



Report

Getting to grips with power

Can NGOs improve justice in Bangladesh?

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Development
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Cover photo: 'Courtyard Meeting' for raising awareness on legal rights and entitlements, Madaripur Sadar Upazila, Madaripur District, Bangladesh, 2012 © Emdadul Islam Bitu

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Acronyms

ADR	Alternative Dispute Resolution
AL	Awami League
ASK	Ain o Salish Kendra
BELA	Bangladesh Environmental Lawyers Association
BLAST	Bangladesh Legal Aid and Services Trust
BNP	Bangladesh Nationalist Party
BNWLA	Bangladesh National Woman Lawyers' Association
BRAC	Bangladesh Rural Advancement Committee
CBO	Community-based organisation
CEDR	Centre for Effective Dispute Resolution
CLS	Community Legal Services
DFID	UK Department for International Development
DLAC	District Legal Aid Committee
LKM	Learning and Knowledge Management
MLAA	Madaripur Legal Aid Association
JSF	Justice Sector Facility
PIL	Public interest litigation
PRP	Police Reform Project
SUS	Sabalabmy unnayan samity
UNO	Upazila Nirbahi Officer
UP	Union Parishad
USD	United States Dollars
VC	Village courts

Terminology

<i>fatwa</i>	A ruling on a point of Islamic law given by a recognised authority
<i>karbari</i>	Ethnic minority community leader in Chittagong Hill Tracts
<i>hartal</i>	General strike
Headman	Ethnic minority community leader in Chittagong Hill Tracts
<i>shalish</i>	Community dispute resolution process
<i>shalishkar</i>	Mediator in a community dispute resolution process
Nagorik Uddyog	Citizens Initiative
<i>Raja</i>	King
<i>upazilas</i>	Sub-district

Executive summary

For many years, donors have supported justice interventions in Bangladesh: providing small-scale grants to activist NGOs, facilitating large-scale national justice sector reforms, and doing community-based work. The latter typically involves funding paralegals, alternative dispute resolution, ‘village courts’ and more. Into this mix comes the Community Legal Services (CLS) project, a £17 million project funded by the UK’s Department for International Development (DFID). Over five years, CLS provided grants to 18 non-governmental organisations (NGOs), who aimed to support improved community legal services.

The CLS project provoked some big questions. What are the most effective strategies Bangladeshi NGOs use to improve legal services? What role does capacity building play in this? Should international donors focus on promoting legal services, empowerment, or both? The project also had a strong focus on providing access to justice for women and girls. How can this happen in a culturally sensitive way that also protects women from backlash? Furthermore, many of the grantees were selected due to their wide community reach, rather than legal expertise. Is this an effective way to expand legal services?

This research sought to unpack these questions through an in-depth qualitative research study. It sought to

understand what worked, where, and why. We conducted a total of over 100 interviews, focus groups and observations of CLS in action. We worked with seven grantees, in four districts of Bangladesh. We spoke at length with clients of CLS, NGO staff, a range of stakeholders involved in the justice sector, and the diverse communities across the country. We observed community-led legal aid clinics, government-run legal aid, yard meetings and NGO field facilitators.

Our research took into account the **political economy of justice** in Bangladesh. Two main parties dominate Bangladeshi politics: the Awami League and the Bangladesh Nationalist Party. Local political parties can influence traditional dispute resolution and formal court cases through their patronage networks. Religious norms and beliefs also shape justice processes and outcomes.

NGOs often seek to challenge power relations in Bangladesh. However, their attempts to change justice processes and outcomes are both shaped by, and dependent on, their relations with elites at the village and district level. In addition, donors have shaped how, and what, NGOs are able to focus on, making them vulnerable to shifting international finances and priorities.



Community Mediation for settling disputes outside the court, Kalkini Upazila, Madanpur District, Bangladesh, 2012 © Emdadul Islam Bitu

What did the CLS project achieve? And how?

We found DFID's support to CLS NGOs to be commendable. They took, as their starting point, the day-to-day legal problems faced by poor and marginalised groups in Bangladesh. As such, huge numbers of people gained greater awareness of the formal law and avenues for redress. Some progress was also made in improving the fairness of the processes and outcomes of justice in diverse institutions and places across the country.

Awareness raising activities resulted in a number of citizens, mostly women, coming forward to claim their rights and resolve disputes. Yard meetings were used to disseminate information about the formal law. Using existing community groups, some NGOs exerted their collective influence to tackle individual dispute issues and raise broader awareness. Street theatre was also a participatory way to encourage community engagement and reflection. We found that awareness raising had to be conducted sensitively, by trusted NGOs and individuals – particularly where initiatives were invoking religious or cultural justifications for reducing violence against women.

The CLS project has increased **access to justice** by reducing social and geographic barriers. However, the vast majority of disputes, particularly those which involve violence in the family, will still not be made public. Attempts to make disputes public are fraught with personal risk, particularly for women. The ability of CLS grantees' staff to challenge social barriers depended upon their own worldviews and ability to convince influential elites of the value of an alternative justice process or outcome. Access to justice is of little use if that 'justice' remains discriminatory.

NGOs can improve the **quality of justice** processes through providing timely, clear and respectful support to disputants. This can be a marked contrast to what the disputants are used to, particularly through traditional *shalish*. Gaining the support of an NGO can help disputants secure a fairer outcome of their case. However, in the CLS project, we found that a lack of sustained follow-up or broader social and economic support to women facing violence put them at risk.

