi Peshawar, and Quetta Punjab reported 2131 cases; Sindh reported 5895 cases; NWFP reported 2155 and Balochistan reported 823 cases. <http://www.mohr.gov.pk/theminister.html>

22 <http://www.senate.gov.pk/ShowTopics.asp?Language=E&TopicCode=4&CatCode=1>; The Senate Committee is led by a Chairman and has 12 members.

The National Assembly has a committee system very similar to that of the Senate (National Assembly Committee). Members that have expertise or specific interest in human rights make up this committee to advise the National Assembly on policy.<sup>23</sup>

Neither the Senate Committee nor the National Assembly Committee websites make available documents that reveal the position of the Committees on SOGI rights. Given the involvement of these committees in law and policy, it may be strategically advantageous for the diverse SOGI community to maintain an awareness of the committees' agendas.

### C. Supreme Court Human Rights Cell and the Provincial High Court Human Rights Cells

Under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, the Supreme Court has jurisdiction when a question of enforcement of human rights is involved. In 2005, the Chief Justice established the Human Rights Cell of the Supreme Court of Pakistan, under the plan of establishing rule of law and a society based on justice. The Human Rights Cell is under the direct supervision of the Chief Justice and headed by the Director General, an officer of the Pakistan Supreme Court.

The Human Rights Cell is mandated to address rights violations and is in charge of monitoring the activities of police, jail authorities, courts, and other public sector organizations. Human Rights Cell officers receive applications related to the working of the aforementioned bodies, then present a summary to the Chief Justice who determines if the complaint falls under the power granted by Article 184(3) of the Constitution. Cases warranting urgent relief or constituting a pattern of human rights violations are taken up by the Court under its suo motu powers.

The Human Rights Cell provides an expeditious and inexpensive remedy to citizens, in parallel to the standard court litigation processes. The Supreme Court website indicates that as of 2010, the Human Rights Cell received approximately 250 complaints a day. There is no information on the types of cases or disaggregation of data available on the website.

In Pakistan, public interest litigation has paved the way for bringing various statutory reforms in matters of general public importance, including the Human Organ Transplantation Ordinance 2007 and the Prohibition of Smoking at Public Places Ordinance.

There are human rights cells at Provincial High Courts and at local and district level; formed on the recommendation of the National Assembly Standing Committee for Human Rights.<sup>24</sup>

Theoretically, these human rights cells could be accessible mechanisms for people of diverse SOGI. However, SOGI-related rights issues remain a sensitive issue. The effectiveness and accessibility of such rights reporting mechanisms is likely to be largely determined by leadership.

## 5. NON-GOVERNMENTAL ORGANIZATIONS WITH HUMAN RIGHTS MANDATES

### A. The Human Rights Commission of Pakistan

The Human Rights Commission of Pakistan (HRCP) was established in 1987. It is an independent, non-governmental organization that is member-based, with an elected council, a number of office bearers and a secretariat.

According to its charter, the HRCP works with people committed to the principles of the Universal Declaration of Human Rights and all other charters, covenants, and protocols of the United Nations related to human

<sup>23</sup> <http://www.na.gov.pk/en/cmnen.php?comm=MjY>; The National Assembly Standing Committee on Human Rights has 20 members and is headed by a Committee Chairman.

<sup>24</sup> [http://www.supremecourt.gov.pk/Annual\\_rpt\\_ap09mar10/9.pdf](http://www.supremecourt.gov.pk/Annual_rpt_ap09mar10/9.pdf); <http://www.supremecourt.gov.pk/web/page.asp?id=228>; <http://tribune.com.pk/story/70589/district-police-officers-to-supervise-rights-cells/>

rights. According to its charter, HRCP aims to 'promote studies in the field of human rights and mobilize public opinion in favour of accepted norms,' and 'to take appropriate action to prevent violations of human rights and to provide legal aid and other assistance to victims of violations.'

HRCP represents a potential rights reporting mechanism to the extent that they are a promoter of human rights and an advocacy organization.

