



National Human Rights Commission of Bangladesh

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

Presented at the National Partnership Dialogue • 11 October 2012





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Published by:

International Development Law Organization
Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
idlo@idlo.int; www.idlo.int

United Nations Development Programme
UNDP Asia-Pacific Regional Centre
United Nations Service Building, 3rd Floor
Rajdamnern Nok Avenue, Bangkok 10200, Thailand
Tel: +66 (2) 304-9100
Fax: +66 (2) 280-2700
aprc@undp.org, <http://asia-pacific.undp.org>

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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.

In participating in the Regional NHRI SOGI Project, the National Human Rights Commission of Bangladesh took part in two dialogues with representatives of the SOGI community with a view to building NHRC representatives' sensitivity to, and understanding of the rights and specific vulnerabilities of people of diverse SOGI; as well as a series of internal meetings and research activities.

National report approved by: Hon. Chairman Prof Mizanur Rahman, National Human Rights Commission of Bangladesh.

National report prepared by: Dr. Sayed Saikh Imtiaz, Assistant Professor, Department of Women and Gender Studies, University of Dhaka. Nominated Consultant of the National Human Rights Commission of Bangladesh.

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1. INTRODUCTION

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. The right to health is enshrined in the International Convention on Economic, Social and Cultural Rights (ICESCR), to which Bangladesh acceded in 1998. This right has been interpreted as “an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”¹

The Committee on Economic, Social and Cultural Rights (CESCR) has stipulated that the right to health includes certain freedoms and entitlements some of which are legally enforceable, such as the provision on non-discrimination. The CESCR has stated that the Covenant “proscribes any discrimination in access to health care ... on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation ... which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”

Access to health care and the right to health may be explicitly or implicitly denied through laws, religion, social institutions and cultural traditions. Stigma and discrimination negatively impact upon access to essential healthcare services by marginalized groups, including people living with HIV and people of diverse sexual orientation and gender identity (SOGI). The cumulative impact of these factors is that marginalized groups are often driven underground and disproportionately affected by health conditions. This in turn has broader social and economic consequences, as poor health impedes upon a persons’ ability to work, to contribute towards society, and to support their family.

The National Human Rights Commission of Bangladesh (NHRC or Commission) placed the right to health as one of its high priority areas for 2011,² and plays an important role in promoting and protecting the right to health in Bangladesh.

This paper will first outline the overall human rights situation with regard to people of diverse SOGI, and HIV. The second section focuses on the mandate and powers of the NHRC. The third section, against the backdrop of the first two sections, details the NHRC’s rights reporting mechanisms and initiatives on inclusion, the right to health, SOGI and HIV.

2. BACKGROUND

2.1 National Commitment to Human Rights

Bangladesh fought for its independence and became a sovereign state in 1971. Through this process, Bangladesh committed to ensure the full enjoyment of the human rights for all its citizens, based on the principle of non-discrimination in the Constitution of the People’s Republic of Bangladesh, 1972 (Constitution). The Constitution provides at Article 18 that it is the primary duty of the State to improve public health.³ Article 15 further states that it is the responsibility of the State to secure for its citizens, *inter alia*, “the basic necessities of life, including food, clothing, shelter, education and medical care”⁴ and further “the right

1 <http://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx>

2 NHRC identifies ten priority areas for 2011-12 in its strategic plan for 2011-15. Of these, the second highest priority area is “violations of economic, social and cultural rights, including health rights, discrimination against people with disabilities, etc.”

3 Constitution of Bangladesh Article 18 (1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

4 Constitution of Bangladesh Article 15 (a).

to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement.”⁵

The establishment of the NHRC is a direct outcome of the commitment of the state of Bangladesh to ensure economic and social rights and justice for each and every citizen. The NHRC plays a vital role in Bangladesh, where rule of law is weak and the knowledge of human rights is limited.⁶

In a chiefly Muslim society, discussion about HIV and people of diverse SOGI remains challenging. The NHRC has approached this matter with sensitivity to the socio-political context and laws of the country.

