NATIONAL CONSULTATION
ON
PUNITIVE LAWS HINDERING AIDS RESPONSE IN BANGLADESH

18-19 MAY, 2013
Dhaka, Bangladesh

National AIDS and STD Programme
UNAIDS Bangladesh
UNDP Asia-Pacific Regional Centre

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Executive Summary

Bangladesh is a low HIV prevalence country. However, to prevent the further spread of HIV among vulnerable groups and the general population, as well as to provide care, support, and treatment for those already affected, like any other country, Bangladesh must enact a comprehensive response to the epidemic. To do so, the Government of Bangladesh has recently recommitted itself to take necessary steps to eliminate HIV-related stigma and discrimination through promotion of laws and policies that ensure realization of human rights and fundamental freedom of those affected and at higher risk of HIV.

Reviewing laws that are hindering the AIDS response in Bangladesh has been considered a top priority. The National AIDS / STD Programme, with the assistance and support from UNAIDS and UNDP Asia-Pacific Regional Centre under the Multi-Country South Asia Global Fund HIV Programme (MSA-910-G07-H) , arranged a national workshop on 18-19 May 2013 inviting a wide range of stakeholders including assistance of media, national law and human rights commission, police, human rights activists and civil society to build understanding and consensus on punitive laws hindering the AIDS response in Bangladesh.

The objectives of the workshop were to identify the laws hindering the AIDS response and build consensus on reforms needed to create an enabling legal environment for access to HIV services and to chalk out a time bound action plan identifying priorities for the amendment of punitive and discriminatory legal environment that are impeding AIDS responses.

The consultation was attended by 82 participants. The inaugural session, which was attended by eminent personalities, expressed the need for the timely intervention, while the overview of the HIV/AIDS epidemic in Bangladesh painted a vivid picture to the participants in understanding the gravity of the AIDS epidemic and limitations of the current response.

Information on legal and policy barriers to HIV responses in Asia and the Pacific were shared with the participants which enabled them to compare the local context, with the same of the region. The discussions around „why laws and policies are critical to effective HIV responses?" and the presentation of a preliminary review of the key laws and policies for in-depth discussion provided the perfect setting for an interactive group work. The

session on „sharing personal experiences and challenges faced" by those who are affected highlighted the ground realities in Bangladesh.

Following the rich introductory and technical sessions the participants were mobilized to identify laws hindering the AIDS response in Bangladesh and build consensus on reforms needed to create an enabling legal environment for access to HIV services. The group discussions that were held enabled the participants to gain consensus on these laws and areas that need reform.

The second part of group discussion enabled the participants to develop a time bound action plan for the amendment of punitive and discriminatory legal environment that are impeding AIDS response and to ensure positive social and medico-legal environments in Bangladesh. The participants worked in six group groups to address issues relating to: female sex workers, hijras, men who have sex with men, people living with HIV, people who inject drugs, and migrant workers. They brain-stormed and identified major legal barriers, policies and practices hindering access to HIV prevention, treatment, care and support by these populations in Bangladesh and recommended actions to address these concerns.

The key legal and social barriers to be addressed included; a lack of access to treatment for migrant workers, unequal employment opportunities for people living with HIV, punitive laws and law enforcement measures impacting on certain key affected populations, discrimination and stigma in the workplace, healthcare system and society in general.

An action plan was drawn up recommending specific time-bound actions to be taken by different agencies, through collaboration between government agencies, civil society and the representatives of most at risk populations to address punitive laws, policies and practices that hinder the AIDS response in Bangladesh.

LIST OF ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
BLAST	Bangladesh Legal Aid and Services Trust
CrPC	Code of Criminal Procedure 1898
ESCAP	Economic and Social Commission for Asia and the Pacific
FSW	Female Sex Worker
HIV	Human Immunodeficiency Virus
IDUs	Injection Drug Users
LGBT	Lesbian Gay Bisexual and Transgender
MARP	Most At Risk Population
MSM	Men Who Have Sex with Men
MSW	Male Sex Worker
NHRC	National Human Rights Commission
NASP	National AIDS/STD Programme
PLHIV	People Living with HIV/AIDS
PWID	Person Who Injects Drugs
RSRA	Rapid Situation and Response Assessment
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme

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PART 1: BACKGROUND

1. Bangladesh is a low prevalence country for HIV (<0.1% in the general population and <1% in most high risk groups). However, there are multiple vulnerability factors in operation which could contribute to rapid spread of the epidemic. These include the high prevalence of risk behaviours (needle-sharing, unsafe sex), and a widespread lack of knowledge on how to avoid infection.

2. A 2009 NASP national size estimate for Most At Risk Populations (MARPs) suggested that there is a population of about 20,000-23,000 people who inject drugs and around 100,000 female sex workers, of whom around 4,000 live and work in 14 large brothels[1]. The 2010 International Centre for Diarrheal Disease Research, Bangladesh, *Rapid Situation and Response Assessment* (RSRA) indicated a population of about 40,000-150,000 men who have sex with men, including male sex workers[2]. Around 10 million Bangladeshis, mostly young and sexually active, are currently working outside the country and according to the available national data around 50% of recent HIV infections in Bangladesh are linked to returnee migrants and their families. Back home, spouses of HIV positive returnee migrants too acquire HIV infection due to nondisclosure of HIV status. Stigma and discrimination against HIV positive people and other Most At Risk Populations is rife.

3. The Report of the Global Commission on HIV and the Law[3] has found that punitive laws, discriminatory and arbitrary policing and denial of access to justice for people with and at risk of acquiring HIV are fuelling the global AIDS epidemic. Bangladesh too has on its statute books several laws that either directly criminalise and penalise activities of Most At Risk Populations or that may be abused or discriminatorily applied to obstruct activities to prevent HIV dissemination. Protective laws to stop violence against Most At Risk Populations are lacking, and people who inject drugs and sex workers in particular may be compelled to go into hiding in order to avoid police atrocities and incarceration. This hinders their ability to access evidence-informed HIV prevention as well as HIV treatment, care and support if needed.

4. In this context The National AIDS/STD Program (NASP) of the Government of Bangladesh, in collaboration with UNAIDS Bangladesh and the UNDP Asia-Pacific Regional Centre, organized a two day "National Legal Consultation on Punitive Laws That Hinder AIDS Response in Bangladesh" on 18 and 19 May 2013 in Dhaka.

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[1] National AIDS/STD Programme (NASP), Population Size Estimates for Most at Risk Populations for HIV In Bangladesh, 2009,Available at: http://www.aidsdatahub.org/dmdocuments/PSE_report_for_bangladesh_2009.pdf

[2] World Bank, UNAIDS, 20 Years of HIV in Bangladesh: Experiences & Way Forward, 2009 Available at: http://www.hnpinfobangladesh.com/docs/di_220_Consolidated%20Report%20Nov%2030%20final.pdf

[3] Global Commission on HIV & the *Law*, Risks, Rights and Health, July 2012 Available at: http://www.undp.org.mk/content/Publications/FinalRepoAIDS.pdf

5. A total of 82 participants attended the event (see Annexure 1) which was supported by the South Asia Multi-Country Global Fund Round 9 (MSA-910-G01-H). Speakers included Advocate Quamrul Islam, Hon"ble State Minister, Ministry of Law, Justice and Parliamentary Affairs, Ms. Nilufar Chowdhury Moni MP, Ms. Tarana Halim, MP, Prof. Mizanur Rahman, Chairman, National Human Rights Commission, Prof. Shah Alam, Acting Chairman, Law Commission, Mr. Shahinur Rahman, Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs, Dr. Abdul Waheed, Line Director, National AIDS/STD Program (NASP), Mr Leo Kenny, UNAIDS Country Coordinator, Bangladesh, Dr. Tasnim Azim, Head of HIV/AIDS Programme and Virology International Center for Diarrhoeal Disease Bangladesh, Ms Brianna Harrison, Program Officer, Human Rights and Law, UNAIDS, Asia Pacific Regional Service Team, Bangkok, Ms Sultana Kamal, Executive Director of Ain o Salish Kendra, Dr. Sharful Islam Khan Bobby, Project Director, RCC Program, the Global Fund at icddr,b and Ms Sara Hossain, Honorary Executive Director of the Bangladesh Legal Aid and Services Trust, Mili Biswas, DIG Police and Dr Sayed Abdulla Al-Maruf, Director Islamic Foundation. The event was moderated by Dr Munir Ahmed Social Mobilization & Partnership Advisor, UNAIDS, Bangladesh.