The CLS project had a thorough approach to **capacity building**. Training was to be only one of the ways by which overall organisational development would take place. Their flexible approach proved necessary given internal project and external political challenges. Through short and targeted training, regular NGO frontline staff members have been trained as CLS workers. More broadly, however, the project missed opportunities for ongoing evaluation and more in-depth learning about the different approaches, modalities and activities that CLS was funding.

Was the CLS work **sustainable**? When the project ends, most staff will move into other roles and to different NGOs. Yet a cadre of professional staff with CLS capacity will remain in the development sector. This could, therefore, mainstream legal services in other areas. Furthermore, it is plausible that CLS has contributed to

some attitudinal change around access to justice. However, the CLS project, like the majority of donor projects, did not have a sufficient time frame nor mandate to ensure longer-term sustainable changes.

Challenges for the CLS Model

While the CLS project has been valuable, there were a number of problems and challenges observed, which are linked to overall strategic outlook.

Having a specific focus on community **legal services** was constraining. Firstly, it appeared to prevent a holistic view of how disputes affect people's lives. If a woman makes a domestic violence case public, she may require other forms of social or economic support, or even physical protection. However, this was not directly possible through CLS funding. Secondly, it meant the project neglected to take a broader view of legal empowerment. Doing so would have encouraged a focus not just on individual disputes, but on how to mobilise around problems of collective significance in local communities.

Development NGOs have shown themselves capable of encouraging awareness and access to legal services: they are often embedded in their project locations and are able to secure the trust of local people. The challenge has been to ensure that all development NGOs play to their strengths. Some NGOs were required to expand into areas they had never worked in before, which meant they didn't carry the trust and legitimacy that can come with being a 'community' NGO. Furthermore, the role of expert legal organisations, in relation to development NGOs, was not sufficiently established. There were some good practices, such as funding development grantees to help implement existing public interest litigation rulings. But few issues were translated from the community to national NGOs to focus on, nor was there significant implementation of national legal rulings by community NGOs.

DFID Bangladesh was required to support DFID HQ's push to **reach targets** for increasing access to justice for women and girls. Therefore, the CLS project partnered with development NGOs whose services naturally had a wide reach. In some respects, this was a positive development, supporting improved justice in particularly remote or underserved areas. Yet there is a tension between expanding and deepening service. Some organisations did not have the time to give the due attention required to sensitive situations.

Gender relations were not sufficiently considered in the project. Most CLS grantees worked on issues relating to violence against women. They helped many women disputants receive at least partial remedies, based on some good gender-sensitive practices. However, the grantees often struggled to tackle the overwhelming barriers to women accessing good quality justice. In part, this was because the focus on women and girls was taken too literally, when a broader gender focus, including looking at male attitudes to domestic violence, was required.

Recommendations for improving CLS

Implementers

- 1** *Implementers and NGOs should work closely with elites.* Improving the quality of justice in politically sensitive areas requires local NGOs who have trust and legitimacy. However NGO's should remain conscious that they are not just influencing power relations; they are part of them.
- 2** *They need to acknowledge and work with diversity.* Staff must be sensitive to the socio-political, cultural and economic aspects that influence what people view as 'justice' and where they might go to seek it. Sensitivity is particularly important when working with indigenous groups, who have often experienced years of discrimination and will rightly be wary of outsiders.
- 3** *They must offer a holistic approach.* Many women end up being socially and economically disempowered after entering into a legal claim. Therefore, legal, social and economic pathways are needed to ensure 'access to justice'.
- 4** *They should put the local perspectives first.* A 'local first' approach means analysing community needs, and working out where and how a legal approach can be genuinely helpful to tackle local problems. Recourse to the law may not always be the best solution.

International donors

- 1** *CLS projects need a wide-ranging focus on violence against women.* Projects should be guided to understand and mitigate the risks of the potential impact of programming activities on women and girls. Future work in this area must have a broader gender approach, taking account of the diverse male attitudes and actions in relation to violence against women.
- 2** *Donors should take a multi-sectoral approach.* Focusing on 'results' can obscure an examination of the underlying drivers of disputes and crimes, which is far more important. The challenge is to ensure a focused programme while tackling cross-cutting legal, social and economic issues.
- 3** *Donors need to recognise that extensive capacity building is a key part of sustainability.* This involves building legal, managerial and political capacities and skills. Donors could consider longer-term, smaller scale core funding.
- 4** *Encourage a politically smart and adaptive approach.* A 'politically smart' approach encourages greater attention to NGO's relationship building with key counterparts at all levels. Using 'adaptive' programming would have meant more explicit testing of the different legal modalities, and changing these as required.

1. Introduction

Improving people’s ‘access to justice’ appears to be the ‘right’ thing to do. Yet in the development industry, rule of law approaches to assistance have been heavily criticised, typically for seeking to replicate Western-style institutions. Replication may involve building courthouses and training judges, even when the effectiveness of such institutions in a country is far from proven, nor necessarily desirable from the perspective of the country’s citizens. Training may be designed by a foreign technocrat, who knows little about a country or its legal system (Carothers, 2006; Desai et al., 2012; Denney and Kirwen, 2015; Albrecht and Kyed, 2011). Such attempts focus more on form than function, overemphasising state capacity and viewing the world as they wish it to be, rather than as it is (Desai and Woolcock, 2012).

