

## **Report on Bangladesh – 4th Round of the Universal Periodic Review – February 2009**

This report is submitted by the Sexual Rights Initiative (a coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development and Creating Resources for Empowerment and Action-India<sup>1</sup> and others). It focuses on the **socio-political rights of the sexual and gender minority communities of Bangladesh** particularly with reference to **gay, lesbian, bisexual, transgender, Intersex, Hijra, Kothi and other linguistically unmarked groups**.

### **First Section: Background**

#### **Introduction**

1. Bangladesh was elected a member of the newly formed UN Human Rights Council in 2006<sup>2</sup> and was also a member of UN Human Rights Commission prior to that.
2. Bangladesh as a nation-state has faced difficulties in terms of governance, corruption and severe poverty right from the very day of its independence in 1971. In 1991 the first democratic government was voted into power supplanting the repressive military regimes that ruled the country for about two decades. Yet endemic political instability and difficulties to ameliorate the situation of the country have continued until the present day. Reports of state-sponsored killing of putatively criminal individuals through its various law-enforcing agencies, the rise of Islamic fundamentalism, the oppression of religious and ethnic minorities and the unlawful detention of civilians have been some of the characteristic features of the elected governments. Currently under the ‘caretaker government’<sup>3</sup> massive reforms are being undertaken to facilitate a free and fair election. Yet the reports of state-sponsored extra-judicial killings continue unabated even under this new regime. The caretaker government has also routinely been accused of clamping down on freedom of speech and political assembly.
3. Human rights concerns voiced by the civil society and news media have too often been dismissed by both the elected as well as the current caretaker government as being “anti-state”. It is against the backdrop of these events that the overall human rights scenario and particularly the rights of the people with marginal gender and sexual preferences need to be contextualized.

#### **National Legal Framework and Human Rights Institutions**

4. The constitution of the people’s republic of Bangladesh categorically guarantees a denizen’s fundamental rights and civil liberties. Different articles in part III of the constitution<sup>4</sup> prohibit discrimination on the grounds of religion, race, sex and caste. There are also clearly delineated principles guaranteeing freedom of expression, personal liberty, freedom of movement and assembly. Yet the complaints about State non-compliance with those principles persist.
5. Despite earnest calls from different human rights activist bodies no elected government has yet formed a human rights commission in accordance with the Paris Principles. In December 2007 an ordinance to create a Human Rights Commission was promulgated by the caretaker government<sup>5</sup>. However the modus operandi of the commission is yet to be settled.

International human rights obligations:

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<sup>2</sup> UN press declaration: <http://www.un.org/News/Press/docs/2006/ga10459.doc.htm>

<sup>3</sup> Caretaker government is an interim government entrusted with the task of conducting a free and fair election. It originated from a lack of general agreement among the competing political parties about maintaining legitimate means of changing government and holding unbiased election. Through the thirteenth amendment of the constitution the provision of caretaker government was formalized

<sup>4</sup> <http://aceproject.org/ero-en/regions/asia/BD/Bangladesh%20Constitution%201972.pdf>

<sup>5</sup> <http://www.thedailystar.net/law/2007/12/03/index.htm>

6. Bangladesh<sup>6</sup> has ratified the International Covenants on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.
7. However, very few strides have been adopted to inject the spirit of these treaties into the sphere of the domestic laws. Moreover the state also failed to submit its periodic reports on measures taken to materialize human rights. The initial report to the UN Committee on Torture was due in 1999 and to the Committees on ICESR and ICCPR in 2000 and 2001. So far Bangladesh has only managed to report systematically to CEDAW and CRC but implementation of their recommendations has been poor.<sup>7</sup>

#### **Recommendations for the First Section:**

- To immediately and properly investigate all allegations of state-sponsored extrajudicial, summary and arbitrary killings; sanction those found responsible and create the required mechanisms to prevent such incidents from occurring again.
- To effectively and swiftly implement the ordinance creating a Human Rights Commission in accordance with the Paris Principles, and to institutionalize a culture of zero tolerance for violation of human rights.
- To ensure the rights of women, religious and ethnic minorities, children and other groups subjected to human rights violations in no time
- To revamp the national laws in line with the spirit of the international human rights conventions to which the state is signatory.
- To report in a timely fashion to the Committees overseeing compliance with the Treaties ratified by Bangladesh, and to take all necessary steps to implement their recommendations.