Part 2: The Objectives

7. The Objectives of the workshop were to:

1. Identify laws prevailing that are hindering the AIDS response in Bangladesh,
2. Build consensus on reforms needed to create an enabling legal environment for access to HIV services and
3. Develop a time-bound action plan of identified priorities to address the punitive and discriminatory legal environment that is impeding the AIDS response in Bangladesh.

The objectives of the workshop and the workshop programme are given in Anneuxre 2

Part 3: The Inaugural Session

3.1 Introductory remarks

8. In the introductory remarks Dr. Munir Ahmed, Social Mobilization & Partnership Advisor of UNAIDS Bangladesh, noted that political leaders from Bangladesh had pledged their commitment to eliminating HIV/AIDS at the UN General Assembly High Level Meeting on AIDS held on 8–10 June 2011 in New York. This High Level Meeting resulted in the adoption of the 2011 Political Declaration on HIV/AIDS[4] and identification of ten

[4] Available at: http://www.unaids.org/en/aboutunaids/unitednationsdeclarationsandgoals/2011highlevelmeetingonaids/

targets and elimination commitments. The National Consultation is being organised in furtherance of the eighth such target, specifically focused on eliminating stigma and discrimination against people living with and affected by HIV through promotion of laws and policies that ensure the full realization of all human rights and fundamental freedoms. The Consultation is also being implemented in furtherance of commitments made by Bangladesh and the other Members of the Economic and Social Commission for Asia and the Pacific (ESCAP).

3.2 Opening Remarks

9. Dr. Abdul Waheed, Line Director, National AIDS/STD Program (NASP), commented that despite the existence of laws that hinder the response to AIDS, Bangladesh has successfully worked to reduce the prevalence and risk of HIV and AIDS over the last 20 years. He welcomed the consultation as a timely initiative to identify the laws hindering the HIV response in Bangladesh and to draft a plan to delineate the scope of work to amend or abolish such laws. He looked forward to the plan being presented to key stakeholders within the Government of Bangladesh to catalyse their consideration and action on core recommendations.

3.3 Objectives of the Consultation

10. Mr. Leo Kenny, UNAIDS Country Coordinator, Bangladesh, defined the objectives of the consultation, recalling that Bangladesh has less than 1000 days to fulfil its commitments made at the United Nations High Level Meeting in June 2011. Bangladesh signed off on ten goals, all of which were interconnected, with goal no. 8, dealing with stigma and discrimination, being the most important. Bangladesh is the only country in Asia which is now low prevalence, and appears on track to achieving this goal. However, key issues remain to be urgently addressed.

3.4 Legal and Human Rights Issues as Mentioned in National Policy Documents

11. During his address on Legal and Human Rights issues and in the National Policy document Dr. Abdul Waheed, Line Director, National AIDS/STD Program (NASP) outlined the human rights commitments of the Government of Bangladesh relating to National Policies and Plans on HIV/AIDS. He stated that human rights form the conceptual backbone of the National Policy on HIV/AIDS and STD related Issues.[5] People living with illnesses or disabilities, including people living with HIV, are entitled to enjoy their constitutionally protected fundamental rights without discrimination and arbitrary restrictions. Dr Waheed highlighted the reasons for the successes of the National Response to HIV/AIDS in Bangladesh including strong political commitment, excellent

[5]National Policy on HIV/AIDS and STD Related Issues, 1995.
Available at: http://www.oit.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_113095.pdf

collaboration between governmental and non-governmental organisations and care and support for people living with HIV through public-private partnerships.

3.5 HIV/ AIDS Scenario and Violence Data in Bangladesh

12. Dr. Tasnim Azim, Head of HIV/AIDS Programme and Virology, International Centre for Diarrhoeal Disease Research, Bangladesh, presented information on the incidence and prevalence of HIV/AIDS in Bangladesh. She stated that according to the UNAIDS regional factsheet 2012[6], Bangladesh is one of the countries in Asia where the rate of HIV infection has increased by more than 25%. Although UNAIDS identified this trend as that of a "latent epidemic", Bangladesh is not projected as a latent epidemic country as the real numbers are very low. The term "controlled epidemic" is used and is considered more appropriate to describe the trend in Bangladesh. This should not lead to complacency, however, as the number of HIV cases is on the rise and assessment needs to be made of the source and origin of these cases.

13. She further described the historical background of the prevalence of HIV in Bangladesh and its spread across certain populations. Prevalence among the key populations, namely the Female Sex Workers, People Who Inject Drugs and Men Who Have Sex with Men is about at 1% with a concentrated epidemic among the people who inject drugs in Dhaka at 5.3%. Program coverage is roughly 57.9% among Female Sex Workers 92.4% among Person Who Injects Drugs and 31.3% among Men Who Have Sex with Men and this is heavily dependent on sustained funding. She also identified cross border migrants as an emerging population among whom HIV is being detected. In Bangladesh, the two border areas of Benapole and Hili have high rates of HIV prevalence due to the movements of cross border migrants. Returning migrants from across the border reportedly also have higher rates of HIV.

14. Dr. Azim further focused on sources of risk including continued high risk behaviours, structural factors, such as punitive laws, that impede the HIV response, and most importantly, continuing stigma and discrimination. There are different levels and types of stigma which prevail not only in the general population but also among people living with HIV and service providers. People living with HIV are at risk of violence perpetrated by law enforcement agencies, local goons, as well as their own family members or partners. This violence disproportionately affects women, with female sex workers most at risk of being beaten or raped. Outreach workers providing services to people who inject drugs also face violence. However, the scenario is changing slowly. Police harassment has reduced. Internal stigma among people living with HIV remains a problem and prevents them from seeking services and coming out. For all of these reasons, it is critically important to combat stigma and discrimination against people living with HIV and Most At Risk Populations.

3.6 Enabling Legal Environment for Effective AIDS response: Global and Regional Support for National Progress

15. Ms Brianna Harrison, Programme Officer, Human Rights and Law UNAIDS, Asia Pacific Regional Service Team, Bangkok, reviewed the framework of international and

[6]UNAIDS Regional Factsheet 2012 Available at: https://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/2012_FS_regional_ssa_en.pdf

regional commitments for enabling a legal environment for an effective AIDS response. Ms Harrison stated that Bangladesh currently has an opportunity to reach its 2015 target, given that it has demonstrated a strong response to HIV and is well placed to lead the world in progress towards achieving an AIDS-free generation. The commitments given by the Government of Bangladesh at both the international and regional level as well as the report of the Global Commission on HIV and the Law can shape the nature of discussions here in Bangladesh.

16. The United Nations General Assembly"s 2011 Political Declaration on HIV AIDS is especially important as in it States agreed on concrete numeric targets, recognized key at risk populations and committed to creating enabling legal and policy frameworks to address HIV related stigma and discrimination. Target No. 8 of the Declaration is important in itself and also critical to meeting other targets.

17. At the regional level, Governments including Bangladesh have committed to ESCAP Resolutions 66/10, 67/9 and the Road Map endorsed at 68th ESCAP session. The Government of Bangladesh committed to organise national multi-sectoral consultations on legal and policy barriers and to hold a participatory and inclusive national review on implementation of the Political Declaration. Today"s consultation fulfils Bangladesh"s commitments in this respect, but this is just one step in the process towards change. Governments agreed to these processes in order to accelerate progress towards the elimination of legal and policy barriers to access to HIV services for people living with HIV and key populations at higher risk of HIV. Accordingly, support for implementation of the action plans developed at the consultation will be critical.

18. The Global Commission on HIV and the Law was an independent commission of global leaders, convened by UNDP on behalf of the UNAIDS family to explore how legal environments help or hinder HIV responses. Its final report, launched on 10 July 2012, included in a set of recommendations aimed at creating legal environments that contribute to effective and efficient HIV responses. The scope of enquiry of the Commission focused on laws and policies, law enforcement practices (non-enforcement of protective laws, inappropriate enforcement of punitive laws, and discriminatory police practices), and on access to justice, such as legal literacy, legal services and effective remedies.