Proponents of legal empowerment saw themselves as the antidote to this problem, offering a bottom-up approach to legal assistance (Golub, 2003; Carothers, 2006; Kleinfeld, 2012). This is often seen in support for paralegals and legal clinics, which seek to either resolve people’s issues at the ‘community’¹ level or facilitate passing them up to a higher level (Maru, 2010). More recently, it has been argued that empowering citizens also requires fundamental change at the legal or policy level, through legal activism such as public interest litigation (Domingo and O’Neil, 2014). The term ‘community legal services’ reflects another way of discussing many of the issues outlined, albeit in part by removing the explicit intention of changing power dynamics. Yet power relations are central to how justice provision works. Justice institutions are clearly at risk of being abused by powerful elites who want to protect their own interests. Attempts to reform them will likely face resistance, which needs to be taken into account (Bakrania, 2014; Harper, 2011).

In Bangladesh, the *shalish*, a traditional form of dispute resolution, continues to be the primary way people resolve local problems. The *shalish* is a ‘small-scale local council convened for conflict resolution’ (Lewis and Hossain, 2008: 54), which often involves village elders, religious leaders, elected representatives or other influential community members. While its practices are both mixed

and changing, research suggests the *shalish* can often discriminate against poorer or more vulnerable groups, particularly women who suffer violence.

In Bangladesh, donors have for many years supported justice interventions, ranging from small-scale funds for activist NGOs to large-scale national justice sector reforms. Community work typically involves funding paralegals, alternative dispute resolution, village courts and more. However, the level of progress through these approaches is unclear. Discrimination – tied to the broader political, social and economic context – persists across formal and informal justice systems.

Into this mix comes the Community Legal Services² (CLS) project, funded by the UK’s Department for International Development (DFID) to the tune of £17 million. CLS is a five-year programme fund, designed as a competitive grant-making project that provides grants to 18 main NGO grantees, with a further 12 sub-contracted under those agreements. These grantees were both established legal service organisations, as well as development NGOs. The former brought legal expertise, while the latter brought a track record of community-based work.³ The programme supports direct community legal services, advocacy, research, and capacity building for NGOs in the sector.

Within the direct community legal services, there are four main activities:

1. Legal information and advice
2. Mediation
3. Referral
4. Litigation

Our research focuses on these activities. In framing itself as engaged with ‘services’ rather than ‘empowerment’, the CLS project provides an interesting reflection for the shifting narratives and practices outlined above.

The CLS project raises some big questions. How can the wide array of NGOs in Bangladesh best support access to justice? Can mainstream development organisations improve legal services? To what extent are service delivery

1. The concept of ‘community’ has numerous definitions. The authors of this report agree with de Berry (1999: 16), who notes that ‘communities are not homogeneous nor simple and uncontested entities’ and that community based organisations ‘encode lines of power and representation’.

2. According to CLS (2012), community legal services include various forms of alternative dispute resolution, including arbitration, conciliation, mediation, NGO-administered *shalish* and traditional *shalish*. Different forms of legal aid are also included.

3. We use ‘development NGOs’ or ‘development organisations’ as broad terms to cover non-legal grantees. These NGOs may have a rights-based, service delivery or more radical, activist orientation.

and empowerment mutually exclusive approaches? Is it best to expand services to new geographic areas or consolidate those that exist? If women and girls are supposed to be helped by justice interventions, which strategies are the most effective – and do no harm?

Structure of the report

In what follows, we first describe our research aims and methods. Section 2 is an analysis of the political economy of justice in Bangladesh. In Section 3, we document the role of the CLS project, including their theories of change. What the CLS project tells us about strategies to improve legal services in Bangladesh is the focus of Section 4. This involves reviewing how the project has contributed to awareness, access, quality, capacity building and sustainability. Throughout these sections, we draw on the 27 interviews we conducted with clients of CLS grantees, as well as numerous others as outlined in the next section. We then respond to some of the big questions posed above in Section 5 through an analysis of the CLS model. Themes in the discussion of the model include project modalities, reach and depth, legal empowerment, the role of development NGOs and gender. The sixth and final section concludes with recommendations for both Bangladeshi organisations and international donors.

1.1. Research aims and methods

This research was commissioned by Maxwell Stamp, the lead implementer of the CLS project. The aim was to build on a previous rapid appraisal of CLS, which one of the co-authors of this report led (Jahan et al., 2016). The initial Term of Reference suggested a focus on ‘what works’ and ‘learning and knowledge management’, which was expanded in the following manner.

Research questions

This research project asked two main questions:

- What are the most effective strategies for improving the access to, and quality of, community legal services across Bangladesh?
- What are the most effective strategies for improving legal and development organisations’ capacity to deliver those services?

These two research questions overlap: our hypothesis is that organisational capacity building can improve the design, implementation and outcomes of projects if the right enabling conditions are in place. The focus here is on *strategies* for improving community legal services, with the aim that this paper can inform future efforts to improve justice for poor and marginalised people across Bangladesh.

In this research study, we are particularly interested in the extent to which CLS grantee strategies take into account the power relations of community legal services, such as around gender, class and ethnicity.

Approach

Initial research of one week in Dhaka involved selecting, refining and exploring hypotheses within the programme’s theories of change. Based on these discussions and the wider literature, the hypotheses have been consolidated into the ‘outcomes and indicators’ table, highlighted in Section 3. We investigated the hypotheses to understand which strategies have worked, which have not, and why. During field research, all researchers had with them printed sheets of these hypotheses alongside their interview checklist, to ensure they were a key focus of the research. Our interviews are largely anonymised. In the text, our references to interviews use ‘#’, followed by the chronological number we assigned it during our research, and then a letter for location (e.g. ‘S’ for Satkhira).