Significantly, HRCP is a signatory to the Yogyakarta Principles. The HRCP Chairperson at the time was one of the group of human rights experts to participate in the Yogyakarta process and meeting; the Yogyakarta Principles bears her signature.

The HRCP takes part in the UPR process under the shadow report prepared by non-government organizations. Under the Summary of Stakeholders' Information Report prepared by the Office of the High Commissioner for Human Rights, HRCP is not shown to speak out on SOGI rights.<sup>25</sup>

The HRCP has no desk or focal point for sexual orientation and gender identity related violations, but has supported some research and data generation on SOGI. Additionally, a number of the HRCP annual reports, The State of Human Rights in Pakistan, either implicitly or explicitly recognize the rights of transgender people.

HRCP initiatives on human rights related to SOGI include:

1. In 2012, as part of its internship programme, the HRCP supervised a research report by a Canadian law student, Mr Waleed Malik, exploring the impact of the Supreme Court legislation on the rights of the transgendered (local name of preference: *khwaja sara*) community.<sup>26</sup> The report is based on a review of available literature and on personal interviews with organizations and individuals.

The report found that after three years of litigation, the *khwaja sara* community has finally found its 'moment of public attention'. The report suggests that this moment may be of revolutionary value but it is fast slipping away, and much ground clearing will have to be done at social and cultural levels to improve public attitudes before *khwaja sara* can access education and employment opportunities. For this to happen, all responsibility cannot be placed at the door of the government. Social actors and non government actors like the HRCP will have to work together to improve the environment of acceptance and inclusivity.

2. In 2012, HRCP prepared a Special Report for UNICEF on the project 'Monitoring Child Rights Violations.'<sup>27</sup> The HRCP report focused on street children, including teenagers from the transgender community, cross dressers, and those who identified as homosexual.<sup>28</sup> HRCP surveyed 20 street children to build understanding of how these children respond to rights violations, amongst other matters. Some of the street children interviewed used drugs and some were HIV positive. Of the 20 street children interviewed, 18 reported that of the violence and abuse they experienced, the worst abuse and rights violations had occurred at the hands of the local police.
3. In the State of Human Rights in Pakistan, 2011 (2011 Report), HRCP recognized the vulnerability of sexual minorities and supported the rights of the transgendered community as upheld by the Supreme Court of Pakistan.

'The most vulnerable women of the population were religious and sexualized minorities...'

<sup>25</sup> Notably, the Commonwealth Human Rights Initiative (New Delhi, India) is quoted as stating that there are no laws to protect against discrimination on the basis of sexual orientation. The CHRI Shadow Report recommended a moratorium on public prosecutions under Section 377 of the Criminal Code and a process to repeal Section 377.

<sup>26</sup> Waleed Malik, 'Transgender Rights', 2012.

<sup>27</sup> Third Quarterly Report, July- September 2012. UNICEF/HRCP. See Annexure.

<sup>28</sup> Men having Sex with Men, a new coinage that is preferable to the term 'homosexual' that is considered more limiting. This term then also includes transgender, cross dressers, bisexuals, sex workers straight and gay who service men.

'Women from sexual minorities - the *hijra* or transgendered community who mostly identify themselves as women — were granted the status of citizens of the State, but the only employment opportunity provided to them by the State was as tax collectors out to harass defaulters. This official gesture not only demeaned them as people and reinforced cultural biases of their nuisance value, but also set a precedent for how they were to be treated socially.'

In November [2011], the Supreme Court directed the Election Commission to enlist transgendered peoples on the voters' list, a division bench directed the federal authority of NADRA (National Database and Registration Authority) to issue this community with computerized identity cards, and the Sindh government pledged a piece of land to building a colony for them. The Court appreciated this and asked the other provinces to follow suit.'

