

Parallel Report to the Committee on the Elimination of all Forms of Discrimination Against Women regarding Bangladesh's Protection of the Rights of LGBTI women



**Kaleidoscope
Australia**
Human Rights Foundation

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Contact Person: Professor Paula Gerber
President, Kaleidoscope Human Rights Foundation
Paula.Gerber@monash.edu

1. Background

- 1.1 Kaleidoscope Human Rights Foundation (**Kaleidoscope**) is an NGO that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific region. Kaleidoscope has prepared this report with the input and consultation of activists within the Bangladeshi LGBTI community.
- 1.2 This report has been prepared to inform the Committee on the Elimination of Discrimination against Women (**Committee**) of areas of concern regarding Bangladesh's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) to respect the human rights of lesbian, bisexual, transgender and intersex (**LBTI**) women.
- 1.3 Kaleidoscope provides its permission to the Committee to post this report on the Committee's website for public information purposes.

2. Executive Summary

- 2.1 The Bangladeshi Government has taken some positive steps in recent years to respect, protect and fulfil the rights of women generally. Bangladesh's legal recognition of hijra as a third gender is a significant positive step in recognising that people do not fall within a gender binary of male or female.
- 2.2 However, there are significant areas of law, regulation and policy where Bangladesh is failing to meet its obligations under CEDAW with respect to LBTI women. In particular, Bangladesh has:
 - (a) not yet implemented anti-discrimination legislation to reduce discrimination on the basis of sexual orientation or, outside the legal recognition of Hijra, gender identity and intersex status in education, health care and employment;
 - (b) not yet provided any protections or rights to same-sex couples, whether in the form of marriage or another legal institution.
- 2.3 These areas raise concerns with respect to Articles 2, 5, 10, 11, 12, 13, 15 and 16 of CEDAW.
- 2.4 We therefore urge the Committee to make the following **recommendations** to Bangladesh in its concluding observations:
 - (a) enact legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including employment, education, housing and health care;
 - (b) include sexual orientation, gender identity and intersex status in the school curriculum and in teacher training materials, in order to promote understanding and cultural awareness and to reduce discrimination and negative societal attitudes towards LBTI women;
 - (c) amend the *Domestic Violence (Prevention and Protection) Act, 2010* to provide protection against domestic violence to Hijra and transgender women;
 - (d) provide same-sex couples with the same legal protections and rights as opposite-sex married couples.

3. Terminology

- 3.1 **LBTI**, in this report, is an abbreviation for lesbian women, bisexual women, transgender people and people with intersex variations.
- 3.2 **Bisexual women** are women who are physically, romantically and/or emotionally attracted to both men and women.
- 3.3 **Cisgender** denotes a person whose sense of gender identity corresponds with the physical sex assigned to them at birth.
- 3.4 **Gender identity** refers to an individual's own internal feelings and experiences of gender, which may or may not correspond to the sex that individual was assigned at birth.
- 3.5 **Intersex** people have physical sex characteristics that do not fit typical notions of male or female bodies. Like everyone else, all intersex people have a gender identity, which may be male, female or another identity. Like everyone else, intersex people also have a sexual orientation, which may be straight, gay/lesbian, bisexual, asexual, etc. This reflects that intersex is not, in itself, a gender identity or sexual orientation, but rather a physical variation in sex characteristics.
- 3.6 **Lesbian women** are women who experience emotional, romantic and physical attraction to other women.
- 3.7 **Sexual orientation** refers to a person's emotional, physical and/or sexual attraction to persons of the opposite sex or gender, the same sex or gender, to both sexes and/or to more than one gender.
- 3.8 **Transgender people** are people whose gender identity and/or expression is different from the physical sex they were assigned at birth. This is a gender identity, not a sexual orientation.
- 3.9 **Transgender women** are people who were assigned male sex at birth but identify and live as women.
- 3.10 **Transgender men** are people who were assigned female sex at birth but identify and live as men.