2.2 The Emergence of Advocacy for the Rights of Sexual Minorities and People Living with HIV

Being a predominantly Muslim country, many people in Bangladesh consider sexual orientation that does not involve opposite sex to be ‘unnatural’. Though presumably, homosexuality and diverse SOGI has always been present in the society, it has not always been visible. As a result of this, there has been little public discussion on this topic.

In recent years, Bangladesh has seen a growing discussion and debate about issues surrounding diverse SOGI. This is in part related to the national response to HIV. The Bangladesh response to HIV has brought two issues to the forefront of human rights discussions. Firstly, it has pointed out that people living with HIV have all the rights and entitlements of other citizens of Bangladesh. Secondly it has created the space to recognize the rights of people of diverse SOGI.

Over the past decade, people of diverse SOGI have started to demand their rights. In Bangladesh “gay, lesbian, bisexual, transgender, intersex, hijra, kothi and other groups” are identified under the category of people of diverse SOGI.⁷ In February 2009, the Sexual Rights Initiative (a coalition of NGOs)⁸ submitted a report to the UN Human Rights Council, on the sociopolitical rights of the sexual and gender minority communities of Bangladesh under the 4th Session of the Universal Periodic Review (UPR). The Bangladesh Sexual Rights Initiative Report notes that in Bangladesh there are subgroups of people who do not meet the western definition of gay, lesbian or bisexuals.⁹ Few have corroborated that sexual identity in Bangladesh can be hard to categorize.¹⁰ Also seen, especially in the HIV sector, is the use of the term men/males who have sex with men/males (MSM), rather than the term ‘gay’ to describe homosexual or bisexual men.

In Bangladesh, young, middle and upper class men are more likely to self identify as gay.¹¹ Amongst these men, access to the internet, English literacy and the resources to travel contribute to a sense of solidarity with the global lesbian, gay, bisexual and transgender (LGBT) community.¹²

5 Constitution of Bangladesh Article 15 (d).

6 50.2% of respondents participating in a quantitative survey conducted by the NHRC in 2011 had never heard of the term human rights. ‘Perceptions, Attitudes and Understanding – A Baseline Survey on Human Rights in Bangladesh’ 2011, National Human Rights Commission of Bangladesh.

7 The Sexual Rights Initiative Report, submitted to the United Nations 4th Universal Periodic Review, February 2009 <http://www.upr-info.org/IMG/pdf/SRI_BGD_UPR_S4_2009_SexualRightsInitiative_JOINT_upr.pdf>

8 Coalition members include: Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development and Creating Resources for Empowerment and Action-India and others

9 Sexual Rights Initiative Feb. 2009, Para. 8-11

10 Ain o Salish Kendra (ASK), Dhaka. 2008. Human Rights in Bangladesh 2008 (English). <www.askbd.org/hr_report2008/22_Sexual.pdf> [Accessed 15 Apr. 2010] _____. N.d. “About ASK.” <http://www.askbd.org/web/index.php?page_id=420> [Accessed 13 Apr. 2010], 241; The Daily Star [Dhaka]. 10 August 2007. Srabonti Narmeen Ali and Elita Karim. “Pushing Boundaries.” <<http://www.thedailystar.net/magazine/2007/08/02/sfeature.htm>> [Accessed 7 June 2010]

11 2011, Siddiqi, Dina, M., ‘Sexuality, Rights and Personhood: Tensions in a Transnational World’, *BMC International Health and Human Rights*, vol.11, supp. 3.P.5; for example the online Boys of Bangladesh (BoB) group: <http://boysofbangladesh.org/index.php>. accessed 26 June 2012

12 2011, Siddiqi, Dina, M., ‘Sexuality, Rights and Personhood: Tensions in a Transnational World’, *BMC International Health and Human Rights*, vol.11, supp. 3.P.5; for example the online Boys of Bangladesh (BoB) group: <http://boysofbangladesh.org/index.php>. accessed 26 June 2012

There are a small number of LGBT community groups in Bangladesh. Some commentators report LGBT organizations fear police raids on meetings in public spaces. For some MSM and transgender people, the internet has provided a safe space for meeting people.¹³ Whatever the identity marker, as long as such identity indicates homosexual behavior, the social attitude towards it tends to be negative and biased.

