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General situation of LGBTI people

There is widespread social stigma and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Bangladesh, who often face both verbal and physical abuse in their everyday life. LGBTI rights are seldom respected and recognised among the civil society and governmental institutions. Those who chose to be open with their non-conforming sexual orientation face many challenges and severe consequences that prevent them from living a dignified life. LGBTI persons face social rejection, unemployment, violent intimidation from the police, and exclusion from their families. Men who have sex with men (MSM) are often ostracised by their family and the community and are denied access to fundamental rights such as housing, education, employment, and health care. Violent abuse by the police against MSM is well known in Bangladesh. There is a great social and economic pressure in the country for people to marry a person of the opposite sex. Public opinions about sexual orientation and gender identity tend to be heavily influenced by traditional Islamic and Hindu sexual morals. Furthermore, the LGBTI community faces widespread hostile attitudes from civil society, primarily because of religious traditions in the country.

Same sex sexualities and non-conforming gender identities are not recognised under the current legal framework. Bangladesh is still using a penal code (Section 377) that was introduced by colonial authorities from British India in 1860 criminalising same-sex sexual acts. Social stigma and pressure make it extremely difficult for all LGBTI persons, but lesbian women remain a neglected entity in Bangladesh. Being both women in a conservative society where women in general cannot enjoy the same freedoms as men, and being a sexual minority whose sexuality is socially, legally, and preciously proscribed make it hard for lesbian and bisexual women to find social space where their sexual identity is accepted.

The first LGBTI magazine in Bangladesh, *Roopbaan*, was launched in 2014, with the aim to create a more widespread visibility of the LGBTI issues in the media and to promote greater acceptance and understanding of the community in Bangladesh.

Legal and human rights instruments

Constitutional provisions and legal framework

Bangladesh inherited the penal code from British colonial administration. The Penal Code is titled “Of Unnatural Offences” and states “*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*”. Although this Section is gender neutral it is usually assumed to apply only to men. Section 377 attempts to cover a wide range of sexual acts, including homosexual behaviour. Even though there have been no known cases of deportation, fines or imprisonment, under Section 377, this law is mostly invoked by law enforcers to harass, extort, and blackmail LGBTI persons.

The Penal Code is most often used in conjunction with Section 54, which is the Code of Criminal Procedure. This code allows Bangladeshi police officers to arrest people without warrant, to intimidate, and to blackmail. Section 54 states that “any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned”. This provision, combined with Section 377 of the Penal Code, is the main tool of intimidation used by police against LGBTI persons in Bangladesh.

Contradictory to the sections above, article 28 from Bangladesh Constitution states: “*The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth*”. Furthermore, article 11 in the constitution stipulates the im-

portance of enjoyment of everyone's fundamental rights and freedoms. However, there is no law in Bangladesh, which prohibits discrimination based on a person's sexual orientation and gender identity. The Government of Bangladesh has accepted recommendations made during the Universal periodic Review in 2013, with regard to the human rights training of law enforcement and judicial officers, but refuses to abolish Section 377.

The Government in Bangladesh has approved a proposal of the social welfare ministry to identify "Hijra" as a third gender identity. Hijra, which is often a subsumed under the trans umbrella in the West, is a South Asian feminine gender identity. Furthermore, the government, announced in 2013, agreed upon to secure Hijras the right to identify themselves as a separate and distinct gender from binary norm on all official documents, including passports.

Regional and international human rights instruments

While many other countries in December 2008, signed a United Nations (UN) declaration affirming that international human rights to include sexual orientation and gender identity, Bangladesh was one of 57 to sign a counter-statement. The counter-statement expresses serious concerns about granting rights to "certain persons on the grounds of their sexual interests and behaviours", and suggested that the protection of sexual orientation could lead to the normalisation of paedophilia.