#### **Second Section: Gender and sexual diversity in Bangladesh**

8. There is a culture of collective denial of the existence of same sex sexualities in Bangladesh a fact perhaps attributable to the rise of religious fundamentalisms in the country. Given that, there is a lack of public debate about same sex sexualities in the context of Bangladesh. More importantly same sex sexualities are often dismissed as 'western'.
9. Traditionally there have been two culturally visible and publicly institutionalized nonnormative gender/sexual subcultures in Bangladesh. One of these is known as the Hijra<sup>8</sup>. Hijra community is comprised of 'males' mostly from lower classes who desire putatively 'macho' males and often identify as 'female' or 'non-man'. Hijra is a ritually bounded community with strong devotion to both Hindu and Muslim-identified practices. Many Hijras in Bangladesh undergo emasculation or castration. Alongside the Hijra there is also a subculture of putatively 'effeminate' males who self-identify as Kothi. Kothis also desire 'masculine' males and often identify as 'females' or 'non-man'. While those who join the Hijra generally live as Hijra throughout their lives Kothis subvert masculine gender in marked social spaces like parks and gardens and later vanish into the mainstream society as 'normal' males. Kothis are also generally non-emasculated. However one commonality that binds the Hijra and Kothi is their renunciation of socially imposed masculinity. There is in fact a great degree of inter-community migration between these two groups a fact that makes any neat distinction difficult. Alongside the Hijra and Kothi there has also been a proliferation of seemingly 'western-fabricated'

<sup>6</sup> <http://www.un.int/bangladesh/gen/treaties.htm>

<sup>7</sup> <http://www.southasianrights.org/pdf/hr%20commission2008.pdf>

<sup>8</sup> For a detailed analysis of the Hijra and Kothi and the rise of LGBT see Hossain, Adnan (fc) 2008 'socio-political review of LGBT Issues in Bangladesh' in Greenwood Encyclopedia of LGBT Issues Worldwide. Greenwood Publisher, USA.

- identity categories like lesbian, gay, bisexual and transgender from 2000 onwards mostly among the urban middle and upper class. While the Hijra and Kothi are somewhat publicly visible, the LGBT-identified community is still underground. Nevertheless some of these LGBT-identified groups have started to use public spaces in recent times to hold get-togethers and discussion sessions. For example the International Day against Homophobia was celebrated for the first time in a public lounge under the banner of a gay-identified group in 2008.
10. Owing to a strong patriarchy no visible female same sex sexual subculture exists. Even in LGBT-identified groups - most of which are still internet-based -there are very few lesbian-identified members. Nevertheless anecdotal evidence suggests that female same sex sexuality exists in every social class in Bangladesh though only in secrecy.
  11. Alongside the Hijra, Kothi and LGBT groups, a wide range of linguistically and culturally unmarked same sex sexual behaviors are also practiced in Bangladeshi society. Many of those practicing same sex sexuality are heterosexually married and do not necessarily identify as bisexual. Marriage being an obligatory social institution, most males and females attracted to same genders enter into the institution of heterosexual marriage and lead dual lives.