A recommendation of the 2011 Report included: 'More women and transgender people need to be facilitated into the workforce on better terms of employment to make them a part of the social force and able to withstand family pressures and domestic violence.'<sup>29</sup>

The 2011 Report further states:

'HIV/AIDS: Pakistan was, until recently, considered a high risk, low prevalence country by international standards. According to UNAIDS, the Joint United Nations Programme on HIV/AIDS, this has now changed because from low prevalence of about 11 percent cases in 2005 to 21 percent by 2008. According to UNAIDS estimates, at least one in every five injectable drug users is infected by the virus.

From being prevalent amongst injecting drug users and sex workers, the disease has spread to the rest of the population, to women and children, from transfusion. Data suggests that most of the infected population is younger than 25. There is still a lot of misinformation and social stigma attached to the immune system disorder which is considered to be a disease affecting homosexuals or those leading promiscuous lives. This keeps the disease under wraps and the general misconception is that it is transmitted through touch exposes patients to social problems.'<sup>30</sup>

The 2011 Report records fact finding missions, it includes:

25 April 2011, Hyderabad, murder of two transgender individuals.

4. The HRCP State of Human Rights in Pakistan, 2010 (2010 Report) notes the limited access to health in prisons and the increasing rates of HIV.

The 2010 Report further reported:

'Relief to transgender individuals: In December [2010], a three-member bench of the Supreme Court, headed by the Chief Justice, advised the government to employ transsexuals to recover loans from defaulters as was done in India and to ensure their inheritance rights as duly guaranteed in the Constitution. Earlier, in November [2010], the Supreme Court had directed the government to formulate a policy for ensuring the rights of transgender individuals and creating job opportunities for them. Before that, in August [2010], Supreme Court had directed federal and provincial governments to provide protection and free of cost health and education facilities to transsexuals and submit report to the apex court on implementation of its directions. The court was hearing a petition filed by an advocate against, what he said, the social injustice committed to the transgender individuals.'

Further research and direct interviews indicate that HRCP tends to function primarily as an advocacy group, by taking a public position in the media, public fora, and through liaison with other national and international organizations supporting human rights. Although HRCP does not actively promote the rights of

<sup>29</sup> *The State of Human Rights 2011*, p157.

<sup>30</sup> *The State of Human Rights 2011*, p235

sexual minorities, the above-mentioned initiatives and reporting represent important and significant steps in addressing SOGI issues in Pakistan.

## **B. HRCP Affiliated Human Rights Body - AGHS**

HRCP's twin organization, the AGHS Legal Aid Cell, actively works with women and children providing legal aid and, in the case of women, also temporary shelter.

Formed in 1980, the AGHS Charter includes in the AGHS mandate, the defense of rights violations of minorities and those based on sexual orientation, HIV and AIDS. The organization has expressed willingness to work with sexual minorities if a case is brought to them. In a recent article in *The New York Times*, an AGHS representative is reported to have noted that all the examples of homosexual relations – in Sufi poetry, Urdu literature or discreet social conduct – occur within the private sphere. 'The biggest hurdle is finding the proper context to bring this issue out into the open.'<sup>31</sup>

## **6. CONCLUSION**

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This review of rights reporting mechanisms and institutions addressing human rights in Pakistan may be considered a step in increasing the understanding of avenues available for reporting of rights violations experienced by the SOGI community.

Notably, significant challenges exist in Pakistan. The mandates and powers of the abovementioned human rights bodies do not specially preclude them responding to human rights violation experienced by people of diverse SOGI, however the political climate in Pakistan means there may not be the will to address SOGI related rights. Equally, people of diverse SOGI must be informed, empowered and feel sufficiently protected, before they are likely to utilize rights reporting mechanisms.

In the absence of sufficient academic and activist groundwork, it is not possible to establish if people of diverse SOGI wish to claim sexuality as identity or as behaviour in a society where such practices have existed and been tolerated in the past. To have an awareness of human rights and be sufficiently empowered to claim rights, people first need support to overcome social and cultural marginalization. Advocating for the right to education and non-discrimination in employment has the potential to empower people of diverse SOGI.

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31 Advocate Hina Jilani quoted in *The New York Times* and the *International Herald Tribune*, 4 November 2012 in 'Gay Pakistanis, still in shadows seek acceptance'.







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