A critical question here was what it meant for a strategy to ‘work’. The CLS project had its own measures of success based on DFID criteria, such as ‘population access and reach’. This is an estimate of how many people could use legal services supported by CLS. They also looked at disputes accepted and resolved by service providers, and referrals made. Wider value-for-money assessments, commissioned by DFID, have sought to understand the financial benefits of service provision to disputants and the government. These success criteria shape how implementers act in each location. Even though this was not prescribed under the project, our view on success is broader, taking into account the influence of CLS interventions on unequal power relations. This is underpinned by a broad legal empowerment approach.

According to Domingo and O’Neil (2014), most research and development assistance in relation to legal empowerment tends to focus on how people make claims and/or their experience of formal or informal dispute resolution. As such, they stress the need to look at the *entire* ‘justice chain’ to evaluate the conditions under which legal action can be pro-poor, lead to redress for vulnerable groups and/or facilitate broader social change. This includes the decision to take legal action, the experience of dispute resolution, implementation and impact. In our research, we employed the justice chain as an analytical tool to understand the effectiveness of CLS strategies. This means taking into account the broader socio-political and legal environment, and not looking at service provision in isolation. What ‘works’ and what does not will often be closely linked to these broader factors.

Figure 1: The justice chain



Source: Domingo and O’Neil (2014)

NGO and location selection

It was beyond the scope of this research to document all 30 grantee experiences. We decided to focus on **seven CLS grantees in four districts** in Bangladesh. These included two districts in the north and two in the south, with additional interviews conducted in Dhaka. We chose the research locations and NGOs using the following criteria: availability of past research such as Jahan et al. (2016), key activities and modalities being undertaken by grantees, non-urban areas, geographical and cultural diversity, predominantly development rather than legal NGOs,

and NGOs who work with marginalised groups and/or women. Further information on our research methods is available in the Annexes, including location descriptions; interview details and process; data gathering, transcription and analysis; and limitations. In total, we conducted 108 interviews, focus groups or observations.

Table 1 describes the NGO’s we conducted research with, including their organisational approach and legal modalities undertaken for the project. On page 14, a map of Bangladesh shows the coverage of all CLS grantees across the country.

Table 1: NGO approach

NGO	Approach	Research Locations	Modalities
Brotee	Rights-based development NGO. Focus on democracy, environment, livelihoods.	Rajshahi	Legal Awareness Legal Advice Litigation Case referral
BLAST	Legal NGO. Focus on legal aid, research and advocacy (including public interest litigation).	Rangamati Rajshahi	Awareness Legal advice Office based mediation Litigation Case referral
BNWLA	Legal NGO. Focus on advocacy, right-based prevention and supporting female lawyers and clients.	Mymensingh Satkhira	Awareness Legal advice Office based mediation Litigation Case referral Shelter and rehabilitation
Green Hill	Development NGO. Focus on livelihoods, empowerment.	Rangamati	Legal awareness Legal advice Indigenous dispute resolution Case referral
Lighthouse	Development NGO. Focus on disaster relief, minorities, empowerment.	Rajshahi	Legal awareness Legal advice Community mediation Litigation Case referral
SUS	Development NGO. Focus on livelihood, agriculture, minorities.	Mymensingh	Legal awareness Legal advice Community mediation Litigation Case referral
Uttaran	Development NGO. Focus on landless rights, governance.	Satkhira	Legal awareness Legal advice Case referral

Community Legal Services (CLS) Programme Coverage Bangladesh



CLS provided us a map, which we edited for the purposes of this paper.

2. The political economy of justice in Bangladesh

Two main political parties dominate Bangladeshi politics and governance: the Awami League (AL) led by Sheikh Hasina, and the Bangladesh Nationalist Party (BNP) led by Khaleda Zia (Gerlach, 2013; Mohiuddin, 2008). Political parties tend to be vertically networked so as to have a strong influence at the local level, using their supporters to organise patronage networks, instigate protests and enforced stoppages (*hartals*) and sometimes violence (Khan, 2010; Sobhan, 2010). A series of neutral ‘caretaker’ governments have overseen elections, although a breakdown of this process in 2007 led to an 18-month period of a military-backed caretaker government. Since the BNP’s boycott of the general election in 2014, the ruling AL that was re-elected unopposed has continued to strengthen its hold on power. This has broken the pattern of alternating governments between AL and BNP that had persisted since 1991.

The legal system in Bangladesh comprises of a formal court system, which includes village courts at the lowest level, with district-level courts and a Supreme Court above them. The literature highlights that judicial independence in Bangladesh is waning, with higher courts unable or unwilling to challenge the ruling party on key issues (Hassan, 2013). However, there appear to be some recent cause for optimism, with the current Chief Justice emerging as a strong defender of the separation of judiciary from the executive. There is pervasive corruption and interference in the lower courts, and village courts rarely function in the absence of donor support (O’Neil et al., 2015). Party politics matters throughout the formal and informal justice system in Bangladesh, through local party members playing a role as justice providers but also having the power to influence cases involving those close to them (Lewis and Hossain, 2008; Hassan, 2012; Valters and Jahan, 2016).

Moreover, Bangladesh being a predominantly Muslim country, Islam-based socio-cultural norms and beliefs as well as local religious leaders play important roles in shaping the justice processes and outcomes. Provision of religion-based personal laws reinforces and deepens the deference to religion-based social and economic practices

(Ahmed, 2012; Hashmi, 2000). For those organisations seeking to change how community justice operates, these are major issues to consider, alongside the broader social and economic barriers to justice provision.