4. Positive Steps Taken by Bangladesh

- 4.1 Since its last periodic review by the Committee, the Bangladeshi Government has taken some positive steps to further the rights of LBTI women.
- 4.2 In particular, on 11 November 2013, Prime Minister Shiekh Hasina announced that Bangladesh would officially recognise Hijra as a third gender. Hijras are a broad community encompassing transgender men and women and people with intersex variations. The Hijra community often identifies itself as an alternative gender, rather than as transgender.
- 4.3 The Ministry of Social Welfare estimates that there are approximately 10,000 Hijras openly living in Bangladesh.¹

¹ Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2014, Bangladesh - <http://www.state.gov/j/drl/rls/hrrpt/2014/humanrightsreport/index.htm#wrapper>

- 4.4 In ancient Hindu tradition, Hijras have held important societal roles in South Asian culture and are believed to bring good luck to newborn children. Notwithstanding this, Hijras have suffered persecution on the basis that they are considered to be same-sex attracted. Though Hijras do not always identify as being same-sex attracted, they are sometimes persecuted as such.²
- 4.5 Under Bangladeshi Government policy, Hijra are now able to identify their gender as 'Hijra' in all government documents, including passports.
- 4.6 As a reflection of the legal recognition now enjoyed by Hijra, it is reported that in September 2013, the National Human Rights Commission of Bangladesh upheld the claim of Sohel Rana, who was dismissed by his State employer, the Bangladesh Medical Studies and Research Institute, on the basis of gender identity.
- 4.7 Article 20(1) of the Bangladesh Constitution prescribes that:
- 20. (1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities, to each according to his work".*
- 4.8 Further, item 28(1) of the Bangladesh Constitution prescribes:
- 28. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.*
- 4.9 These provisions of the Bangladesh Constitution were found by the National Human Rights Commission to prohibit discrimination in employment on the basis of gender identity, and Sohel Rana was awarded compensation for the loss of salary and other benefits arising from the dismissal.³
- 4.10 The legal recognition of Hijra and the protections that are now being afforded to them is illustrative of the importance of legal recognition of all people, irrespective of their sexual or gender identity, as a critical first step towards providing meaningful protection of the human rights of all LGBTI women and to encourage changes in community attitudes towards them.⁴

5. Discrimination and Prejudice (Articles 2 and 5)

Bangladesh's Obligations under CEDAW

- 5.1 Article 2 of CEDAW requires that Bangladesh "pursue by all appropriate means and without delay a policy of eliminating discrimination against women". The Committee has previously stated in its General Recommendation No. 28 that:

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https://www.ofpra.gouv.fr/sites/default/files/atoms/files/report_on_the_mission_to_the_peoples_republic_of_bangladesh.pdf ; <http://www.worldpolicy.org/blog/2014/01/29/hijras-battle-equality> ; <http://america.aljazeera.com/articles/2015/7/2/bangladesh-hijras-angry-over-gender-testing-for-government-positions.html>

³ <http://www.bandhu-bd.org/wp-content/uploads/2014/12/Spotlight.jpg>

⁴ <http://www.pri.org/stories/2015-05-31/bangladesh-wants-third-gender-hijras-serve-traffic-police>

“The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity... States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”

- 5.2 General Recommendation 28 provides a basis for the Committee to make recommendations relating to discrimination against LGBTI women in Bangladesh.
- 5.3 Article 5(a) of CEDAW requires Bangladesh to take all appropriate measures to “*modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*”. This includes prejudices grounded in stereotypical, heteronormative assumptions about the sexual orientation or gender identity of women which have the effect of marginalising LGBTI women.

Bangladesh’s Compliance with Articles 2 and 5

- 5.4 Article 28 of the Bangladesh Constitution prescribes that
28. *Discrimination on grounds of religion, etc*
- (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.*
- (2) *Women shall have equal rights with men in all spheres of the State and of public life.*
- (3) *No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any education institution.*
- (4) *Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.*
- 5.5 In the matter of *Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)*, the Human Rights Committee determined that the reference to “sex” in Articles 2(1) and 26 of the International Covenant on Civil and Political Rights included sexual orientation. Despite this, it is generally regarded that the prohibition against discrimination on the basis of sex under the Bangladesh Constitution does not prohibit discrimination on the basis of sexual orientation.⁵
- 5.6 As an illustration of its position in this regard, Bangladesh recently voted against the Human Rights Council resolution A/HRC/32/L.2/Rev.1 on protection against violence and discrimination based on sexual orientation and gender identity, which was adopted by the Human Rights Council on 28 June 2016.