3.7 Global Commission on HIV & the Law: A Resource to Support National Efforts

19. Mr. JVR Prasada Rao, Special Envoy to the Secretary General on AIDS in Asia and the Pacific had prepared a presentation on the relevance of the Global Commission"s work to the efforts within Bangladesh to address punitive laws (In the absence of Mr Rao, Ms Brianna Harrison, Program Officer, Human Rights and Law, UNAIDS, Asia Pacific Regional Service Team, Bangkok made the presentation).

20. This presentation reflected on the scope of the enquiry carried out by the Global Commission on HIV & the Law, stating that the Commission had looked beyond the legal environment as it exists on the books and also made an assessment of law enforcement practices and access to justice issues.

21. The Commission"s findings reveal that an epidemic of discriminatory and punitive laws is costing lives. Laws are not drafted to intentionally hamper the AIDS response but

end up doing so in practice. This necessitates evaluating and amending the „law on the streets", i.e. how the law is being enforced as well as the social and cultural environment in which law is being enforced.

22. The Commission made some significant recommendations, including, as follows:

- Sex between two consenting adults should not be criminalised
- People who inject drugs should be seen as people with health issues entitled to effective, evidence-based treatment, not as criminals
- Civil society must be engaged in making the right to access to justice a reality for all.

23. Change is slowly happening. In Nepal[7] and Pakistan[8], court rulings have required governments to recognise a third gender. In India, the High Court of Delhi has read down a legal provision criminalising same sex relationships[9]. Within the Asia Pacific, another country, Fiji, has also decriminalised same-sex relations. Political leaders must move beyond rhetoric and the Government must invest in evidence and in rights based laws and programmes. Where cultural tradition and religious beliefs are used to hinder an effective AIDS response, these must be challenged. Civil society must be empowered to hold national, regional and global stakeholders to account.

3.8 Punitive Laws Hindering AIDS response in Bangladesh, Barriers & Challenges

a) Personal Experiences of Arbitrary Application of the Law Hindering HIV/Responses or Affecting Most At Risk Populations

24. Ms Akther, Ashar Alo Society, a school teacher from Manikgonj, spoke of her experiences as a person living with HIV. When she was 12 years old, Nasrin was forcibly married. Two weeks after her wedding, her husband went abroad. After a year, her husband returned to Bangladesh and he was HIV positive. Her husband died two months later. Her in-laws became violent towards her, blaming her for infecting their son with HIV and his subsequent death. She was thrown out of the house by her in-laws who claimed that they were scared that she would infect them. Ms Akther went to live with her parents. They did not accept her due to her HIV status. Not understanding the nature of the condition, they insisted that she remarry. Nasrin also faced social ostracism when people found out about her HIV status. She did not have proper access to medical services and was deprived of property rights by her family due to her HIV status.

25. M Akter, President, Sex Workers" Network of Bangladesh discussed how laws that deal with prostitution are abused to harass sex workers. Sex workers are subjected to violence by the police as well as local goons. They are deprived of access to health and HIV services and their children don"t have access to schools. In general, they do not get

[7] *Pant v Nepal* Writ No. 917 of the year 2064 BS (2007 AD) Available at: http://www.gaylawnet.com/laws/cases/PantvNepal.pdf

[8] The Express Tribune, Ensuring Equality: Transgender equal citizens of Pakistan, rules SC, 26 September 2012 Available at: http://tribune.com.pk/story/442516/ensuring-equality-transgenders-equal-citizens-of-pakistan-rules-sc/

[9] *Naz Foundation v Government of NCT of Delhi*, 2009 (160) Delhi Law Times 277 Available at: http://www.nazindia.org/judgement_377.pdf

rights on an equal footing with other citizens of the country. Ms Akther spoke of how aged seven, she was incarcerated in a Vagrants Home, under the Vagrancy Act. She was sexually abused at the shelter and when she was ten years old she was thrown out of there. She then started identifying herself as a sex worker.

26. Mr Rafiqul Islam Royal, Badhon Hijra Shongho described his experiences of exclusion from his own family on their discovering his sexual orientation. When Mr Royal was aged twelve, his family began to punish him for what they perceived as his effeminate behaviour. He was beaten up by his elder brother and faced discrimination within the family. He was teased and bullied at school and finally had to leave school as a result of the harassment. In 2011, he began to identify himself publicly as a man who has sex with men (MSM). Once when he spoke about this, at an international forum, he was asked who would protect him if he was prosecuted under the penalizing so called „unnatural offences". He has no answer to this question. The experience of Mr Royal and other men who have sex with men is that there is no government body to which they can turn for protection of their rights.

27. Mr Jamil Ahmed spoke of his experiences as a person who injects drugs. „I am taking methadone and my addiction is under control. If methadone is scaled up, then situation among people who inject drugs will improve. The police do not harass drug pushers or sellers, but only drug users. They are arbitrarily and unlawfully detained. They are also beaten up severely. Even in cases where a person is not in possession of drugs but only injection or other paraphernalia, he or she faces harassment from law enforcement agencies".

28. Ms Joya Shikdar, Sex Workers" Network of Bangladesh described how she had faced multiple forms of discrimination, within her family and within the community when she was growing up as a result of being a hijra. She was raped in front of her father and brother but they did not protect her and blamed her, stating that she was responsible for what was done to her because of her attitude. She further stated that the Hijra community is stigmatized by all that includes their family members and HIV infection makes a Hijra"s life more difficult in the perspective of seeking and accessing treatment. Ms Shikdar lauded the recent government efforts to grant recognition and protection to *hijras*.

29. Ms Akhi, Nari Mukti Shongho, spoke of her experience as a brothel-based female sex worker. She explained that the brothel in Tangail, where she lives, is 130 years old. She and other sex workers in that community have been facing abuse and violence. There are three sources of discrimination and harassment: family, police and local goons. Perpetrators of violence should be identified in order to address it and sex worker should be given legal recognition as a profession in order to better protect sex workers from exploitation and harassment. She concluded by stating that stigma and discrimination are linked with sex workers and led to lack of access to health services at public and private settings as sex work at brothel is illegal and not clearly recognized as a profession by law.

b) Key Concerns regarding Prevailing Laws

30. Ms Sara Hossain, Advocate Supreme Court of Bangladesh and Honorary Executive Director, Bangladesh Legal Aid & Services Trust (BLAST) focused in her presentation on laws that are being abused and are hampering the AIDS response in

Bangladesh. She stated that the problems in the laws cannot be dealt with in isolation. Social attitudes towards people living with HIV have to be changed and discrimination has to be addressed. Most At Risk Populations in Bangladesh are people who inject drugs, female sex workers, migrant workers, men who have sex with men and hijras.

31. Punitive laws hinder the AIDS response in two ways, first by criminalising certain Most At Risk Populations, hence pushing these populations underground and making them more vulnerable to abuse and violence, and second by preventing implementation of and access to activities to prevent HIV transmission.

32. The rights framework in Bangladesh comprises of constitutionally protected fundamental rights, including the right to life, personal liberty and non-discrimination (Chapter III, Constitution of Bangladesh). These protections are reinforced by the provisions of the core international human rights treaties that have been ratified by Bangladesh. These include the International Covenant on Civil & Political Rights, 1976, the International Covenant on Economic, Social, & Cultural Rights, 1976, Convention on Elimination of All Forms of Discrimination Against Women, 1981, the Convention on the Rights of the Child, 1990 and the Convention on the Rights of Persons with Disabilities, 2008.

33. Most recently, the Government of Bangladesh, in the recent second cycle of its Universal Periodic Review has stated that:

> **"***... on LGBT, we concur with NHRC that the laws of the land... However, we recognize the need for protecting all vulnerable groups of our population, given their constitutional equal rights and freedoms. Moreover, we do not condone any discrimination or violence against any human being on any pretext.*" [10]

34. **In practice many existing laws, and their application and misapplication impact negatively on the efforts to prevent HIV/AIDS Transmission. These may be categorised as follows:**

Laws that criminalise sex work by adults*:* Sections 11, 12 & 13 of the Human Traffic (Deterrence and Suppression) Act 2012; Section 373, Penal Code, 1860; Section 236(1), Cantonment Act, 1924 and Section 74, Dhaka Metropolitan Police Ordinance, 1976. Some participants noted that such laws are being used arbitrarily to harass sex workers, including those who are involved in peer education programmes. One participant raised the issue of false cases being filed under the new and relatively draconian law the Human Traffic (Deterrence and Suppression) Act 2012. Obstacles within the legal system such as difficulty in securing bail, long and protracted trials, etc. mean that law becomes a medium of harassment.