2.3 Stigma and Discrimination

There is little discussion on the rights of people living with HIV in Bangladesh. There is substantial stigma attached to HIV and accordingly, reasonable to presume that a person living with HIV faces considerable discrimination in Bangladeshi society. According to the findings of the Stigma Index (an initiative of UNAIDS and partner organizations), discrimination in health care settings is a recurring issue in Bangladesh.¹⁴ It also suggests that many people living with HIV avoid clinics and hospitals for fear of being discriminated against because of their HIV status.

The Stigma Index Report also cites confidentiality and involuntary testing for HIV as issues of concern in healthcare settings. The Stigma Index Report also shows discrimination is a reality for all ages. A pervading issue across the nine country analysis was the incidence of verbal insults and threat felt by people living with HIV. Even when study respondents had not experienced direct discrimination, they reported a generalized fear of discrimination and modified their behaviour accordingly. The analysis examines how self stigma is also an issue for people living with HIV.

2.4 The Government Response to HIV

Since the beginning of the HIV response in Bangladesh, the Government has been pro-active in incorporating key affected groups into its harm reduction policies.¹⁵ Notably, the Ministry of Health and Family Welfare (MoHFW) has incorporated MSM, *hijras* and sex workers as distinct target groups for HIV interventions. Publicly acknowledging key affected populations demonstrates tolerance towards SOGI and HIV-related issues in Bangladeshi society.

2.5 The Legal Framework and Enforcement of Law

Social attitudes are reinforced by the Penal Code of Bangladesh, derived from the British Penal Code during colonial occupation. Section 377 of the Penal Code of Bangladesh criminalizes homosexual acts:

“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 may extend to ten years, and shall also be liable to fine.”

It is broadly assumed that although this section is gender neutral, it is applied to men. However, the ambiguity in Section 377 means it could cover a wide range of sexual acts, including between a man and a woman.

On 5 March 2010, Amnesty International reported that “it is generally unsafe for homosexuals in Bangladesh to publicly reveal their sexual orientation, and they frequently marry persons of the opposite gender to give the appearance of heterosexuality.”¹⁶ Amnesty International also reported that homosexuals whose sexual orientation is known encounter discrimination and ostracism; in addition, social barriers and stigma result in many homosexuals being unable to obtain employment and opting to sell sex.

¹³ US Department of State, 2010 Human Rights Report: Bangladesh, available at <<http://www.state.gov/j/drl/rls/hrrpt/20100/sca/154478.htm>>, accessed 25.06.2012

¹⁴ See <<http://www.unaids.org/en/resources/presscentre/featurestories/2011/august/20110829stigmaindex/>>

¹⁵ See National Strategic Plan for HIV/AIDS 2004-2010

¹⁶ Amnesty International (AI), Toronto. 5 March 2010. Correspondence from the Refugee Coordinator providing information from a Bangladeshi researcher with the South Asian team of the International Secretariat of AI

The abovementioned Sexual Rights Initiative Report indicates that section 377 of the Penal Code is primarily used to “bully Hijra, Kothi and LGBT - identified communities.”¹⁷ An article in Himal South Asian, a regional news and analysis magazine, corroborates that Section 377 is rarely enforced.¹⁸ However, Section 54 of the Criminal Procedure Code and Section 86 of the Dhaka Metropolitan Police Ordinance records show that physical assault or beating was the primary form of violence experienced by MSM. Second to physical violence was rape, followed by forced eviction from public spaces.¹⁹

