



No. 2(119)/21-Chair/NCHR
GOVERNMENT OF PAKISTAN
NATIONAL COMMISSION FOR HUMAN RIGHTS
5th Floor Evacuee Trust Complex, F-5/1,
Agha Khan Road, Islamabad.



Islamabad, the 30th August, 2023

Subject: **NADRA'S OBLIGATION IN ISSUING CNIC TO TRANSGENDER PEOPLE**

Dear Sir,

The National Commission for Human Rights (NCHR) is a statutory body established under the NCHR Act XVI of 2012. The NCHR Act, 2012 provides a comprehensive and overarching mandate for the promotion and protection of human rights in Pakistan, as enshrined in the Constitution and international treaties. Among its various responsibilities, the primary functions of the NCHR include the investigation of human rights abuses and providing advice to the Government on legislative, policy, and administrative matters pertaining to human rights in the country.

The National Commission of Human Rights (NCHR) is deeply concerned about the National Database and Registration Authority's (NADRA) refusal to register transgender people in violation of the Constitution of Pakistan and the fundamental rights of transgender people.

On 13 June, the Head of Operations of NADRA through an official communication instructed all DAUs to process applicants only with "Male or Female" gender markers and cease printing cards with "gender other than male or female with immediate effect." A number of transgender people have since been refused ID cards with the "X" gender marker. Transgender people with "X" gender markers have also been unable to renew their ID cards or amend details such as their postal address on their ID cards.

The transgender community in Pakistan is already marginalized and denied its constitutional rights. NCHR is troubled by NADRA's actions, which are leading to further victimization of and discrimination against transgender people.

NADRA has relied on a judgment by the Federal Shariat Court (Shariat Petition No. 5/i of 2020), which on 19 May 2023, ceased the operation of certain provisions of the Transgender Persons (Protection of Rights) Act, 2018, and related rules "with immediate effect." These provisions included Section 2(f) (containing the definition of "gender identity"), Section 2(n)(iii), Section 3 (related to legal gender recognition), and Section 7 (related to inheritance) of the Transgender Persons (Protection of Rights) Act, 2018.



NADRA's decision contravene 203D of the Constitution of Pakistan, the proviso of which states :
"Provided that

no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been preferred, before the disposal of such appeal."

The proviso of Article 203D has two parts: First, it states decisions of the Federal Shariat Court shall not take effect before the expiration of the period within which an appeal may be filed before the Supreme Court against the judgment. The Federation or Province have six months to appeal judgments of the FSC (Article 203F), which means no decision of the FSC can take effect until six months have passed since the judgment was issued. On this ground alone, NADRA could not have ceased registering transgender people only days after the FSC judgment.

Second, the proviso to Article 203D provides FSC decisions shall not take effect before the disposal of any appeal filed against the judgment. The Supreme Court, too, has interpreted Article 203D categorically: "*Since the appeal is pending adjudication, the said decision of the Federal Shariat Court (impugned therein) has not come into effect, because the second part to the proviso to clause (2) of Article 203(D) of the Constitution.* (2022 SCMR 1352). In a recent judgment (PLD 2023 PHC 6), the Peshawar High Court also held: "*Decision of Federal Shariat Court was assailed before the Supreme Court in appeal and same is still pending adjudication, thus, in accordance with the proviso to Art.203-D(2) of the Constitution, the decision of the Federal Shariat court before disposal of the appeal by the Supreme Court is not effective.*"

Multiple appeals have been filed against the FSC judgment regarding the Transgender Persons (Protection of Rights) Act, 2018. For example, *Farhatullah Babar etc. vs Hammad Hussain etc*, C.Sh.A.2/2023, among others. The Constitution is clear: until the appeals are decided by the SC, the FSC judgment has no effect and the Transgender Persons (Protection of Rights) Act, 2018, and the rules are still in force in their entirety. All government authorities, therefore, remain bound to implement provisions of the Act.

NADRA is relying on Para 96 of the FSC judgment that says certain provisions of the Transgender Persons (Protection of Rights) Act, 2018, and related Rules "shall cease to have any legal effect immediately". Such direction has no legal effect as it is in clear violation of the text of the Constitution as well as judgments of the SC and High Courts.

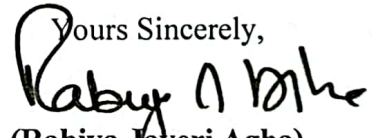


NCHR is deeply concerned that transgender people are being denied their fundamental right to get their ID cards made as well as legal gender recognition through NADRA's decisions. Provision of CNIC cards to citizens is the primary duty of the State, as the provision of a number of other rights is tied to having a valid CNIC card. Among others, this violates their right to dignity (Article 14), right to life (Article 9), and the right to equality before law (Article 25). As a result, some have also been unable to get their passports made or renewed, which violates their right to the freedom of movement (Article 15) as interpreted by the Supreme Court. That this is happening during election year has the further impact of disenfranchising transgender people, including a violation of Article 17 of the Constitution.

In view of the above, NADRA should kindly revisit this policy and start registering transgender people.

Looking forward to a positive response.

Thanking You.

Yours Sincerely,

(Rabiya Javeri Agha)
Chairperson, NCHR

The Director General,
National Database and Registration Authority,
Government of Pakistan,
Islamabad.

Copy for information to:

- The Secretary, Ministry of Human Rights, Government of Pakistan, Islamabad.
- The Secretary, Ministry of Interior, Government of Pakistan, Islamabad.