Laws that criminalize certain sexual practices: Section 377, Penal Code 1860 criminalises so called „unnatural offences". Although no reported cases of prosecutions under this legal provision have been found, and it appears to be little invoked in practice, its continued existence is seen by many as contributing to a

[10] Human Rights Council Working Group on the Universal Periodic Review, National Report: Bangladesh 22 April–3 May 2013, A/HRC/WG.6/16/BGD/1Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/107/07/PDF/G1310707.pdf?OpenElement

culture of silence and exclusion and marginalisation for men who have sex with men , who may be threatened with prosecution and extortion.

Laws that criminalise drug use: Section 19, 21, 25 of Narcotics Control Act, 1990. Possession of drug paraphernalia may be sufficient for arrest, resulting in many PWIDs facing harassment, threat of or actual arrest.

Laws which enable arbitrary arrest and detention of Most At Risk Populations: Section 54, Code of Criminal Procedure, 1898; Section 75, 80, 86 of the Dhaka Metropolitan Police Ordinance, 1976[11], Vagrants & Shelterless Persons (Rehabilitation) Act, 2011 (Vagrancy Act). The High Court has issued guidelines to curb abuse of section 54 of the CrPC by law enforcement agencies when making arrests without warrant on suspicion of commission of an offence.[12] While the use of Section 54 CrPC may have reduced, participants" testimonies, and other available research, as well as anecdotal evidence indicates that similar provisions in the various Metropolitan Police Ordinances, as well as the Vagrancy Act have been used to carry out arbitrary arrests of certain most at risk populations, in particular sex workers and men who have sex with men. Concerns have earlier been expressed by the NHRC and civil society[13] regarding the wide powers of arrest under the new Vagrancy Act 2011 (which replaced the earlier far more draconian Bengal Vagrancy Act 1943).

Laws that criminalise the distribution of communications material on HIV/AIDS prevention by peer educators: Sections 268, 292, Penal Code 1860, Sections 4, 8, Pornography Control Act, 2011. There is a need to examine whether this law is serving the purpose it was enacted for and not simply being used for harassment of innocent individuals, such as peer educators who seek to disseminate materials for their campaigns on ending HIV/AIDS transmission who reported being harassed by police invoking threats of arresting them for possession of pornographic material by reference to this law.

Laws that criminalize HIV transmission: Sections 269, 270, Penal Code 1860. There have been no known prosecutions under these sections. This issue needs further discussion as this provision effectively criminalises individuals on the grounds of their health status.

Abusive and discriminatory practices: Police harassment has been reported by participants and others to take the form of extortion, arbitrary and illegal detention, custodial violence (physical and sexual), illegal searches and seizures, raids, threats of and forcible eviction from places of residence and abuse of laws to file false cases.

Gaps in legal protection: There is currently no law in Bangladesh specifically protecting the rights of people living with HIV. The constitutional protections against discrimination can be enforced against the State only and existing laws with

[11] All other metropolitan cities - namely Chittagong, Khulna, Rajshahi, Barisal, Rangpur, Sylhet – have similar police ordinances.
[12] *BLAST & Ors. v. Bangladesh & Ors.* 55 DLR (2003) 363.
[13] http://www.blast.org.bd/content/pressrelease/press-release-17sept11.pdf

protective provisions such as the Safe Blood Transfusion Act, 2002 are not effectively enforced.

35. Ms. Hossain concluded by calling on participants to frame recommendations which would identify priority actions for i) amendment or repeal of abusive and discriminatory laws and practices, ii) putting in safeguards to prevent arbitrary or discriminatory enforcement of laws, iii) framing laws to prevent discrimination against people living with HIV and iv) most importantly, actions that would address the need to remove stigma and discrimination against people living with HIV and other most at risk populations.

3.9 Response from the Law Commission

36. Responding from the Law Commission, Professor Dr. Shah Alam, Acting Chairman, Law Commission of Bangladesh, began his speech by describing the situation of men who have sex with men, hijras and people who inject drugs in Bangladesh who are subjected to stigma, discrimination and exclusion in every walk of life. He further stated that all individuals as human beings are entitled to basic human rights irrespective of their status.

37. He further added that the HIV status should not need to be hidden and that there should not be any fear of stigma or isolation resulting from disclosure of HIV status. Hence, public awareness of the rights of people living with HIV should be raised. We need to identify the laws which are discriminatory and operate to criminalise stigmatise or marginalise most at risk populations so that such laws may be amended/ repealed as necessary. We need to consider if any protection laws need to be framed and adopted to ensure the rights of most at risk populations. The Chairman of Law Commission promised to carryout necessary research on existing discriminatory laws by taking support from relevant stakeholders and to propose recommendations accordingly.

3.10 Response from the National Human Rights Commission

38. Professor Dr. Mizanur Rahman, Chairman, National Human Rights Commission (NHRC) stated that the law cannot function in a vacuum, and society has to change along with the law. Laws must be addressed and we need to look at this process of law reform closely, given the human rights implications. Problems arise in Bangladesh as protective laws are not properly enforced while punitive laws are inappropriately and arbitrarily applied. A lot has been said about harassment by the police. The need for the police to act independent of influences including of political influence was highlighted.

39. Laws can be used to prevent individuals from being subjected to stigma and to address the impact of stigma. The NHRC, along with the Law Commission, is already engaged in drafting an anti discrimination law which may serve this purpose. Further consultations and multi-sectoral approach are necessary in this connection and the NHRC is ready to participate in such approach. It would be useful to form a committee with representatives from the responsible ministries, such as the Ministry of Law and Justice, the Ministry of Health, Ministry of Religion, the NHRC and the Law Commission to review laws that are hindering the AIDS response.

3.11 Response of the Police

40. Ms Mily Biswas, Additional Police Commissioner, noted that the police can only enforce the law, but have no powers to reform or amend it. More focused programs need to be undertaken in order to generate awareness among people about HIV transmission and prevention. Joint action from all sectors is required to eliminate HIV and AIDS. Compliance with religious doctrines regarding abstinence from risky behaviours such as unsafe sex and drug use can work as a protective mechanism against the spread of HIV.

3.12 The Transgender Population in Bangladesh: Overall Status

41. The status of the transgender population in Bangladesh was presented by Dr. Sharful Islam Khan Bobby, Project Director, for Rolling Continuation Channel (RCC) Programme. The Global Fund at icddr,b, began by briefly explaining the terms sex, gender, sexuality, sexual orientation and hijra. He then outlined the history of work with the hijra community in Bangladesh which started in 1997. In general, the risks associated with hijras are discussed but their resilience is not discussed. There have been a number of significant initiatives in Bangladesh aiming to address the exclusion and stigmatisation of hijras. Two such initiatives at icddr,b include providing employment to transgendered persons, and successfully undertaking advocacy with the Global Fund to include an option to state a third gender on their electronic forms and website.

42. Positive trends regarding recognition of legal status of hijras have emerged in a number of Asian countries. The Supreme Courts of Pakistan and Nepal have asked their respective governments to recognise hijras as the third gender. In India, the option to select the third gender is available in electoral registration forms and driving licences in some states.

43. The legal status of hijras as a third gender is not recognised in Bangladesh law. The Constitution does not expressly grant protection from discrimination on the grounds of gender, sexual orientation or sexuality. Nevertheless, some good practices have emerged in Bangladesh including changes in the passport application form which permit an applicant to state „other" in the entry for gender (although there is no provision to define the content of „other").

44. Dr Islam concluded that the rights of hijras should be recognised in Bangladesh in the following contexts: legal recognition as the third gender, citizenship rights, property rights and marital rights. Section 377 of the Penal Code currently criminalises certain sexual practices. However, to provide an enabling environment for addressing HIV, and reducing the vulnerability of hijras, the sexual practices of hijras need to be decriminalised and legal protections put in place. At the same time, Dr Islam cautioned that while of course any work with hijras should have a clear rights orientation it was important to avoid creating any backlash which may inhibit the HIV response.