Bangladesh still continues to oppose recommendations of a number of International institutions regarding LGBTI rights. One example is in the sixth Asian and Pacific Population Conference by International Conference on Population and Development (ICPD) held in Bangkok, 2013, Bangladesh expressed its reservations on the promotion of rights of LGBTI persons. However, Bangladesh is a signatory to ICCPR (International Convention on Civil and Political rights), ICESCR (International Convention on Economic, Social and Cultural Rights) and CEDAW (Committee on the Elimination of Discrimination against Women), which are valuable tools to advocate LGBTI rights. 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 materialise human rights. The initial report to the UN Committee on Torture was due in 1999 and to the Committees on ICESCR and ICCPR in 2000 and 2001. Thus far, Bangladesh has only managed to report systematically to CEDAW and CRC and the implementation of their recommendations has been poor.

The Asian Pacific Forum has worked with National Human Rights Institutions (NHRI) in Bangladesh to promote the rights of people of diverse sexual orientations and gender identity. In 2002, the National Human Rights Commission (NHRC) of Bangladesh submitted a report as part of its State's participation in the Universal Periodic Review. The NHRC of Bangladesh argued that it is now time to ensure that all groups including transgender, intersex, and sexual minorities should be protected from discrimination.

Sexual and Reproductive Health and Rights, HIV/AIDS and Gender Based Violence

The first case of HIV/AIDS in Bangladesh was detected in 1989. Today UNAIDS estimates that there could be over 12,000 people living with HIV in the country. The overall prevalence is less than 1% in the country. Due to limited access to voluntary counselling and testing services, there are many Bangladeshi's who are unaware of their HIV status. Even though Bangladesh is considered to be a low prevalence country, it remains extremely vulnerable to an HIV epidemic. Due to the high level of poverty, overpopulation, gender inequality, and high levels of transactional sex, Bangladesh would have multiple struggles to cope with an epidemic.

Sexual and gender minorities have minimal access to medical services and treatment. This is mainly due to the widespread social stigma and discrimination by medical service providers. The UN General Assembly Special Session on HIV/AIDS (UNGASS) 2012 report noted that in 2010-2011, 9.3 per cent of all MSM had received tests in the past twelve months. Non-governmental organisations are working to provide sexual health services to the LGBTI community

and to campaign for greater openness and legitimacy for the community. However, many HIV/AIDS awareness programs have been threatened or closed down because of intimidation and violence by law enforcement authorities.

The South Asia Regional HIV/AIDS Program managed by the United Nations Development Programme Asia-Pacific Regional Centre (UNDP APRC) is a five-year regional initiative, from 2010 to 2015, to reduce impact of HIV and AIDS on men who have sex with men and transgender (TG) persons in South Asia. The program has been implemented in seven South Asian countries – Bangladesh is one of them. The main objective is to improve the delivery of HIV prevention, policy environment and knowledge regarding MSM (men who have sex with men) and Transgender persons in South Asia. The program stresses that the prevalence of HIV positive among MSM could increase rapidly if prevention efforts are not being continuously operated. The Global Fund to Fight AIDS, Tuberculosis and Malaria has also been one of the big donors to fight HIV/AIDS in Bangladesh and to support targeted interventions for key populations.

The government in Bangladesh has not ratified the recommendations of the International Conference on Population and Development (ICPD) to protect and fulfil the rights of persons of diverse sexual orientation or gender identity (SOGI) and has failed to provide comprehensive sexuality education to young people. The government claims that sexual education could encourage sexual activity that goes against the values of the country. Because of the lack of support and rejection from the government to work on sexual and reproductive health and rights (SRHR), organisations find it more challenging to work with these issues in a safe environment.

Surveys and qualitative studies have indicated that violence experienced by MSM and transgender persons is most commonly perpetrated by the police. MSM also risk violence and sexual violence from other men in public. Violence by family members towards transgender persons is also not uncommon, likewise forcing marriage. Organisations who work with transgender persons report that they face har-

assment not only from law enforcement, but also from those in positions of trust, such as relatives and teachers. These violations and marginalisation leads to social isolation, degradation of mental health, homelessness and poverty.

Civil society organisations and institutions active in the LGBTI field

Although the realisation of the importance of a right-based approach exists among the NGO community in Bangladesh, it is not easy to adopt in practice. One of the major challenges that remains are to fight the commonly held attitude in the government and other institutions, that homosexuality is illegal and culturally/religiously unacceptable. Because of the attitudes among stakeholders and policymakers, it has taken many years for LGBTI activists to organise in social communities. Due to the difficult environment in which organisation have to operate, the few organisations that exist restrict their activities mostly to the promotion of safe sex knowledge and the distribution of condoms.