Poor and vulnerable people are legally disempowered in numerous ways in Bangladesh. The state’s legal enforcement (such as the police and courts) are beset by nepotism, corruption and predation. Women, in particular, face unequal treatment through marriage, household and kinship systems. Communities are typically dominated by local political elites, on which people rely for patronage. Market systems are fragile, with most workers lacking formal legal protection of their rights (Khair, 2008).

2.1. Disputes, crimes and where people go for help

People may have a wide range of disputes and crimes in their communities. Typical disputes often include family matters such as dowry⁴ and child marriage, sexual and gender-based violence, land-related conflicts, assault, and much more. Bangladesh is culturally, religiously and ethnically heterogeneous. The extent and nature of these disputes depends upon who you are and where you are in the country. It may also involve the army or other illegal armed groups. For example, a land dispute within Chittagong Hill Tracts may relate back to longstanding grievances with Bengali takeovers of land previously occupied by non-Bengali indigenous minority communities. In Satkhira, land disputes may occur over the areas used for shrimp cultivation, a business that can be profitable for elites and businessmen. Women’s situations differ across the country depending on a region’s history and culture, but also women’s individual capabilities. As Valters and Jahan (2016) note, women may become ‘leaders’ where they have a strong mix of family support, political connections, economic independence, education and NGO networks.

Research in Bangladesh has frequently reiterated that the majority of rural people’s preference is to avoid

4. It is important to understand the two distinct concepts: dower and dowry. Dower is the mandatory payment of an agreed sum to a wife by her husband at marriage as mandated in Islam. Many women orally ‘forgive’ the debt of dower once the marriage takes place. Dowry is the practice of payment to a groom’s family by the bride’s family on marriage. Once limited to upper-caste Hindus, the relatively new practice among Muslims in Bangladesh is legally prohibited but fairly common. During a divorce, a woman should get back her dower money (if it has not been paid during the wedding), dowry money and maintenance.

making intra-family issues public, or to deal with them through informal or community-led forums, often the *shalish* (Justice Audit, 2015; Valters and Jahan, 2016). Many Bangladeshi scholars have outlined how the all-male *shalish* is an ‘oppressive force’ for women (Ahmed, 2013: 159; Alam, 1998; Hashmi, 2000). The *shalish* and *fatwas* declared as part of judgements sometimes promote an Islamist interpretation of behaviour, as a way of disempowering women and NGOs (Riaz, 2005). However, Ahmed (2013: 160) has cautioned against the ‘binaries of Islam versus women’s empowerment, which are popular in gender and development circles’. She argued that, in fact, Islam is central to the grassroots feminist struggle in Bangladesh.

The village courts are quasi-formal. They came into being on the basis of the 1976 Village Courts Ordinance and deal with civil and criminal cases, but follow informal dispute resolution procedures. By law, these village courts should operate all over the country, but the reality is that their existence and use often depends upon donor or NGO support (Das and Maru, 2011; Harrold, 2007; Lewis and Hossain, 2008; Quader, 1995). There are also Arbitration Councils, which operate under the Muslim Family Law Ordinance of 1961 to resolve disputes such as divorce, polygamy, dower and maintenance payments. Within each of these community forums, tensions emerge between the rights of Bangladeshis guaranteed through formal law, and the longstanding (if changing) religious and cultural norms. These tensions condition the views and choices made by those interacting with the justice system.

2.2. The role of NGOs

The role of NGOs in Bangladesh has been diverse, at times contradictory, and subject to significant change. In the 1980s, NGO approaches included service delivery, ‘conscientization’⁵ and mobilisation. The role of NGOs has been consistently contested by the state since their involvement in political struggles in the 1990s (Lewis, 2017). By the 2000s, there was a service delivery monoculture, in part fuelled by the influence of donor funding (Nazneen and Sultan, 2009). The commonly made distinction between NGOs providing service delivery such as credit, education or healthcare, and the NGOs that take

a more political or rights-based empowerment approach, becomes blurred when it comes to legal services work. Service delivery organisations have sought to introduce rights-based models into their work, often focusing on women’s empowerment. Perhaps no organisation reflects this complexity as much as BRAC: one of the largest NGOs in the world involved in large-scale service delivery, inspired by Freirean roots, seeking to challenge social norms around gender and inequality.

A number of Bangladeshi NGOs focus on justice sector reform: The Asia Foundation (2007) estimated NGOs provide justice services to 30% of the country. The work of Ain o Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh National Woman Lawyers’ Association (BNWLA), Bangladesh Rural Advancement Committee (BRAC), Nagorik Uddoyog and Madaripur Legal Aid Association (MLAA) is particularly well-documented (Harrold, 2007; Hassan and Ali, 2006; Hasle, 2003; Higgitt, 2011). These interventions typically involve support for legal aid, mediation, NGO-*shalish* and various awareness raising and mobilisation activities (Harrold, 2007; Khan, 2012; Kolisetty, 2014). While there have been limitations to the extent to which development NGOs have produced sustainable political impacts (Lewis, 2017), there is evidence that efforts around legal empowerment have been more productive (Harrold, 2007; Hassan and Ali, 2006; Higgitt, 2011; Kolisetty, 2014; Valters and Jahan, 2016).

NGOs often seek to change the *shalish*, create their own, or allow disputants to move their case elsewhere, typically to the formal courts. The aim of such work is often to support or help develop a version of *shalish* that is more equitable. This may involve training community leaders, introducing new procedures and rules and/or creating demographically balanced *shalishkar* panels. The overall result is that the *shalish* now sometimes takes hybrid forms in different geographic areas, incorporating elements of party political leaders and new forms of women’s participation, and is less reliant on the power of traditional village elders as the sole source of authority. While a full mapping of the country has not been conducted, our assumption is that there remains a high prevalence of all-male *shalish* across the country.