PART 4: KEY ISSUES OF CONCERN

45. After the main presentations were concluded, participants divided into six groups each focusing on issues specific to a particular community most at risk of HIV (female sex workers, hijras, men who have sex with men, people living with HIV, people who inject drugs, and migrant workers). Each group aimed to identify laws, policies and practices

hindering the AIDS response with respect to that particular community, and to propose recommendations to address these concerns.

4.1 People Living with HIV/AIDS (PLHIVs)

a) Punitive Laws: The group did not identify any laws which they considered as applying expressly to People Living with HIV/AIDS in Bangladesh, or hindering the AIDS response.

b) Discriminatory/ Arbitrary Practices: The following practices were seen to be major concerns:

i. Harassment of people living with HIVand peer educators, and lack of remedies: As written records are not kept of harassment (for example threats of extortion or arrest by the police of peer educators carrying information, education or communication material which is deemed to be „pornographic" or „obscene"), legal claims are hard to pursue.

> *Recommendation:* Information of any threats or acts of harassment of people living with HIV and peer educators, by state or non-state actors, should be regularly collected and collated.

ii. *Denial of health insurance* for people living with HIV on grounds of health status

iii *Lack of confidentiality* on the part of health care service providers

> *Recommendation:* Direction to health care providers to ensure confidentiality for all seeking services

iv Lack of access to adequate health care

> *Recommendation*: Directorate General of Health & Services should be sensitized and mobilised to ensure access to health care for people living with HIV.

v Mandatory testing for HIV prior to employment acts as a bar to access to employment (particularly in the hospitality industry)

> *Recommendation:* Direction by concerned authorities on all employers to prohibit mandatory HIV testing prior to employment

vi Bars to claiming inheritance due to social stigma and poverty

> *Recommendation:* Right to property of people living with HIV should be legally protected. People living with HIV should be expressly included in the draft National Social Protection Strategy which is under consideration by the Government.

c) Lack of protective laws: No protection against employment related discrimination on grounds of health status

> *Recommendation:* Framing protective laws that prevent and penalise discrimination in respect of employment on the grounds of health status of employment on grounds of their HIV status.

4.2 Female Sex Workers

a) **Punitive Laws**: The group identified ambiguities in the laws regarding the legal status of sex work.

Recommendation: The State should grant legal recognition to sex work as a profession in order to enable adult sex workers to enforce their fundamental rights and freedoms in particular their right to an occupation.

b) **Arbitrary Application of the Law**: Abuse of laws (Cr.P.C Sec 54, DMP Ordinance, Sec 75, 80 & 86, Vagrants & Shelter less Persons (Rehabilitation) Act, Sec 9 & 20) are reportedly used to arbitrarily and discriminatorily harass and detain Female Sex Workers:

Recommendation: Guidelines should be established for proper use of these legal provisions. Oversight mechanisms over law enforcement agencies should also be established to prevent abuse of laws

Recommendation: Short term strategies should be identified to engage with law enforcement agencies etc. who abuse laws before anti discrimination law can be enacted

c) Lack of Protective Law/ Policy: Discrimination in provision of health services, shelter, children‟s right to education and denial of right to equal protection of the law and access to justice.

Recommendation: The constitutional right against discrimination should be explicitly extended to be made applicable to female sex workers and their children. The right against discrimination should be enforceable against private actors too

Recommendation: National Social Protection Policy/ National Women‟s Development Policy should address sex workers

4.3 People Who Inject Drugs

a) Punitive Laws: Sections 19, 21 & 25 of the Narcotics Control Act, 1990 were identified as being detrimental to the harm reduction program.

Recommendation: Legal reform should use, carrying, transport and storage of specific drugs under the supervision and approval of the Department of Narcotics Control and the relevant ministry, UN agency and Government authorized relevant agency.

Recommendation: Strict supply and monitoring system of drugs should be ensured.

Recommendation: Guidelines could be sought from the administrative authorities or the courts to determine the scope of application of these provisions to prevent their arbitrary or discriminatory use.

Recommendation: Policy changes with regard to methadone should be made by the drug control authority in collaboration with the Ministry of Home Affairs.

b) Lack of Protective Policy: Lack of a specific policy on people who inject drugs deprives several vulnerable groups within the population of people who injects drugs of access to HIV prevention, treatment care and support.

Recommendation: Children who are drug users should be included in the harm reduction program

Recommendation: 60% of female drug users who are sex workers should receive special support

Recommendation: Interventions are needed to support people who inject drugs who are in prison.

Recommendation: Recovering people who injects drugs should be included within the national safety net policy, and able to access employment opportunities

4.4 Migrant Workers

a) Discriminatory/ Arbitrary Practices: Mandatory HIV testing without counseling and referral services was considered a major concern.

Recommendation: There should be counseling and a referral services for migrant workers identified as having HIV before migration as well as in the destination country.

Recommendation: Referral system for care and support for returning migrants with HIV should be set up.

b) Lack of protective law/ policy, or lack of enforcement: The existing law and policy on migration does not adequately address the needs of migrant workers and is not properly implemented.

Recommendation: Provisions of existing migration policy and law dealing with health care of migrants and HIV prevention should be properly implemented.

Recommendation: Issues of migrants‟ health insurance and health of migrants‟ families should also be addressed by the migration policy.

c) Use of international and regional mechanisms:

Recommendation: Access to justice for the victims of labour trafficking or sexual abuse and exploitation should be ensured in destination countries through bilateral and multilateral treaties.

*Recommendation:*The issue of cross border migration and its effect on HIV transmission should be flagged and discussed at regional mechanisms such as SAARC

4.5 Men who have Sex with Men

a) Discriminatory/ Arbitrary Practices: Men who have sex with men are deprived from accessing education, restricted from expressing themselves freely and choosing their professions. Men who have sex with men may be forced into sex work due to lack of education.

Recommendation: Before focusing on laws, there is need to focus on changing social attitudes, enabling access to services and other opportunities, and addressing discriminatory practices.

b) Punitive Laws: The participants stated that there is contradiction among laws and strategies regarding men who have sex with men.

Recommendation: The status of Section 377 Penal Code should be clarified, as it does not necessarily apply to men who have sex with men, nor is it regularly applied in practice, however it is invoked by the police and others when threatening or harassing men who have sex with men.

c) Arbitrary Application of the Law: Abuse of provisions of the Penal Code & DMP Ordinance on carrying obscene material to harass and detain men who have sex with men.

1. *Recommendation:* Guidelines should be issued to ensure that implementation of these sections does not lead to harassment of peer educators.
2. *Recommendation:* NGOs should work with the NHRC and the police to strengthen their ability to ensure protection of the rights of men who have sex with men.

4.6 Transgendered Persons/ Hijras

a) Lack of protective law/ policy: The group highlighted structural impediments, including poverty, social exclusion, restriction in access to education, identity conflict, no right to marry, deprivation from inheriting property or filing legal proceedings and restrictions in accessing social security and health care services.

Recommendation: Legal recognition of hijras as the 3rd gender

Recommendation: Challenges in establishing service delivery points for health services should be addressed

Recommendation: Problems of illicit drug use within the community must be addressed through harm reduction and evidence-based drug dependence treatment.

Recommendation: The discrimination and sexual violence that hijras face show it is appropriate that both the government and the human rights movement in the country begin to take this issue with the seriousness it deserves.

b) Punitive law: The groups stated that there is ambiguity regarding the scope of application of punitive laws such as, Section 377 of the Penal Code, to men who have sex with men but it is often invoked by police and others to threaten or harass hijras and men who have sex with men.

Recommendation: As Section 377 of the Penal Code is not routinely invoked, thus it would be wise to address stigma and discrimination through programmes.

These initial points and recommendations from the groups were then further discussed in groups and in plenary in order to further prioritise and refine and generate consensus. The Action Plan in Annexure 3 of the report is the final product based on these initial discussions.

Part 5: The Way Forward

5.1 Responses of the Government of Bangladesh

46. Advocate Quamrul Islam, Hon"ble State Minister, Ministry of Law, Justice and Parliamentary Affairs, Chief Guest began by stating that all the relevant Ministries, including the Ministries of Law, Justice & Parliamentary Affairs, Health and Social Welfare would consider the recommendations arising from this consultation. He assured all participants that the present Government was fully committed to delivering health services to all citizens, especially the poorest of the poor, and cited the establishment of community clinics.

