



Home Office

## **Home Office Response to IAGCI Review**

**Pakistan (Sexual Orientation and Gender Identity) CIG, July 2014**

**20 April 2015**

<b>Review Conclusions/ Recommendations</b>		<b>Response</b>	<b>Home Office Comments</b>
1.	<p><b>Overview</b></p> <p>Within this CIG Report, the Summary of Issues (1.2), Consideration of Issues (1.3), and background Information (2) are succinct, objective, and up-to-date. They are also largely—but not entirely—accurate, relevant, and traceable.</p>	n/a	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>
2.	<p><b>Overview</b></p> <p>Following a brief discussion of the legal context affecting LGBT individuals in Pakistan, together with one small clarification regarding ‘sodomy’, this Review addresses the accuracy and relevance of the CIG Report information focusing on two main issues, namely (a) the presence, or not, of effective state-based protection for LGBT individuals in Pakistan (see CIG paragraph 1.3.5) and (b) the ways in which LGBT individuals might live ‘discreetly’ to avoid persecution in Pakistan (see 1.3.4, 1.3.8, 1.3.12, the Policy Summary, 2.4.1 and 2.4.2).</p> <p>With reference to these two issues, I also move beyond the information contained in the CIG Report itself and refer to the Asylum Policy Instruction for Sexual Identity Issues as well as the legal guidance contained in ‘HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31’. These two resources are very helpful.</p>	n/a	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>

3.	<p><b>Key Issues</b></p> <p>As correctly noted in the CIG report, Pakistan has no law protecting against discrimination on the basis of sexual orientation. Nor is there any law permitting same-sex unions or marriages.</p> <p>On the contrary, Section 377 of the Pakistan Penal Code criminalises ‘carnal intercourse against the order of nature’, which is usually read as prohibiting non-heterosexual sexual activity involving any form of penetration. (The punishment for individuals convicted under Section 377 of the Pakistan Penal Code involves a fine plus imprisonment—generally 2-10 years but potentially for life.) In addition to Section 377, Pakistan’s Hudood Ordinance (Section 4) criminalises ‘zina’ or sexual intercourse outside marriage. This law does not specifically target LGBT groups. However, insofar as non-heterosexual relationships cannot be legalised in any form of marriage, it suggests that non-heterosexual sexual acts that involve penetration can be prosecuted.</p> <p>It should be noted that the same standard of ‘penetration’ is used in the legal ‘explanations’ pertaining to <i>both</i> Section 377 <i>and</i> the Hudood Ordinance. This standard is not necessarily restricted to gay men; it can be used to prosecute different forms of non-heterosexual and even heterosexual sexual contact.</p> <p><b>For the sake of <u>accuracy</u>, then, Paragraph 2.2.7 of the CIG Report (attempting to draw a distinction between Section 377 and the Hudood Ordinance on this point, as well as a blanket exemption from the latter for lesbians) may be revised. Legally, lesbians and other bisexual or transgender groups are not <i>necessarily</i> exempt.</b></p>	Accepted	We will update this paragraph to make this point clear in the next iteration.
4.	<p><b>Key Issues</b></p> <p>Similarly, the CIG Report notes that ‘the Hudood Ordinance provides punishment for sodomy’ (1.3.7 and 2.2.3). In fact the Hudood Ordinance does not mention ‘sodomy’, but the preceding paragraphs illuminate the logic underpinning this reference to sodomy in the CIG Report. <b>For the sake of <u>accuracy</u>, the wording in these paragraphs may be corrected to note that any form of penetration outside of a conventional understanding of heterosexual sexual contact is criminalised.</b></p>	Accepted	The wording in 2.2.3 will be changed to correct this point in the next iteration.

5.	<p>In any event, the legal punishment for zina (Sections 5 and 17) perpetrated by a Muslim is death. (For non-Muslims the punishment is lashing.) The evidentiary requirement for conviction, however, is very high, involving four eyewitnesses. This, at least in part, accounts for the fact that LGBT convictions for zina are very rare.</p> <p>However, the <i>fear</i> of prosecution under Section 377 or the Hudood Ordinance is significant for LGBT individuals, even despite the fact that convictions leading to formal legal punishments are rare.</p> <p>It is, however, quite important to stress in the Consideration of Issues (1.3) that, as the background Information (2.2.4) points out, prosecutions and punishments under Section 377 of the Pakistan Penal Code <i>are</i> carried out in Pakistan. <b>So, for the sake of <u>accuracy</u>, the Policy Summary on page 6 could be revised to say that LGBT individuals ‘are not under any [CUT: real] [ADD: consistent] threat of prosecution’.</b></p>	Not Accepted	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>
6.	<p><b>2. Ineffective Protection</b></p> <p>Even apart from questions about prosecutions actually pursued or punishments actually carried out, then, the CIG Report could do a bit more to stress that the police (and, thus, the state) are <i>directly complicit</i> in existing patterns of non-state persecution affecting LGBT individuals.</p> <p><b>For the sake of <u>accuracy</u>, then, the statement in the CIG Report under paragraph 1.1.1 (Basis of Claim) could be revised to say ‘... fear of persecution [ADD: and non-protection] by the Pakistani authorities or by non state actors due to their sexual orientation, or perceived sexual orientation, or gender identity’.</b></p>	Not Accepted	<p>This suggested revised paragraph could be read as meaning “non-protection ... by non-state actors”, which isn’t relevant to the refugee status determination process.</p> <p>In any case, this observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>