⁵ http://ihrp.law.utoronto.ca/utfl_file/count/documents/SOGI/Bangladesh_SOGI_2011.pdf

- 5.7 Further, in its State report to this Committee, Bangladesh acknowledges that challenges to the promotion of equality and elimination of discrimination against women arises through the operation of the "personal laws" - laws binding on the followers of different faiths, the enforcement of which have statutory effect, such as the *Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937)* in respect to Muslim personal law.
- 5.8 The personal laws give statutory force to religious provisions of different religious faiths, which contain provisions that are highly discriminatory against LGBTI women and may only be amended by agreement of leaders of the relevant religious faiths.⁶

Recommendations

- 5.9 We urge the Committee to include in its concluding observations **recommendations** that Bangladesh introduces laws prohibiting discrimination on the basis of sexual orientation and gender identity in all areas of public life, including employment, health care, housing and education.

6. Legal Recognition of Gender Identity (Articles 1, 2, and 5)

Bangladesh's Obligations under CEDAW

- 6.1 In its General Recommendation 28, the Committee has determined that Article 1 together with Articles 2(f) and 5(a) indicate that the Convention provides protection against gender-based discrimination against women.

Bangladesh's Compliance with Articles 1, 2 and 5

- 6.2 While Bangladesh is to be commended for its recognition of Hijra as a third or "alternative" gender, there is no legal recognition of female to male transgender people, or male to female transgender people. That is, transgender women are only afforded protection to the extent that they identify as Hijra and not as male or female.
- 6.3 It is reported that Article 86 of the *Dhaka Metropolitan Police Ordinance, 1976*, entitled "Penalty for being found under suspicious circumstances between sunset and sunrise", is used against transgender women, or men presenting in women's clothing. In particular, Article 86(b) prescribes that, "*Whoever is found between sunset and sunrise ... Having without any satisfactory excuse his face covered or otherwise disguised... shall be punishable with imprisonment ... or a fine*". This offence has been used to prosecute transgender women found wearing makeup and women's clothes or meeting in small groups between sunset and sunrise.⁷

Recommendations

- 6.4 We urge the Committee to include in its concluding observations **recommendations** that Bangladesh introduces laws providing legal recognition of the gender identity of all transgender women as women, and not merely as an alternative or third gender.

⁶ <http://www.nyulawglobal.org/globalex/Bangladesh.html> ; <https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage>

⁷ https://www.ofpra.gouv.fr/sites/default/files/atoms/files/report_on_the_mission_to_the_peoples_republic_of_bangladesh.pdf

7. Education (Article 10)

Bangladesh's Obligations under CEDAW

- 7.1 Article 10(c) requires Bangladesh to take all appropriate measures to eliminate “any stereotyped concept of the roles of men and women at all levels and in all forms of education...”. These stereotyped concepts may involve stereotypes about the sexual orientation, gender identity/expression and/or intersex status of women, grounded in heteronormative, cisgendered and dyadic (non-intersex) assumptions.
- 7.2 Article 10(f) further requires Bangladesh to ensure “the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely”. As part of this obligation, Bangladesh is expected to take steps to reduce drop-outs of female students arising from discrimination or bullying based on their sexual orientation, gender identity or intersex status.

Bangladesh's Compliance with Article 10

- 7.3 Consistent with its recent steps to provide legal recognition of Hijra, the National Curriculum and Textbook Board has recently determined to include Hijra in national curriculum and textbooks.⁸
- 7.4 There is no similar positive inclusion of LGBTI women who do not identify as Hijra.