47. The Minister said that information about HIV/AIDS should be incorporated in school curricula. Social attitudes are changing and now are more open than before. Education and awareness about HIV/AIDS should start at the home, with parents informing their children.

48. Increasing awareness on this issue among migrant workers is a priority issue. The hijra population should be able to enforce their basic human rights. The Government is already considering the demand for providing quotas for hijras in public employment.

49. The Minister stated that any recommendations from the consultation should be submitted to the Ministry of Law at the earliest so that necessary action could be taken. He concluded by underscoring the importance of generating social awareness regarding HIV and removing prevailing social stigma against people living with HIV in particular. He noted that religious teachings should be followed and mind-sets that seek to deprive people living with HIV of their rights and entitlements should be changed.

50. Mr. Shahinur Islam, Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs thanked the partners for organising the consultation and assured the participants that the Ministry of Law would take positive steps to ensure fulfilment of the recommendations arising out of the consultation. He further recommended that measures should be considered to improve the social and economic status of vulnerable groups such as female sex workers/hijras and to ensure that they are not deprived of protection under laws such as Nari O Shishu Nirjatan Daman Ain, 2000 (as amended 2003) while also emphasising the need to protect migrant workers‟ rights through effective coordination between the government, NGOs and international organisations.

51. Dr. Sayed Abdullah Al-Maruf, Director, Islamic Foundation stated he was happy to be part of the consultation process. Islamic community accept hijra population, and religilous teaching could be used to reduce substance abuse. He emphasised the low prevalence of HIV in Bangladesh, ascribing this to the prevalence of strong religious values. He asserted the importance of undertaking effective measures for rehabilitation of vulnerable populations, and that religious organizations should be part of the national AIDS response.

5.2 Responses from the Legislature

52. Ms. Nilufar Chowdhury Moni MP underscored the need to address double standards in society, pointing out that many individuals who have no objection to themselves using the services provided by sex workers nevertheless object to the same sex workers‟ children going to school. In addition to reforming social mindsets and stereotypes, several laws such as Section 54 of the Code of Criminal Procedure, and provisions of the various Metropolitan Police Ordinances need urgent reform, as safeguards need to be put in place to prevent their arbitrary application. In practice, legal provisions such as Section 54 of the CrPC may be invoked to exploit and harass those who are poor and vulnerable, including hijras and sex workers. Ms Moni also referred to the need to address a lack of clarity in the law regarding the status of sex workers. She noted that while the High Court had passed a judgment holding that sex work is not illegal as such under the law of Bangladesh, sex workers continued to face the threat of arrest, harassment and extortion as many of the activities in which they were engaged remained illegal. Ms Moni also called for amendment to the rules or policies that require children to disclose their father‟s names to get admission to school; otherwise children of sex workers would continue to face obstacles in this regard. In conclusion Ms Moni noted that Parliament should consider it a priority to pass laws to protect vulnerable groups. If addressing HIV requires us to stand next to minorities, we should do that.

53. Ms. Tarana Halim, MP began by affirming that while certain vulnerable groups – such as female sex workers, people living with HIV, men who have sex with men, hijras and people who inject drugs -- are marginalised in society, they are all citizens of Bangladesh, and as such equal in the eyes of law and have the same constitutional rights. We cannot deprive any individual of her/his basic human rights.

54. Bangladesh is party to all the core international human rights treaties. Implementation of these treaties will result in protecting these vulnerable groups. Laws

need to be enacted, repealed, reformed or amended in order to ensure full implementation of the state‟s international obligations to eliminate discrimination, and ensure equality of all.

55. Administrative steps may be taken to ensure the rights of transgendered persons. These could involve including an option in official documents, such as passport forms, or the census forms, for transgendered persons to identify themselves as belonging to a third gender. In other cases, legislative measures may be needed, for example to ensure that criminal/penal laws which are specifically applicable to men and women also apply to transgendered persons too. Personal laws may need to be clarified to ensure that for example Hijras are not excluded from their inheritance rights. The superior courts could interpret the law to protect the inheritance rights of transgendered persons.

56. A recent governmental initiative has involved setting up government schools next to every brothel, with such schools required to follow the national curriculum. This initiative will potentially benefit the children of sex workers. At the same time, as long as brothels remain illegal, or under threat of eviction, their inhabitants will remain marginalised and excluded, and will find it more difficult to access HIV prevention services. There is a need to ensure greater visibility for excluded groups such as sex workers, and to sensitize the media to create greater public awareness and understanding of their lives.

5.3 Responses from Civil Society

56. Advocate Sultana Kamal, Executive Director of Ain o Salish Kendra, and former Advisor to the Caretaker Government, noted that there is widespread awareness at least among concerned civil society and government organisations of the laws that are hindering the AIDS response in Bangladesh.

57. However, we ourselves often unconsciously use terms such as “prostitute” or “*potita*” („the fallen one‟) though we are well aware that these are insensitive and derogatory. We may also want to consider whether to revise the use of the term men who have sex with men which defines an individual solely by their sexual behaviour. Changing our language and changing our mind-sets is of critical importance in the process of according dignity and humanity to all individuals.

58. Several marginalised communities face social exclusion and structural impediments that result in their being deprived of human rights. The core issue that we need to address is denial of recognition to certain groups and communities, based on their behaviour or practices.

Part 6: Action Plan

59. An action plan (Annexure 3) was drawn up by all participants recommending specific time-bound actions to be taken by different agencies, through collaboration between government agencies, civil society and the representatives of most at risk populations to address punitive laws, policies and practices that hinder the AIDS

response in Bangladesh. The timeline for completion of all activities, unless otherwise stated is end 2015, the deadline for achievement of the targets defined in the 2011 *Political Declaration on HIV and AIDS*.

PART 7: CONCLUSION AND FOLLOW UP

60. Mr. Leo Kenny, UNAIDS Country Coordinator delivered the vote of thanks. Reflecting on the two day discussions, he recalled the NHRC Chairman"s remarks that in the crux of the discussion were on fundamental human rights. The Hon"ble State Minister, Ministry of Law Justice and Parliamentary Affairs and the Acting Chairman of the Law Commission had committed their full support to developing the action plan formulated at the end of the consultation. Community members gave information about the imperative need to address these issues. In addition, the inputs from Ms. Nilufar Yeasmeen Moni, MP, and Ms. Tarana Halim, MP, Prof. Mizanur Rahman NHRC, Prof. Shah Alam NLC, Mr. Shahinur Islam, Deputy Secretary, Ministry of Law, Ms. Sultana Kamal, Ms. Sara Hossain and the community members needs to be acknowledged. Mr. Kenny concluded by expressing his special thanks to Ms. Brianna Harrison and Dr. Munir Ahmed of UNAIDS for their contributions in moderating the event and preparing core presentations.

The National AIDS / STD Programme in collaboration with UNAIDS, will contribute towards the follow up of this meeting by liaising with the relevant Ministries especially Ministries of Law, Justice and Parliamentary Affairs, Health and Social Welfare in considering the recommendations from each group participating in order to ensure that legislation is passed in ensuring the protection and rights of people living with HIV.

National representatives from UNIADS can furthermore act as focal points that may provide technical and other support and guidelines to relevant ministries.

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Annexure 1

Participant List

Annexure 2

Workshop Objectives and Programme

National Legal Consultation on Punitive Laws that hinder the AIDS Response in Bangladesh

May 18-19, 2013

Spectra Convention Center

Gulshan-1 Dhaka

Specific objectives:

1. To identify the laws hindering the AIDS response and build consensus on reforms needed to create an enabling legal environment for access to HIV services.

2. To chalk out a time bound plan of action identifying priorities for the amendment of punitive and discriminatory legal environment that are impeding AIDS responses.