Boys of Bangladesh (BoB) started as an online group in 2002. Boys of Bangladesh have become a non-founded platform for self-identified gay men in the country. They act as a meeting place for LGBTI persons and advocates for their rights and equality and for Section 377 to be repealed.

<http://www.boysofbangladesh.org/>

Bandhu Social Welfare Society (BSWS) provides health care and support to Bengali MSM and hijras. It is one of the pioneer organisations in Bangladesh that started working on sexual minority issues in 1996. It is comprehensively working on the promotion of SRHR and human rights amongst sexual minority populations. They receive core support from RFSU. <http://www.bandhu-bd.org/>

CARE-Bangladesh works with HIV/AIDS issues in Bangladesh and currently run the major needle exchange programs available in Bangladesh. These programs also provide a range of life-saving services such as access to clean needles, access to condoms and health care for STDs, and other ailments.

<http://www.carebangladesh.org/>

Furthermore, a group of transgender women from South Asian countries, including Bangladesh, created the Asia Pacific Transgender Network in 2009. Their objective is to champion transgender women's health, legal, and social rights

The organisation Badhan Hijra Sangha works with hijra women to establish human rights of hijras. Their mission is to organise improvement of the sexual health of hijras, prevent HIV/AIDS; establish recognition of hijras as third gender population; provide economic support and influence policy decisions related to the hijra population.

What Sweden could do – 9 questions to discuss

Within the broader context of support to democracy, human rights and gender equality in Bangladesh, Sweden has a great opportunity to include issues related to the rights of LGBTI persons and their access to justice. When addressing LGBTI in a non-supportive government context as Bangladesh, it is very important to consult LGBTI organisations in the country to make sure not to overrule their agenda. Questions to discuss:

- Could Sweden do more to stay updated on the legal and security situation and the needs and priorities of the LGBTI movement? To offer support and protection to activists and organisations at risk?
- Could Sweden do more to seek strategic alliances and continue to raise LGBTI rights in the dialogue with the government?
- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations, both nationally and regionally?
- Could Sweden do more to include LGBTI organisations in social and professional events/networks and in programmes focussing on civil society capacity development and/or human rights enhancement?
- Could Sweden do more to encourage inclusion of LGBTI rights in support to accountability mecha-

nisms (e.g. law reforms, national human rights institutions, UPR processes etc.)?

- Could Sweden do more to support LGBTI organisations in their work with shadow-reports to instances like the UPR –processes, an important tool for addressing violations of LGBTI persons?
- Could Sweden do more to raise issues of discrimination in economic empowerment, education and skills training in order to ensure that LGBTI persons are not excluded or denied access to programmes?

Presently, discrimination within the labour market is a factor that strongly contributes to the marginalisation of LGBTI persons, and puts them at risk of poverty. The Swedish strategy for Bangladesh aims at improved opportunities for the poor to contribute to and access economic growth, through improved dialogue between social partners on the labour market.

- In dialogues concerning private sector development, could Sweden raise anti-discrimination, codes of conduct, and employment legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity?

The Swedish Strategy for Bangladesh also aims at improving gender equality and to prevent gender based violence, as well as increasing the number of persons who have access to sexual and reproductive health and rights. These programmes could be used as entry points in the work towards decriminalisation and acceptance of LGBTI.

- Could Sweden do more to include gay, lesbian, bisexual, trans and intersex people and the MSM group in supported SRHR and GBV initiatives?

For further advice on dialogue regarding LGBTI issues, download [Sida's Human Rights of Lesbian, Gay, Bisexual and Transgender Persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#) or the [EU tools](#) referred to in the reference list. More specific advice and support measures, as well as contact information, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue.

References

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[Sida's Human Rights of Lesbian, Gay, Bisexual and Transgender Persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#)

EU news, tools and guidelines: http://eeas.europa.eu/human_rights/lgbt/index_en.htm

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#).

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, briefs have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.