There are no anti-discrimination laws in place in Bangladesh that specifically protect people of diverse SOGI or people living with HIV. The Ain o Salish Kendra (ASK) 2008 Annual Report corroborates this, stating there are no “specific protection against discrimination ... on the grounds of sexual orientation.”²⁰ The abovementioned Amnesty International report also stated that state protection for homosexuals who are victims of violence or subject to threats is unlikely, and that in fact such a request could be seen as a confession to a possible criminal offence.²¹

2.6 State Engagement with International Human Rights Processes

In December 2008, while many other countries signed a United Nations declaration affirming that international human rights include sexual orientation and gender identity, Bangladesh was one of 57 countries to sign a counter-statement (read by Syria) that expressed serious concerns about granting rights to “certain persons on the grounds of their sexual interest and behaviors” and among other things suggested that protection of sexual orientation could lead to the normalization of pedophilia.²²

The UPR is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council. Under the auspices of the Human Rights Council, the UPR process provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

Bangladesh participated in 4th Session of the UPR in 2009. The process resulted in 42 recommendations for Bangladesh. Recommendation 27 addressed sexual orientation and gender identity, specifically:

- “provide human rights training to law enforcement and judicial officers, with a specific focus on the protection of the rights of women, children and persons of minority sexual orientation or gender identity and adopt further measures to ensure protection of these persons against violence and abuse;
- consider abolishing article 377 of the Penal Code, which criminalizes sexuality against the “order of nature”;
- decriminalize same sex activity between consenting adults and adopt further measures to promote tolerance in this regard;”

Bangladesh rejected the part of the recommendation relating to sexual orientation. Bangladesh stated “the specific recommendation on sexual orientation can not be accepted. Bangladesh is a society with strong traditional and cultural values. Same-sex activity is not an acceptable norm to any community in the country.

17 The Sexual Rights Initiative Report, submitted to the United Nations 4th Universal Periodic Review, February 2009 <http://www.upr-info.org/IMG/pdf/SRI_BGD_UPR_S4_2009_SexualRightsInitiative_JOINT_upr.pdf>, Para. 13

18 _____. March 2008. Surabhi Pudasaini. “Against the Order of Nature?” <http://www.himalmag.com/A-fillip-to-queer-rights-Reading-down-Section-377_dnw177.html> [Accessed 7 June 2010]

19 Ain o Salish Kendra (ASK), Dhaka. 2008. Human Rights in Bangladesh 2008 (English). <www.askbd.org/hr_report2008/22_Sexual.pdf> [Accessed 15 Apr. 2010] _____. N.d. “About ASK.” <<http://www.askbd.org/web/index.php?page id=420>> [Accessed 13 Apr. 2010], 242-243

20 Ain o Salish Kendra (ASK), Dhaka. 2008. Human Rights in Bangladesh 2008 (English). <www.askbd.org/hr_report2008/22_Sexual.pdf> [Accessed 15 Apr. 2010] _____. N.d. “About ASK.” <<http://www.askbd.org/web/index.php?page id=420>> [Accessed 13 Apr. 2010], 242

21 Amnesty International (AI), Toronto. 5 March 2010. Correspondence from the Refugee Coordinator providing information from a Bangladeshi researcher with the South Asian team of the International Secretariat of AI

22 Syria et al 18 Dec. 2008

Indeed, sexual orientation is not an issue in Bangladesh. There has been no concern expressed by any quarter in the country on this. Therefore, the recommendation is out of context.”

3. THE NATIONAL HUMAN RIGHTS COMMISSION OF BANGLADESH - MANDATE AND POWERS

3.1 Establishment and Mandate

The NHRC was established by the *National Human Rights Commission Act 2009* in consonance with Bangladesh's commitment to international human rights law. The Commission serves as a mechanism for the enrichment of the realization of human rights. The NHRC is intended to contribute to the embodiment of human dignity and integrity as well as to safeguard the basic order of democracy so that inalienable fundamental human rights of all individuals are protected and the standards of human rights are improved in the country.