National Legal Consultation on Punitive Laws that are Hindering AIDS Response in Bangladesh

May 18-19, 2013

Saturday May 18, 2013

8.30 - 9.00	**Registration**
	Inaugural session by Dr. Munir Ahmed UNAIDS Social Mobilization and Partnership Advisor
9.00 - 9.10	Opening Remarks – by A M Badrudduja, Additional Secretary, MoHFW
9.10 - 9.15	Objectives of the Consultation –Leo Kenny, UNAIDS Country Coordinator, Bangladesh

9.15 - 9.25	Presentation on “Legal and Human Rights Issues as mentioned in National Policy documents” Dr. Abdul Waheed, Line Director NASP, Government of Bangladesh
9.25 - 9.45	Presentation on “HIV Scenario and Violence data” by Dr.Tasnim Azim, icddrb Bangladesh
9.45 - 10.00	Presentation on “Global Commission on HIV and Law Risks, Rights & Health” by Brianna Harrison, Human Rights Program Officer, Regional Support Team, Bangkok
10.00 -10.50	Presentation by Barrister Sara Hossain, ED BLAST on “National Laws Hindering the response to HIV” and “Personal experience sharing” by Nasreen (Member Ashar Alo Society) , Hena (General Secretary, Durjoy), Jameel (General Secretary, Procheshta), Shale Ahmed (President BSWS) and Jaya Sikdar (President Sex Workers network Of Bangladesh)- 5 mins each
10:50 - 11:00	Speech by the Guest of Honor Prof. Shah Alam, Chairman Law Commission
11.00 - 11.10	Speech by the Chief Guest, Prof. Mizanur Rahman, Chairman, National Human Rights Commission
11.10 - 11.20	Speech by the Chair: Mr. Prasada Rao, UN Secretary General‟s Special Envoy for AIDS in Asia and in the Pacific

11:20 - 11:40	**Group Photo followed by Tea/Coffee**
11:40 -11:50	Speech by Police DIG & Additional Police Commissioner Dhaka Metropolitan Police Mily Biswas
11.50 – 13.30	***Facilitator: Md Shahinur Islam, Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs*** **Parallel group work sessions: (5 groups)** • Group A on PLHIV • Group B on sex workers • Group C on people who use drugs • Group D on men who have sex with men • Group E on migrants 1. How does the legal environment in Bangladesh hinder access to HIV services for: • Laws and policies • Law enforcement • Access to justice
13.30 -14.30	**Lunch**
14.30 - 15.30	**Group work continued;** 2. Develop an action plan to address the problems identified in: ▪ Laws and policies ▪ Law enforcement ▪ Access to justice
15.30 -16.30	Group Presentations followed by Discussion

Sunday May 19, 2013

9:00 - 9:15	Recap - Day 1 proceedings
9:15 - 9:35	**Presentation 1:** Legal recognition of the third gender for transgendered persons including Hijra population; Ms Tarana Halim MP, Bangladesh Parliament
9:35 - 9.55	**Presentation 2:** Challenges faced on enforcement of laws against all forms of child sexual abuse and exploitation
9.55 -10.30	Discussion on presentations 1 and 2
10.30 - 11.00	**Tea/ Coffee break**
11.00 - 12.30	**Group Work sessions (3 groups) Facilitator: Md Zahid Hossain, Expert M&E, NHRC**
	Group 1 Steps for legal recognition of transgendered persons including the Hijra population **Group2:** Steps for legal recognition of child rights (all action plans to include an in-built monitoring and evaluation mechanism/component) **Group 3:** Finalization of action plan from day1
12.30 - 13.30	Group Presentations (10 minute presentations followed by clarifications) Discussion on developing a mechanism to report back on implementation of action plans
13.30 – 14.00	**Closing Session:**
	Speech by guest of Honor Ms Nilufar Chowdhury Moni, MP

	Speech by Special Guest Shaheen Anam, ED Manusher Jonno Foundation
	Speech by Chief Guest: Advocate Sultana Kamal, Ex Advisor, Care Taker Government
	Speech by Chair, Mr. M.M. Niaz Uddin, Secretary, Ministry of Health and Family Welfare
	Vote of Thanks by Leo Kenny, UNAIDS
14.00	**Lunch**

Annexure 3

Action Plan

Objective 1. To enact new laws granting legal recognition of sex work by adults and ensure their effective enforcement

Outputs : 1.1 New law granting legal recognition to sex work by adults enacted and made aware to public

: 1.2 Mechanisms established to prevent of misuse/abuse of laws

: 1.3 Protective law framed against discrimination on the ground of occupation

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 1.1 New law granting legal recognition to sex work by adults enacted and made aware to public				
1.1.1	Enact law granting legal recognition to sex work by adults - including substitution of the words 'sex work' for 'prostitution' (Form a committee with GO, NGOs, lawyers for drafting the law)	Ministry of Law + NGOs working with sex workers (DNS + SWNOB)		The law granting legal recognition to sex work by adults enacted.
1.1.2	Undertake advocacy & awareness to generate social acceptance of sex workers	NGOs working with sex workers (DNS + SWNOB)		Awareness on social acceptance of sex workers carried out

Output 1.2 Mechanisms established to prevent of misuse/abuse of laws				
1.2.1	Establish a mechanism to ensure accountability and oversight over the police.	NGOs (DNS + SWNOB + SC) + NHRC + Police authorities+ oversight of Ministry of Home Affairs and Ministry of Law + Social Welfare Dept + MoWCA		Mechanism established to prevent misuse of Sec 54 Cr.P.C + Sec 76 DMP Act + Human Traffic Act, 2012 + Vagrants & Shelterless Persons Act, 2011 - monitoring mechanism regarding police and further ensure that police enforce protective laws, including prosecution of perpetrators of violence and sexual violence against sex workers.
1.2.2	Develop guidelines to prevent misuse of legal provision, eg. ensuring presence of a woman officer at the time of arrest of a female, ensuring legal representation, etc.	Ministry of Home Affairs and Ministry of Law		Mechanism established and introduced to prevent misuse of legal provisions
1.2.3	Carry out advocacy and awareness with state and non-state actors to remove social stigma and discrimination surrounding sex work.	NGOs		Advocacy and awareness programmes designed and carried out

Output 1.3 Protective law framed and enforced against discrimination on the ground of occupation				
1.3.1	Form a committee with GO & NGOs, and lawyers for drafting the law Anti-Discrimination Act which covers discrimination on grounds of occupation, thus protecting sex work	Ministry of Law in consultation with MoWCA		Anti-Discrimination Act which covers discrimination on grounds of occupation enacte
1.3.2	Carryout advocacy and awareness programmes to generate social acceptance	NGOs		Advocacy and awareness programmes designed and carried out

Objective 2 To reform punitive laws against men who have sex with men and minimize misuse of legal provisions and abuse of laws

Outputs : 2.1 Punitive law against homo sexuality reformed /repealed

: 2.2 Misuse of legal provisions and abuse of laws prevented

: 2.3 Institutional capacity to address harassment and protection of rights of MSMs strengthened

: 2.4 **Social Attitudes towards MSM changed**

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 2.1 Punitive law against men who have sex with men reformed /repealed				
2.1.1	Organize stakeholder consultations on Section 377, Penal Code for in-depth discussion and to develop strategy to deal with this provision			Advocacy and awareness on proposed changes to Section 377, Penal Code, carried out
2.1.2	Advocate to Political leaders on the need to amend the Section 377			Political leaders advocated
Output 2.2 Misuse of legal provisions and abuse of laws prevented				
2.2.1	Establish an independent mechanism to ensure accountability and oversight over the police			A monitoring mechanism established to preventing misuse of Sec 54 Cr.P.C + Sec

				76 DMP Act and Ensure that police enforce protective laws, including prosecution of perpetrators of violence and sexual violence against men who have sex with men
2.2.2	Implement existing High Court guidelines to prevent misuse of section 54 of the CrPC			Existing High Court guidelines implemented
2.2.3	Develop guidelines to prevent misuse of identified legal provisions, e.g. ensuring peer educators are not harassed under obscenity laws, or face arbitrary arrest under metropolitan police ordinances			Guidelines developed to prevent misuse of identified legal provisions
2.2.4	Carryout advocacy and awareness with state and non-state actors to remove social stigma and discrimination			Advocacy and awareness programmes designed and carried out
Output 2.3 Institutional capacity to address harassment and protection of rights of men who have sex with men strengthened				
2.3.1	Develop a mechanism/s to strengthen institutional capacity to address harassment and protection of rights of men who have sex with men			NGOs should work with NHRC and the police to ensure protection of rights of men who have sex with men

2.3.2	Carryout advocacy and awareness programmes on rights of men who have sex with men			Advocacy and awareness programmes designed and carried out