Recommendations

- 7.5 We urge the Committee to include within its concluding observations a **recommendation** that the National Curriculum and Textbook Board include sexual orientation, gender identity and intersex status in the school curriculum and in teacher training materials, in order to promote understanding and cultural awareness of, and to reduce discrimination and negative societal attitudes towards, LGBTI women.

8. Employment (Article 11)

Bangladesh's Obligations under CEDAW

- 8.1 Article 11(1) of CEDAW requires Bangladesh to take all appropriate measures to eliminate discrimination against women in the field of employment.
- 8.2 Read together with Article 2 and General Recommendation No 28, this creates a requirement for Bangladesh to address intersectional employment discrimination experienced by LGBTI women.

Bangladesh's Compliance with Article 11

- 8.3 In Bangladesh, there are no national legislative provisions protecting LGBTI women, other than Hijra, from employment discrimination on the basis of their sexual orientation, gender identity or intersex status.
- 8.4 The Bangladeshi government has also not taken any measures to monitor discrimination against LGBTI women in employment nor to provide any assistance to

⁸ <http://www.bandhu-bd.org/inclusion-of-hijra-issue-in-national-textbooks-the-discussion-has-started-in-bangladesh/>

women who have been discriminated on the basis of their sexual orientation, gender identity or intersex status.

Recommendations

8.5 We urge the Committee to include within its concluding observations a **recommendation** that Bangladesh legislate to prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in employment.

9. Gender-Based Violence (General Recommendation No. 19)

9.1 In its General Recommendation No. 19, the Committee noted that violence against women is a form of discrimination that seriously inhibits women's ability to enjoy their rights and freedoms on an equal basis with men.⁹

9.2 Women in same-sex relationships face similar risks of physical, sexual or psychological violence from their partners as women in opposite-sex relationships.

9.3 The Government does not conduct any programmes for the development of tolerance with respect to LGBTI women for either the public or professionals, including law enforcement officials. Statistics of hate crimes against LGBTI women, as well as other violations of the rights of this group of people and discrimination against them are not kept. While there is no official recorded information of incidences of violence against LGBTI women, it is incontrovertible that such women are at a particularly high risk of gender-based violence, exacerbated by their sexual or gender identity.

9.4 As an illustration of this, at its 108th session on 8–26 July 2013, the Human Rights Committee considered and gave its views on the deportation of a Bangladeshi lesbian by Sweden in *M.I. v Sweden, Communication No. 2202/2012, Un Doc. CCPR/C/108/D/2149/2012 (2012)*

9.5 In this matter, the woman reported that, upon becoming aware that she was a lesbian, the woman's parents arranged a marriage for her to a Bengali man living in Sweden. When he became aware that she was a lesbian, the man arranged for her return to Bangladesh. Following her return to Bangladesh, the woman was arrested by police, arrested, beaten and raped. As her Swedish residence permit was still valid, she applied to the Swedish Migration Board for asylum, however her application was refused.¹⁰

9.6 In its Communication, which formed the view that the deportation of the woman by Sweden to Bangladesh would violate her rights under article 7 of the International Covenant on Civil and Political rights, the Human Rights Committee stated:

7.2 The Committee notes the author's claim that her return to Bangladesh would expose her to a risk of torture and other cruel, inhuman or degrading treatment or punishment, due to her sexual orientation. Prior to her last arrival in the State party, her family had forced her to marry a Bangladeshi man; she had been harassed by the organization, Chhatra Shibir, and the Bangladeshi police; while in police custody she was raped by policemen; her partner was kidnapped by members of Chhatra Shibir and her whereabouts are still

⁹ United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against Women (11th session, 1992)