5. This draws on the work of Paolo Freire (1972), particularly his book *The Pedagogy of the Oppressed*.

3. The role of the CLS project

3.1. History of CLS

The CLS project is part of a broader Safety and Justice Programme for DFID, which also includes the Justice Sector Facility (JSF) and Police Reform Project (PRP). The overall programme aims to spend £33.63 million over nine years (January 2008 – September 2017). The JSF aims to deliver ‘strengthened sector-wide dialogue, planning and coordination’ among key justice institutions, while the PRP aims to deliver ‘a more accountable and strengthened police service that contributes in delivering improved safety, security and rule of law for vulnerable groups – particularly women and girls’ (DFID, 2016: 4).

The CLS project emerged from a drawn-out procurement process, which started in 2009, with the project finally launching in 2012. The overall design of the project was set out in the original DFID programme document case, for which Maxwell Stamp (lead implementer), British Council and Centre for Effective Dispute Resolution (CEDR) offered a successful bid. The project was to cost £17 million. The mandate of the winning bid was to ‘support NGOs to deliver more and better services to the poor, marginalised and women in a way that complements and stimulates government provision, will be sustainable and supports wider justice sector reforms’ (DFID, 2017).⁶

DFID’s own interests and demands on the project have changed over time, which is evident through the shifting indicators used for project assessment (DFID, 2011; DFID, 2016). However, there has been a clear focus throughout on increasing the geographic areas covered by community legal services; on issues experienced by women and girls; the possible financial benefits of these services; and the number of legal, institutional reform and public interest litigation (PIL) decisions considered, passed or implemented.

The project goals were revised during the inception phase as the project team and DFID wanted to try something more experimental. Alongside support for

typical legal organisations, they were to fund a number of ‘development’ NGOs, with limited or no experience offering legal services. The aim was to mainstream legal services and find a way to expand their reach. Typically, legal service organisations have limited community presence compared to development NGOs.

The project has faced challenges. For example, many of the team members changed about halfway through the five years. Only the Capacity Building Component Lead for the British Council has been in post since the inception phase. Many grantee organisations initially struggled to get their approvals from the NGO Affairs Bureau. There was also political unrest in the lead up to the January 2014 election, which sparked off again around January 2015. This led to *hartals*, which restricted the ability of staff to travel.

3.2. Activities and modalities

CLS has a range of modalities and activities that differ depending on the partners and their location. These include:

- **Legal information and advice:** Including providing information on how to file cases, the jurisdictions of justice institutions, case procedures, information on entitlements and duties under the law, and what institutions may be able to help. Grantees may also collect legal information for different institutions where required. Providing legal advice includes information related to litigation, mediation and or any other legal course of action. Legal awareness sessions (‘yard meetings’) tend to use flipcharts to discuss women’s repression, dowry, child marriage, and even rape.
- **Mediation:** A method of dispute resolution and involves the intervention of neutral third parties to assist disputants in voluntarily reaching a mutually acceptable settlement. Parties must be willing to accept the assistance of the mediator. The CLS project supports

6. The DFID contract for CLS states: ‘Results will be measured by enhanced delivery by NGOs to deliver improved quality and coverage of CLS, improved targeting of the poor, women and minorities, as well as greater results monitoring, attention to sustainability of interventions, better local level collaboration with government authorities and greater policy dialogue with government at the national level. Impact on prevalent and persistent issues such as violence against women, dowry and land disputes will be included’ (DFID, 2017).

three main activities in this area: reforming traditional *shalish* and NGO-*shalish*, alternative dispute resolution, and mediation offered directly by an NGO staff/lawyer.

- **Litigation and referrals:** Some grantees have trained lawyers who can undertake cases, such as BLAST, BNWLA, Mohila Parishad and ASK. Other organisations will refer such cases to them where appropriate. Other options for referral includes to village courts, arbitration councils, District Legal Aid Committees (DLAC), shelters and crisis centres.

The CLS project focused on **capacity building** of grantee organisations through training, workshops, exchange visits, Quality Standards⁷ guides, monitoring and evaluation (M&E) support and more (see Section 4.4). The CLS project also supported **research** and **advocacy**, which are not addressed in depth through our research.

3.3. Theory of change

The CLS team prepared an explicit rationale for the project’s approach expressed through a diagram theory of change, which also had accompanying narrative statements (see Annex 3). There are often both explicit and implicit theories of change for a project. An explicit part of the programme’s theory of change was that service uptake would increase as an outcome. At the impact level, the CLS team hypothesised broader benefits, such as the strengthening of local institutions and gender empowerment. We established what the implicit theories of change were through multiple discussions with the CLS team in Dhaka. Also drawing on our own knowledge, we established outcome areas, hypotheses for how they might be achieved, and what indicators of success would look like. These shaped our field research inquiries and Section 4 of this paper.