### **Laws and policies related to same-sex sexuality and gender identity**

12. As a postcolonial nation-state Bangladesh retains the infamous British anti-sodomy law known as Section 377<sup>9</sup>. The Section 377 of the Penal Code criminalizes sexuality against the 'order of nature' a rather ambiguous phrase that can be stretched to penalize even heterosexual anal sex, cunnilingus and fellatio. The punishments for crimes perpetrated under this section include fines and an imprisonment of up to ten years.
13. Interestingly there has not been any case tried or filed under this section in the history of Bangladesh. Nonetheless '377' is said to have been invoked by the law enforcing agencies to bully Hijra, Kothi and LGBT-identified communities.
14. The national AIDS policy acknowledges the existence of male to male sexual practices<sup>10</sup>. Yet paradoxically homosexuality remains criminalized. There is still no legal framework to protect the rights of people living with HIV/AIDS. The 2005 poverty reduction strategy paper highlights HIV/AIDS and the Government of Bangladesh has prepared a national strategic plan for HIV/AIDS for the period 2004-2010 but it is yet to be seen as to how it gets translated at the level of implementation. Moreover these documents have bypassed the issues related to LGBT and Hijra and Kothi except for slapdash reference to males having sex with males.
15. There is also no law to penalize 'male to male' rape. Rape is still conceptualized within a peno-vaginal framework and is understood to be an exclusively heterosexual phenomenon both culturally and legally<sup>11</sup>.
16. Recommendations:
  - To de-criminalize consensual same sex sexuality between adults by abolishing penal code 377, in accordance with international human rights obligations to which Bangladesh is a signatory (such as the International Covenant on Civil and Political Rights<sup>12</sup>).
  - To formulate a separate law if necessary to address the issue of male rape or to broaden the juridical constituency of extant rape laws to include male to male rape

<sup>9</sup> Bangladesh Penal code, 1898, section 377

<sup>10</sup> National policy on HIV/AIDS and STD related Issues: Directorate general of health services, Ministry of Health and family welfare Government of the people's republic of Bangladesh. 1995, 1996

<sup>11</sup> For instance section 364, 366, 374 of the Penal Code or the Women and Child Repression Act 1995 are based on a heteronormative understanding of sexuality.

<sup>12</sup> In 1994 the Committee on Civil and Political Rights understood that penalizing consensual same-sex practices between adults constituted discrimination based on sex and thus violated Article 2 of the Covenant (Toonen v/Australia).

- To incorporate the issues related to sexual minority community into the national AIDS policy and strategic plans for HIV and AIDS prevention
- To create a legal framework to protect the rights of the people living with HIV and AIDS.

### **Human rights violations against people with non-normative gender and sexual preferences**

17. Gross violations of rights have often been reported in the forms of abduction, arbitrary arrests, detention, beatings and gang rape by the law enforcing agencies and local thugs. Particularly Hijra, Kothi and other 'effeminate' males are often vulnerable to these forms of violence<sup>13</sup>. There are also extensive reports of physical and psychological molestation of 'effeminate' males in academic institutions and workplaces. Most Hijra and Kothi-identified persons who attended schools cite bullying as one of the preeminent reasons for dropout from state sponsored primary schools. Many are reported to have turned suicidal and experienced acute psychological trauma. Left with no options, many turn to prostitution and drugs<sup>14</sup>.
18. There is no legal stance on transsexual surgery in Bangladesh. Nor is there any medical establishment providing for the needs of the transsexual people. The practice of ritual castration popular among the Hijra community involves serious health hazards as they are always surreptitiously performed by ritual cutters in extreme unhygienic conditions. As opposed to the popular belief that castration is forced upon them, Hijras in fact willingly undergo this process.
19. Too often children born as intersex are subjected to non-consensual "corrective surgeries" by the doctors that potentially can damage their sexual and reproductive health and well-being. There is very little awareness of this issue and no group to lobby against such non-consensual surgeries.
20. There are very few organizations in Bangladesh working for the sexual health needs of the Hijra, Kothi and males having sex with males<sup>15</sup>. There is no organization with a physical establishment to cater to the needs of the LGBT community. Nor is there any organization addressing the needs of females having sex with females. Due to the difficult environment in which they operate, the few organizations that exist restrict their activities mostly to the promotion of safe sex knowledge and distribution of condoms. Moreover HIV prevention efforts often suffer as law-enforcing agencies threaten and blackmail the Hijra and Kothi-identified outreach workers on the ground of Section 377<sup>16</sup>. Consequently the susceptibility of Hijra, Kothi and males having sex with males to HIV and STD gets compounded and the ability of organizations to serve those communities is restricted. So far no organization has taken any step to lobby for the repeal of Section 377 of Penal Code.
21. Recommendations
  - To train up and sensitize the law enforcing agencies so that the AIDS/STD-preventive activities do not get interrupted
  - To carry out systematic documentation of the abuses suffered by the people with non-normative gender and sexual preferences.
  - To introduce medical services in public hospitals for the sexual minority community suffering from HIV and STD