Output 2.4 Social Attitudes towards men who have sex with men changed				
2.4.1	Carryout advocacy and awareness activities with state and non-state actors to remove social stigma and discrimination			Advocacy and awareness programmes designed and carried out

Objective 3 To minimize discrimination of *hijra* community

Outputs : 3.1 Legal recognition granted for *hijras*

: 3.2 Access *hijras* to education, employment and health services ensured

: 3.3 Vulnerability of *hijras* to misuse of legal provisions and abuse of laws prevented

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 3.1 Legal recognition granted for *hijras*				
3.1.1	Draft and adopt a law granting legal recognition to *hijras* as the third gender: • Formation of a steering committee • Continuous advocacy with identified stakeholders • Secure right to file criminal and civil suits with the identity of *hijra*	Ministry of Law, Justice and Parliamentary Affairs *and* UNDP NHRC		A new law enacted to legally recognize *hijras* as the third gender
Output 3.2 Access *hijras* to education, employment and health services ensured				
3.2.1	Conduct a study to identify the reason for dropout	Ministry of Education		Attributing factors of school

	of *hijras* from schools			dropout of *hijras* identified
3.2.2	Address issues of the *hijra* community/Third gender in the school curriculum	Ministry of Education		Issues related to *hijras* are inserted in school curricula
3.2.3	Create awareness to address social exclusion and stigma at different levels	Ministry of Social Welfare		Awareness programmes carried out
3.2.4	Include older *hijras* in existing social safety net programmes	Ministry of Education		Social safety networks include *hijra* community
3.2.5	Ensure job quotas for *hijra*	Ministry of Law, Justice and Parliamentary Affairs		Job quotas made available for *hijras*
3.2.6	Identify challenges in ensuring health services to *hijras* and address them	Ministry of Health and Welfare		Health challenges faced by *hijras* identified and addressed
Output 3.3 Vulnerability of *hijras* to misuse of legal provisions and abuse of laws prevented				
3.3.1	Establish a mechanism to ensure accountability and oversight over the police	Ministry of Law, Justice and Parliamentary Affairs		A mechanism established to ensure accountability and oversight over the police
3.3.2	Develop guidelines to prevent misuse of these legal	Ministry of Law, Justice		Guidelines to prevent misuse

	provisions, e.g. ensuring peer educators are not harassed under obscenity laws	and Parliamentary Affairs		of legal provisions developed
3.3.3	Carryout advocacy and awareness with state and non-state actors	Ministry of Home Affairs and Ministry of Law		Advocacy and awareness programmes carried out

Objective 4. To ensure the basic medico legal facilities for persons who inject drugs in community and prison settings

Outputs : 4.1 Recognition and endorsement for 'harm reduction program' by all relevant government agencies and other stakeholders obtained

: 4.2 Methadone maintenance treatment (MMT) programme scaled up

: 4.3 Harm reduction programmes in prisons introduced

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 4.1 Recognition and endorsement for 'harm reduction program' by all relevant government agencies and other stakeholders obtained				
4.1.1	Establish a Steering Committee with a defined TOR and time line	MOHFW		A steering committee established
4.1.2	Carryout sensitization/ advocacy programmes of relevant ministries, agencies and media	MOHFW		Sensitization/ advocacy programmes carried out
4.1.3	Review and update 'Harm Reduction Strategy and obtain endorsement from MOHFW, Ministry of Law	Ministry of Law and Palimentary Affairs,MOHF		'Harm Reduction Strategy' updated and endorsed by the MOHFW
4.1.4	Carryout sensitization programmes for law enforcement agencies and other institutions to gather support for Harm Reduction Operation	MOHFW, NGO, INGOs		Sensitization programmes on Harm Reduction Operations, conducted
4.1.5	Strengthen inter-country Police Advisory Committee	Ministry of Home Affairs		Inter-country Police Advisory Committee strengthened

Output 4.2 Methadone maintenance treatment (MMT) programme scaled up				
4.2.1	Review and update formation of National Steering Committee for MMT with a defined TOR	MOHFW		National Steering Committee on MMT established
4.2.2	Carryout sensitization programmes for National Narcotic Board and other relevant Departments	MOHFW		Sensitization programmes carried out
4.2.3	Ensure supportive procedures for MMT Clinic Operation (Methadone procurement, store, transport, carry , storage and use etc.)	MOHFW		Supportive procedures for MMT Clinic Operation identified and provided
4.2.4	Establish five more MMT clinics in needy areas	MOHFW		MMT clinics established in needy areas
4.2.5	Carryout Fund Raising activities for operation and scaling up of MMT Clinics	MOHFW		Fund Raising activities to scale up MMT Clinics carried out
4.2.6	Organize exposure visits for service providers	MOHFW		Exposure visits organized for service providers
Output 4.3 Harm reduction programmes in prisons introduced				

4.3.1	Establish a Steering Committee with a defined TOR	Directorate of Prisons (IG Prison) MOHFW (NASP, DGHS), MOH (DNC) , Ministry of Law , and Parliamentary affairs , Media , Implementers (DP,NGO, INGOs)		The Steering Committee established
4.3.2	Identify the provisions of the Jail Code that currently obstruct introduction of Harm Reduction Program in Prison and take appropriate policy initiative to correct it	Law Ministry		Policy initiatives taken to modify the Jail Code that currently obstruct introduction of Harm Reduction Program in Prisons
4.3.3	Introduce Harm Reduction Programmes in Prisons – Needle/Syringe exchange, Condoms, STI , BCC , VCT, MMT etc.	Directorate of Prisons (IG Prison)		Harm Reduction Programmes introduce in Prisons
4.3.4	Carryout Fund Raising activities	Directorate of Prisons (IG Prison)		Fund Raising activities carried out

Objective 5. To ensure the rights of migrant workers including right to health services

Outputs : 5.1 The rights of migrant workers strengthened

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 5.1 The rights of migrant workers strengthened				
5.1.1	Formation/re-formation of review committees/ task forces to ensure referral and health services are delivered to migrant workers	MOHFW		A steering committees / Task Forces established in identified areas
5.1.2	Strengthen the Database of Migrant Workers	NGOs		Migrant worker data base strengthened
5.1.3	Identify the lacuna in ensuring the rights of migrant workers, and take steps to address the shortcomings	Ministry of Foreign Affairs		Lacuna of ensuring the rights of migrant workers, identified and shortcomings addressed

Objective **6. To enhance the right to access to health and ensure social justice to people living with HIV**

Outputs **: 6.1 People are not denied to their rights and access to health care irrespective of their HIV status**

: 6.2 Health care service providers are sensitized about the rights of people living with HIV

: 6.3 Social justice to people living with HIV is assured

	Activity	Responsibility	Proposed time line	Activity specific Output
Output 6.1 People are not denied to their rights and access to health care irrespective of their HIV status				
6.1.1	Carryout sensitization programmes to mobilize the nodal bodies for ensuring the access of PLHIV to health care services at the levels of Parliament, MOHFW, DGHS, DGFP, and Divisional, District and Upazilas	MOHFW, (DGHS/DGFP) MOHome (DNC) MoSW , Parliamentary caucus on HIV, NGOs and Civil Society		Sensitization programmes for identified target groups carryout.
6.1.2	Carryout out training programmes to build capacity on Universal Precaution and Management of HIV/AIDS for selected target groups	NGOs		Training programmes conducted

Output 6.2 Health care service providers are sensitized about the rights of PLHIVs				
6.2.1	Create a body within the MoHFW to ensure non-violation of health care rights of people living with HIV	MoHFW		A task group established in MOHFW
6.2.2	Sensitize the local government to address the needs of people living with HIV regarding inheritance (especially women)	Ministry of Health & Family Welfare NGOs		Sensitization programmes conducted
Output 6.3 Social justice to PLHIVs is assured				
6.3.1	Draft a legislation in parliament on ensuring confidentiality of people living with HIV by health care providers	Ministry of Law & Parliamentary Affairs		Legislation on ensuring confidentiality of people living with HIV by health care providers drafted
6.3.2	Draft National HIV and the workplace policy			National HIV and workplace policy drafted
6.3.3	Draft policy guideline on protecting human rights of people infected and affected by HIV			Policy guideline on protecting human rights of people infected and affected by HIV drafted