Table 2: Outcomes, hypotheses, and indicators

Outcome dimensions	Indicators
1. Awareness	
Targeted NGO activities increase knowledge and awareness of legal information and possible dispute resolution options	<ul style="list-style-type: none"> • Demonstrable community knowledge after awareness raising • Willingness to access services after NGO activities • Local level issues used to inform national advocacy where appropriate and feasible
2. Access to justice	
Targeted NGO activities contribute to making justice more accessible, including for marginalised groups	<ul style="list-style-type: none"> • Services are financially, geographically and socially accessible to more people
CLS grantees provide effective coordination or referral	<ul style="list-style-type: none"> • Availability and use of relevant services
3. Quality of justice	
NGO activities contribute to improving the processes of dispute resolution or legal redress	<ul style="list-style-type: none"> • Perceptions of fairness and equity by disputants and legal stakeholders • Perceptions of fairness and equity by other NGOs and legal stakeholders • Demonstrable attempt to redress power imbalances • Effective forum shopping by marginalised groups
NGO activities contribute to improving the outcomes of dispute resolution or legal redress	<ul style="list-style-type: none"> • Perceptions of fairness and equity by disputants and legal stakeholders • Long-term compliance with decisions • Demonstrably fairer outcomes for marginalised groups
4. Capacity of NGOs	
CLS activities improve the knowledge and skills of grantees to support/deliver legal services	<ul style="list-style-type: none"> • Perceptions of grantees • Demonstration of learning through practice • Monitoring, feedback and research are used to inform adjustments to NGO implementation
CLS grantees share knowledge and skills within and across their organisations	<ul style="list-style-type: none"> • Demonstrable knowledge and skill sharing within and between legal and non-legal NGOs • Clear strategies for knowledge and skill sharing • Demonstrable improved management capacity
5. Sustainability	
Project outcomes persists after CLS funding stops	<ul style="list-style-type: none"> • Various project modalities chance of sustaining • Organisational practices plausibly continue • Community knowledge and action plausibly continues

7. These are a set of principles aiming to promote the concept of quality service provision and set a benchmark for all grantees in ensuring responsiveness to clients’ needs. We discuss these throughout Section 4, particularly Section 4.4.

Hypotheses and outcome narratives

1. Awareness

We understand awareness to comprise **legal knowledge** and **legal action**. Legal knowledge means increased familiarity with dispute resolution mechanisms, how one might access them, and what one's formal constitutional and legal rights are. Legal action refers to an individual's or community's willingness to use their legal knowledge to access a legal service, to contest a dispute, or to organise collectively around different issues. One key hypothesis is that increased knowledge and awareness improves access to legal services, including for marginalised groups, through NGO community mobilisations and training sessions. It is well acknowledged in the literature and by project staff that awareness in itself is not enough to improve access. Better access also requires challenging social norms around accessing legal services, particularly for poorer women and marginalised groups. Plus, such access also requires effective services being in place from the outset. Knowledge of a bad service will discourage users from taking their disputes there (see 'Quality of justice' below).

2. Access to justice

The project design explicitly sought to target:

- districts where more than 48% of the population lives below the poverty line;
- indigenous people and ethnic and linguistic minorities;
- hard-to-reach, disaster prone and uncharted areas;
- districts which reflect low utilisation of government legal aid funds;
- women; and
- areas where community services could be scaled up.

Through targeting of this kind, the project hypothesises that it will reduce the financial and geographic restrictions on people accessing legal services. Such services will need to be socially acceptable in the community to truly provide access. The wider literature suggests that this depends on interventions working with, rather than against, existing forms of dispute resolution and legal services. However, we should not assume access to service is by default a good thing; users may suffer discrimination that reinforces their social exclusion, rather than challenge it.

Effective provision of legal services in the context of legal pluralism also requires strong referral mechanisms. This can take place through a paralegal, but also through service providers knowing when and how to refer disputes elsewhere. A key hypothesis of this project is that CLS grantees administer such referrals in a timely and efficient manner.

3. Quality of justice

Project documents make clear that grantees are aiming to improve the quality of legal services. In terms of process, this can mean improving the fairness or equitability of the rules, procedures and actual treatment of disputants in legal processes. In terms of outcomes, this means ensuring fairer or more equitable outcomes for weaker disputants, in line with their perceptions and documented legal rights. In the global mediation literature, there is a well-acknowledged relationship between process and outcome (Moore, 2014). For example, in interest-based mediation, one expects that a resolution will be longer lasting if disputants are not coerced into accepting an outcome. In addition, to improve the quality of justice, both parties to the mediation or alternative dispute resolution (ADR) must comply, long-term, with the decision. This requires CLS grantees to actively track such compliance.

4. Capacity of NGOs

CLS HQ activities aim to improve the knowledge and skills of their grantees. The CLS capacity-building strategy outlines that the project will avoid a 'training input' approach, and instead will ensure not only that organisations learn, but that they have opportunities to share that learning across the project. Partners need to be willing and able to learn what is being offered; they will have to engage in their own internal processes of learning (not driven by the funder), and need to be willing to share their own learning with others. It also means that the activities suggested by the CLS team are adequately prioritised and resourced.

The wider literature suggests that capacity building must take into account the organisational, social and political realities of putting learning into practice. Capacity-builders must have the right expertise, professional skills and language, and should work from what exists rather than unrealistically aiming for best practice. Finally, a flexible, long-term approach is required to ensure the effort of funders matches the need of grantees (Denney and Valters, 2015).

5. Sustainability

Sustainability can be understood in many different ways. One way is whether the project modalities are sustainable in the absence of CLS grantee staff. This often requires that knowledge is somehow embedded in typical community processes, such as traditional justice forums. Another is that organisations continue working on legal services in some way, either through new funding or institutionalised knowledge. Finally, there may be lasting impact in the community in terms of accumulative social norm change.

4. Assessing strategies to improve community legal services

In this section, we ask two questions:

1. *What are the most effective strategies for improving awareness, access and quality of justice?*
2. *To what extent have improvements been supported by capacity building? Where strategies have been effective, and why?*

Drawing on the ‘justice chain’ outlined in Section 1, we look at how claims are formed, to people’s experience of the justice process, to implementation, to the wider impact of NGO engagement. We do so through the categories of: awareness, access, quality, capacity building and sustainability. At each step, we seek to understand the broader socio-political and legal environment that influences these justice processes.