The launching of the NHRC was the result of the effort of the successive governments in late nineties with support from national organizations and agencies. This cumulative effort succeeded in 2007 with the promulgation of the *National Human Rights Commission Ordinance 2007*, followed by the *National Human Rights Commission Act* in 2009. Since 22 June 2010, the NHRC has been led by seven Commissioners (one Chairman, one full time member and five honorary members).

The mandate of the NHRC is derived from the Constitution of the People's Republic of Bangladesh, *the Human Rights Commission Act* and the international human rights instruments to which Bangladesh is a party. As per the Constitution, the fundamental objective of the state is to establish an egalitarian society where equality and social justice would be guaranteed for all citizens. It envisages that Bangladesh shall be a democracy where fundamental human rights and worth of all humans would be ensured.

In line with these objectives, the *National Human Rights Commission Act* in its preamble [read with section 2(f)] has provided that the National Human Rights Commission is being established in order to protect, promote and foster human rights as envisaged in the Bangladesh constitution and international instruments.

3.2 Powers and Functions

The key powers of the NHRC are investigation and inquiry, recommendation, mediation, legal aid and human rights advocacy, research and training on human rights laws, norms and practices. As a protector of human rights, the Commission primarily deals with complaints through investigation, research and sensitization. It advocates for justice and works to ensure people become aware of their rights.

The Commission performs the following functions:

- Developing human rights policies through conducting human rights research and issuing legal and administrative policy recommendations;
- Analyzing laws, policies and practices from a human rights perspective;
- Investigating human rights violation cases and providing access to justice;
- Promoting human rights education and raising public awareness about perception of human rights;
- Promoting, monitoring and comparing the national standard and implementation of international human rights treaties;
- Co-operating with government agencies, civil society organizations, UN human rights bodies and national human rights institutions;

- Settling complaints having the tendency of violation of human rights through mediation, providing legal aid if possible to the aggrieved party;
- Lodging or help to lodge petitions in the apex court;
- Sensitizing law enforcing agencies through human rights training; and
- Other matters deemed necessary to protect and promote human rights.

The Commission may inquire into complaints of violations of human rights (by petition or suo-motu), committed by a person, the state, a government agency/institution/organization or public servants. This is accompanied by the right to enquire and investigate and also give the complainant legal assistance. It also has the power to visit jails and other forms of detention to make recommendations. The NHRC does not act as a criminal court but can receive complaints of violations committed by law enforcement officials.

The NHRC has the power to review and examine draft bills and existing legislation, as well as to advise and make recommendations to the Government of Bangladesh for better implementation or compliance with international human rights instruments. Issues tried by court or issues concerning the service matters of public servants do not fall within the jurisdiction of the NHRC.

Another important power of the Commission is the mandate of mediation. The Commission may summon and ensure attendance, summon written or oral evidence, summon witnesses and the documents in their possession, provide authorization for and against the public participation in an investigation or inquiry, and may call for reports from the government. If the government does not reply, the Commission may start its own investigation. Furthermore, the Commission may actively submit letters to relevant government departments seeking reports on relevant matters. The Commission can also file cases before the courts as representatives of the complainant.

It is worth emphasizing the following powers of the NHRC:

- The NHRC can ask for a report of internal investigation from the Disciplinary Forces or the law enforcement agencies or any of its members on the allegation of human rights violation.
- The NHRC can visit any jail, correctional center, custodial facility or such other place, and make recommendation to the government thereon for the development of those places and conditions.
- The Commission can inquire and report a matter being referenced by the Supreme Court of Bangladesh on a writ petition heard by it.
- The Commission enjoys the power of a civil court in case of any inquiry or investigation.
- The Commission is empowered to appoint mediators according to established rules to dispose of a dispute relating to violation of human rights.
- In case of non-compliance of the reports and recommendations the Commission can bring the matter to the notice of the President who shall cause it to be laid before Parliament.
- The Commission can ask for information from governmental authorities on any alleged violation of human rights and the governmental authorities are required to provide the requested information. In case of failure to provide information, the Commission can start to work at its own initiative.
- The Commission can lodge application to the High Court Division if the case fits with the conditions of filing writ petitions under the Constitution.
- Apart from suggesting legal remedy, the Commission is endowed with the power to recommend the government to provide a temporary grant to the aggrieved person or his family.