<sup>13</sup> See Bondyopadhyay, Aditya and Khan, Shivananda: *Against the odds: The impact of legal socio-cultural, legislative and socio-economic impediments to effective HIV/AIDS intervention with males who have sex with males in Bangladesh*. Naz Foundation International and Bondu Social Welfare Society.

<sup>14</sup> See Hossain, Adnan, 2005. *Hijras: An examination into the context of marginalization*. Unpublished MS thesis. North South University, Dhaka, Bangladesh.

<sup>15</sup> Though more than 380 NGOs are said to be working on HIV/AIDS very few of them address the needs of the males having sex with males, Kothi, Hijra and LGBT community. The only organization with a nationwide health program for males with non-normative sexualities is Bondhu social Welfare Society established in 1997.

<sup>16</sup> See the report '*Ravaging the vulnerable: Abuses against persons at high risk of HIV infection*' by Human Rights Watch August 2003 Vol. 15 No 6(c) for some documentation on the obstruction of HIV-related works.

- To ensure the rights of the NGOs working with the marginal communities like the Hijra, Kothi and males having sex with males.
- To introduce provisions for 'sex reaffirmation/reassignment surgery' for those (grown up transsexuals) willing to transition and to stop non-consensual sex assignment at birth
- To generate employment opportunities for the Hijra, Kothi and other low-income sexually marginal groups
- To conduct sensitivity-training with teachers, to make schools safe for children and youth with non-normative gender preferences and expressions as a way to ensure that they will be able to exercise their right to education.

### **Social stigmatization and medical abuses against non-normative sexual/gender identities**

22. While coverage of homosexuality and transsexual identity in the media is rare some newspaper articles written by eminent educationalists and columnists in the popular national English dailies have demonized non-normative identities as 'unnatural' and 'abnormal'<sup>17</sup>.
23. There is also anecdotal evidence that many LGBT-identified persons often receive mistreatments from medical professionals. Though the psychiatric establishment in Bangladesh follows DSM (Diagnostic and statistical manual) of American Psychiatric Association which has removed homosexuality from the list of disease back in 1973, many psychiatrists and psychologists in Bangladesh still consider homosexuality as 'aberrant' conditions and provide curative therapies often to the detriment of the mental wellbeing of the LGBT-identified people. Additionally awareness about marginal sexualities and gender identities among the medical professionals in government mental hospitals is very low. Many doctors in these establishments consider homosexuality as 'psychotic'<sup>18</sup>.
24. Recommendations:
  - To hold dialogues at the regional and national level on issues related to same sex sexualities and transsexual gender identities involving all the stakeholders including medical professionals, rights activists, academics, journalist, religious leader, government personnel and the sexual minority community.
  - To introduce non-normative gender and sexuality issues in the national educational curriculum to dispel prejudices against the lesbian, gay , bisexual, transgender, Hijra, Kothi and other such groups
  - To provide special training sessions for the media so that reporting of incidents of human rights violations against gender and sexual minority communities occur on a regular basis.

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<sup>17</sup> See for example the article called 'The move to ban gay marriages deserves special appreciation' published in a popular English daily available at <http://www.thedailystar.net/2004/03/05/d40305150192.htm>

<sup>18</sup> Email correspondence by Hossain, Adnan with clinical psychologists practicing as interns in government mental hospitals on 11/8/08