¹⁰ CCPR/C/108/D/2149/2012, paragraphs 2.1 – 2.4

*unknown. Bangladeshi law forbids homosexual acts and LGBT individuals lack protection from the authorities, who are neither willing nor able to protect them. Although this law is not systematically applied, its existence reinforces a general climate of homophobia and impunity for State and non-State agents who persecute LGBT individuals. Furthermore, homosexuality is harshly stigmatized in Bangladeshi society and lesbians are often subjected to intimidation and ill-treatment and forced by their families to marry men. As a result of all the events she experienced, the author's mental health has been severely affected. The author also claims that she provided relevant evidence that was not given due weight by the State party's authorities, in particular a copy of an article published in the newspaper Dainik Nowroj on 13 April 2011 that made reference to her sexual relationship with her partner, Ms P.A., which had previously been described in a newspaper article in 2008 that had received much attention throughout the country.*¹¹

- 9.7 It is reported that, according to testimonies collected from 751 Bangladeshi lesbians, gay men and bisexuals (including around 100 lesbians), more than 50% live in fear of their sexual orientation being discovered, while 59% asserted that they had been discriminated against because of it.¹²
- 9.8 The *Domestic Violence (Prevention and Protection) Act, 2010* defines "victim" narrowly as "a child or woman who is or has been or is at risk of being subjected to domestic violence by any other member of the family to whom a family relationship exists".
- 9.9 This definition of victim has the effect that a victim of domestic violence who is not legally recognised as a woman, including Hijra (who have legal recognition as an alternative or third gender) and transgender women, do not have the benefit of the protections provided under this legislation.

Recommendations

- 9.10 We urge the Committee to include within its concluding observations a **recommendation** that Bangladesh:
- (a) amend the *Domestic Violence (Prevention and Protection) Act, 2010* to provide protection against domestic violence to Hijra and transgender women; and
 - (b) provide education and training to law authorities to apply the *Domestic Violence (Prevention and Protection) Act, 2010* in cases in which LGBTI women experience domestic violence as a consequence of their sexual or gender identity.

¹¹ CCPR/C/108/D/2149/2012, paragraph 7.2

¹² Dhaka Tribune, "LGB community feels conflict in faith, lack of confidence", 19/12/2014, quoted in Report on the mission to the People's Republic of Bangladesh, French Office for Protection of Refugees and Stateless Persons (OFPRA), 2015 available at https://www.ofpra.gouv.fr/sites/default/files/atoms/files/report_on_the_mission_to_the_peoples_republic_of_bangladesh.pdf

10. Economic, Social and Family Rights of Women in Same-Sex Relationships (Articles 13 And 16)

Bangladesh's Obligations under CEDAW

- 10.1 Article 13 of CEDAW requires Bangladesh to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to family benefits, the right to bank loans, mortgages and other forms of financial credit and the right to participate in recreational activities, sports and all aspects of cultural life.
- 10.2 Article 16 of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in all matters relating to marriage and family relations, including the rights to enter marriage, freely choose a spouse and to decide on the number and spacing of their children.

Bangladesh's Compliance with Articles 13 and 16

- 10.3 Bangladesh does not currently recognise marriage between persons of the same sex, nor does it provide any alternative form of recognition, such as civil unions or registered partnerships.
- 10.4 In August 2013, it was reported that a Muslim woman in Bangladesh was arrested and charged with kidnapping after she eloped with a Hindu girl.¹³
- 10.5 The Human Rights Committee's views in the case referred to above (at paragraph 9.5) is illustrative of the fact that lesbians may be forced into heterosexual marriages after having repeatedly refused to wed.
- 10.6 It is reported that lesbian women must resort to subterfuge in order to delay matters, claiming that they need to continue studying or wish to pay for their weddings themselves so that their families are not burdened with the expense involved. Lesbian women may be regarded as "asexual", and are more vulnerable and subject to mental health problems and depression.¹⁴

Recommendations

- 10.7 We urge the Committee to include within its concluding observations a **recommendation** that the Bangladeshi Government consult on and introduce legislation recognising relationship rights of same-sex couples, including the right to same-sex marriage.

¹³ <http://news.trust.org/item/20130802161646-w6h2g/%3Fs> ;
<http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In!%20Research%20Report.pdf>

¹⁴

https://www.ofpra.gouv.fr/sites/default/files/atoms/files/report_on_the_mission_to_the_peoples_republic_of_bangladesh.pdf ;