Witnesses before the Commission are protected for their deposition.

4. INDEPENDENCE AND AFFILIATIONS

The independence of the NHRC is set out in the 2009 Act:

“The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, and dispose of property, both moveable and immovable, and shall by the said name sue and be used.”²³

The NHRC is committed to provide independent views on issues within the parlance of the Constitution or prevailing law for the time being in force for the protection of human rights. In accordance with its official mandate as mentioned above, the NHRC serves as the major national human rights watchdog by monitoring the implementation of state obligations to respect the protection and fulfillment of the rights of every single member of society.

The Commission works independently. It does not require prior approval of the government to spend its budgetary allocation. The budget of the Commission comes from annual grant of Government of Bangladesh or local authority. The account of the Commission is to be audited by the Auditor and Comptroller General of Bangladesh. It has the authority to mediate any complaint if feasible and appropriate, to revisit existing laws of the land and recommend amending any discrepancy for better and more effective protection and promotion of human rights.

Elections for Commissioners are held by a Selection Committee, headed by the Speaker of the Parliament and comprised of the Law Minister, the Home Minister, the Law Commission Chairman, the Cabinet Secretary and two members of the Parliament. Two candidates are selected for each member position, and presented to the President, who then elects one of them. The Commission is mandated to hold a (regular) meeting every two months.

The Commission office is based in Dhaka. The Commission has a mandate to open regional offices.

The NHRC has obtained “B” accreditation status with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. This accreditation level is reflected in its associate membership of the Asia Pacific Forum.

5. THE NHRC AND INTERNATIONAL HUMAN RIGHTS MECHANISMS

Bangladesh has been preparing for its participation in the 16th session of the UPR, in early 2013.

In October 2012, the NHRC submitted a report under the UPR process, and for the first time added a section on other minority groups. The NHRC report stated:

“Excluded groups (including Dalits and transgenders) remain some of the poorest people in Bangladesh and face marginalization and discrimination. In addition the NHRC notes that the Government of Bangladesh did not respect the recommendation with respect to sexual minorities. The NHRC understands the need for the law to be in harmony with the cultural and social mores of the people. Nevertheless, the NHRC believes that it is now time to ensure that all groups, including those who are transgender, intersex or sexual minority, are protected from discrimination.”

23 Unofficial English translation Act No.53 of 2009

6. POLICIES AND INITIATIVES RELATED TO SOGI AND HIV

The NHRC has adopted a Strategic Plan (2010-15) that includes a vision, mission, long-term goals, key strategies and focal areas. The plan also includes a list of “pressing human rights issues” which is not “an exhaustive list, and may be amended by the Commission from time to time.”²⁴

The NHRC recognizes the right to health as a special priority for 2011, and as one of its focus areas under the 2010-15 Strategic Plan. The NHRC does not have any specific policy with regard to SOGI or HIV. Gender based violence is identified as a “pressing human rights issues” for 2011, but there is no reference to diverse gender identity within this priority.

While discussing the need for a special NHRC HIV or SOGI policy, the Chairman expressed his interest in such policies, and reflected that the NHRC’s engagement with the IDLO/UNDP Regional NHRI initiative demonstrates the NHRC’s intention to engage itself in the right to health, the right to non-discrimination, HIV and SOGI related issues.²⁵

Notwithstanding this, the Chairman made it very clear that such issues are not priority issues for the Commission at this point of time. A reflection of this standpoint is seen in the NHRC’s 2009 and 2010 Annual Report. These reports give an account of the efforts of the Commission to progress its goals, neither make note of the rights of sexual minorities or demonstrate disaggregation of data related to SOGI related rights violations. The 2010 NHRC Bangladesh Annual Report (NHRC 2010) describes the NHRC’s efforts to fulfill its objective to ensure the “better protection and promotion” of human rights in the country.