7.	<p><b>2. Ineffective Protection</b></p> <p><b>Similarly, the statement in the CIG Report under paragraph 1.3.8 could be revised to say that ‘... most same-sex relationships tend to remain secret due to the social stigma [ADD: and fear of harassment and extortion (often with police complicity)] attached to them’.</b></p> <p>These additions will not correct inaccuracies per se. They will simply allow the first part of the CIG Report to reflect the trends in Pakistan that are described in the second part of the Report more clearly.</p>	Not Accepted	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>
8.	<p><b>2. Ineffective Protection</b></p> <p>The active role of the police in assisting with the discriminatory eviction of trans-gender tenants, as well as the beating of such tenants (2.3.6), are just two examples of the complicity we see in Pakistan. The failure of senior police officers (and courts) to prosecute such behaviour on the part of the police is merely further evidence of this complicity. However, it may be helpful to highlight that evidence documenting this complicity—for example, police beatings or extortion, even without any prosecution under Section 377 or the Hudood Ordinance (let alone conviction or punishment)—is merely <i>supplementary</i> evidence pertaining to the specific factors that generate a <i>well-founded fear of persecution</i> amongst LGBT individuals.</p> <p><b>This fear of being caught up in a combination of non-state persecution and state-based complicity—already well-documented in the footnotes of this CIG Report—deserves to be highlighted in the Summary and Consideration of Issues (Sections 1.2 and 1.3, particularly under paragraph 1.3.10).</b></p>	Not Accepted	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>

9.	<p><b>3. Discretion</b></p> <p>This brings me to the issue of ‘discretion’ and the ways in which LGBT individuals might live their lives ‘secretly’ to avoid putting them in touch with the combination of non-state persecution and state-based complicity described above. <b>Here the CIG Report (see paragraph 1.3.8 and the Policy Summary) highlights one empirical detail that could be described as <u>irrelevant</u>.</b></p>	Not Accepted	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>
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10.	<p><b>3. Discretion</b></p> <p>The Asylum Policy Instruction for Sexual Identity Issues (Section 6.2), as well as the legal guidance provided in ‘HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31’, clearly states that, if any individual makes any effort to live ‘discretely’, it is necessary to ask why s/he has done so. And, if s/he has done so to avoid persecution, this is an important factor in the case.<sup>1</sup></p> <p>This guidance is relevant <i>without any reference to social class</i>. In other words, turning to the CIG Report (1.3.8), the fact that ‘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’ is, with reference to the issue of social class, <u>irrelevant</u>. On the contrary, this pattern of middle and upper-class ‘discretion’ amounts to nothing more than an invitation to investigate whether this ‘discretion’ stems from a well-founded fear of persecution (and a fear that recourse to adequate state-based protection will be lacking).</p> <p>As such, <b>paragraph 1.3.8 could be revised to say, simply, that ‘LGBT persons may choose to live discreetly in an effort to avoid persecution. Each case must therefore be considered on its individual facts.’</b></p>	Not Accepted	<p>This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)</p>
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<sup>1</sup> Section 6.2 of the Asylum Policy Instruction for Sexual Identity Issues states that ‘people cannot be required to behave discreetly’ and ‘internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location’.

11.	<p><b>3. Discretion</b></p> <p>In the CIG Report (Appendix B), <b>the relevance of ‘Germany v Y &amp; Z [2012] EUECJ C-71/11’ is also somewhat unclear.</b> This case concerns the persecution of Ahmadiyya citizens in Pakistan. It was included to provide additional legal guidance regarding the issue of discretion, indicating that it is not permissible to deny asylum applications on the basis that claimants might live a ‘discrete’ life in their home country to avoid persecution.</p> <p>However, <b>this issue of discretion is discussed with much greater clarity—and <u>relevance</u> for the subject of this CIG Report—in ‘HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31’.</b></p>	Not Accepted	This observation would appear to fall beyond the scope of the review – specifically at §4.6(b) of the Statement of Requirements (“The review should focus exclusively on the country of origin information contained within the document, and not pass judgment on the policy guidance provided.”)
12.	<p><b>4. Transgender Inheritance</b></p> <p>Finally, with reference to paragraphs 2.3.8 and 2.4.6 of the Report, regarding the difficulty that transgender individuals face in receiving ‘their fair share of inherited property’, <b>it may help to note that Muslims in Pakistan are expected to follow the Islamic laws of inheritance spelled out in various Muslim Personal Law (Shariat) Application Acts and the Muslim Family Laws Ordinance, which, in turn, draw for the most part on specific suras regarding inheritance within the Qur’an.</b></p> <p>These texts attempt to specify particular fractional shares for each male and female heir based on their position within the family; they do <i>not</i>, however, address the shares of transgender individuals. This ‘Qur’anic’ dimension of Pakistan’s inheritance laws partly explains the difficulty that transgender individuals face when they attempt to claim their share of any family estate.</p> <p><i>Note:</i> This is not a correction; it is merely a clarification that helps to provide the context within which transgender inheritance rights are situated.</p>	Partially Accepted	We appreciate the observation and will seek sourced material to document and expand on this point in the next iteration.
13.	<p><b>4. Transgender Inheritance</b></p> <p>With reference to the CIG Report paragraph 2.4.8, and <b>for the sake of <u>accuracy</u>, it would also be helpful to clarify that the Pakistan Tehreek-e-Insaf political party (PTI) is currently the ‘ruling party’ only in the province of Khyber Pakhtunkhwa (where Peshawar is the capital city).</b></p>	Accepted	We will update this paragraph to make that point clear in the next iteration.



14.	<b>Inactive Websites</b>	Accepted	Although working on the date of publication, we will review the links in the next iteration.
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