The NHRC is clear that within its jurisdiction it has the mandate to ensure the rights of transgender people, *hijras* or people living with HIV. The Chairperson confirmed that if there is any single instance that a person living with HIV, a transgender person or *hijra* was being discriminated against with regard to health care services or in the community, the NHRC would deal with the matter.

The Chairman stated: “With regard to the recognition of [sexual minority rights] rights... if you look at their rights from the principles of non-discrimination, they have the rights to enjoy every human right that any other citizen in the country enjoys and they cannot be discriminated [against].”

7. THE COMPLAINTS SYSTEM AND RIGHTS REPORTING MECHANISMS

The NHRC maintains a record book to support the complaint system. From time to time, oral applications are made. If the Commission finds that it has jurisdiction over the matter, an applicant is required to submit a written complaint. The Commission aids the complainant with suggestions on how to make the complaint and its format. In some cases mediation or arbitration is suggested.²⁶ The complaint process for each and every case is managed in accordance with the NHRC Standard Operating Procedures.

In late 2012, the NHRC plans to commence receiving complaints online, via its website. This represents an important complaints mechanism for people who experience stigma and discrimination. Notably, the complaint forms available under this system are designed to recognize diverse gender (male, female, other).

To date, the NHRC has not received a complaint regarding the violation of human rights based on SOGI or HIV-related issues. The Commission does not have any separate mechanism to deal with such issues. The Commission’s complaints records and documentation process does not have a disaggregated data system for MSM, transgender or HIV-related issues.

²⁴ NHRC Strategic Plan (2010-15), 11

²⁵ In 2011, the Chairman of the NHRC spoke at a South Asian Regional Roundtable on ‘Law and Policy Barriers to HIV,’ further reflecting his commitment to this agenda.

²⁶ Arbitration is legally binding and can be used as enforcement orders. Mediation is not legally binding.

While, in accordance with Sec 2(f) and 12 of the founding Act, the NHRC has adequate mandate to receive complaints and investigate complaints with regard to SOGI and HIV; the position of the Government of Bangladesh impacts upon the promotion and protection of the rights of persons of diverse SOGI and people living with HIV.

CONCLUSION

The first section of this report demonstrated the complexity of the issues surrounding SOGI and HIV in Bangladesh. These issues are not within the comfort zone of the hegemonic ideology regarding sexuality. Such hegemony is a construction of hundred years of social practices and construes homosexual act as 'unnatural.' Read against the backdrop of the second section of this report, it is plausible to anticipate that notwithstanding its broad mandate and powers, the NHRC will face certain sociopolitical challenges in addressing the rights of people of diverse SOGI and people living with HIV.

Though the NHRC is yet to develop capacity to protect and promote the rights of people of diverse SOGI as a specific vulnerable group, strong commitment to this marginalized group is still evident. As the Chairperson of the NHRC remarked that if you name specific groups as target groups it becomes easier to address the related issues. He went on to note that even if people with diverse SOGI and people living with HIV are not immediately named, they are captured under the language used by the NHRC to protect vulnerable groups, marginalized groups and minorities.

International Development Law Organization

Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
idlo@idlo.int; www.idlo.int

United Nations Development Programme

UNDP Asia-Pacific Regional Centre
United Nations Service Building, 3rd Floor
Rajdamnern Nok Avenue, Bangkok 10200, Thailand
Tel: +66 (2) 304-9100
Fax: +66 (2) 280-2700
aprc@undp.org, <http://asia-pacific.undp.org>