4.1. Awareness

- **Key finding 1:** Awareness raising activities have had a significant reach, including to those who had not engaged with such activities before. This can be valuable for people if they want, or need, to understand their formal legal rights and options. Awareness activities resulted in increasing numbers of citizens, mostly women, coming forward to claim their formal rights and resolve disputes.
- **Key finding 2:** Some NGOs used existing community groups to influence individual disputes and raise broader legal awareness. However, the project was not designed to carry this further and build up a broader collective action approach, where these groups could tackle community problems.
- **Key finding 3:** Participatory and creative ways of engaging local people, such as through street theatre, are likely to encourage a significant degree of discussion and debate over legal issues. Yard meetings can be effective if they are used as a place to raise problems and build community responses. For some groups, the main benefit of awareness raising activities may be

the development of a relationship with an NGO they perceive as influential.

- **Key finding 4:** Awareness-raising activities need to acknowledge and subtly challenge established social norms, particularly around gender inequalities. Where it was successful with CLS, this involved trusted local organisations invoking religious or cultural justifications for reducing violence against women. More attention, however, needed to be given to men’s role in shifting social attitudes.

In this section, we look at the following areas which are particularly important when considering awareness:

- Legal information and action
- Changing social norms.

The former relates to awareness raising activities and people’s responses to them, and the latter relates to the wider impact of these activities.

Legal information and action

Despite decades of legal campaigns, a recent survey suggested that many poor Bangladeshis, particularly those from marginalised groups, still had a limited knowledge of their rights and where they could go to try and resolve a dispute (CLS, 2012). This raises a question about the effectiveness and coverage of awareness raising activities to date. The CLS project has had a considerable reach in its different awareness-raising activities, which serve different but related purposes. Activities include yard meetings, creation of community-based organisations (CBOs), organising street theatre, working with existing institutions and networks, and direct campaigning.

Yard meetings are a well-recognised way for the government and NGOs to provide information to communities. Research from over 15 years ago suggested that in Bangladesh, ‘NGO training sessions stimulate attitudinal change by helping participants think critically about the law’ (ADB, 2001: 11). During CLS yard meetings, grantees typically provide information on a

specific issue, such as dowry or domestic violence, using a flipchart designed by local partners, with content approved by the CLS team. Our research across four districts confirms that these are common issues relevant to a huge number of people, particularly women. However, yard meetings were primarily viewed as a way of disseminating information, rather than facilitating discussions around how and why these issues arise in the community. This prevents an active conversation around what they, as a group of interested citizens, might do about them.

These meetings can provide a space for people to raise both personal and community issues. For example, in Rajshahi, after holding a courtyard meeting, the Brotee field facilitator remained for half an hour to receive cases from members of the community (#13R). This was not practiced consistently by all NGOs. Moreover, it is unclear whether such meetings are necessarily a safe space for people to speak out. With a domestic violence case for example, given that there will be differences within communities around what constitutes acceptable personal treatment in a marriage, voicing such concerns is risky. This is addressed in the Quality Standards developed by CLS, which outline how ‘wherever possible, interviews or meetings with clients should be held in a private space, where the discussion cannot be overheard’. In an open community space, this will be difficult to achieve. That is not to say these sessions are, therefore, unhelpful. At the very least, such sessions create awareness that there is a local NGO working on legal issues with which they can discuss issues in private. This knowledge may be of use to participants at a later date.

If the goal is to encourage collective problem solving in communities, establishing more tightly knit **primary organisations**⁸ or participatory groups, may hold more promise. All CLS development NGOs either formed such groups or adapted pre-existing groups. These groups were trained with materials with the support of the CLS capacity-building unit. They also exercised collective leadership in different ways, including taking action to stop child marriages, pursuing reluctant disputants to attend mediation sessions, checking on the durability of mediation settlements, and accompanying claimants to various justice forums.⁹ In this way, they successfully tackled individual problems in the community. For example, Brotee organised the *gono gobeshak dal*, a youth researcher group which came to challenge cases of child marriage (see Box 1). These same groups could be used to build advocacy coalitions around specific wider issues where there is local political space or momentum (Lewis and Hossain, 2008).

Wider awareness raising through **street theatre** seems to be a strong strategy, when sufficiently nuanced with

Box 1: Activities of *gono gobeshak dal*

Ripon, a member of a youth group, told us how she came to know about a potential child marriage. First, *gono gobeshak dal* went to try and convince the father of the girl to stop the marriage. Being unsuccessful, they went to a local social worker who is a member of the group’s advisory committee. She, along with other group members, again went to the girl’s house. This time the father promised them that he would not marry his daughter off. But, after several days, the group came to know that the wedding was going to take place. The group informed the Upazila Nirbahi Officer (UNO) over the telephone and the UNO came to the wedding location with the police. The marriage was dismissed and the prepared food distributed among the community. The groom subsequently had another arranged marriage where after a few months, his wife filed a divorce on domestic violence grounds. With this knowledge, the father of the girl whose child marriage had been stopped, thanked the members of *gono gobeshak dal* for protecting his daughter.

regards to community norms. For example, Green Hill presents road-plays written in *Marma* and *Chakma* languages for the ethnic minorities in their working area. The scripts of the plays reflect the themes of legal awareness. All these plays are staged with the help of the local theatre groups and draw large crowds of 150-500 spectators. Before staging the drama, a suitable place and time is selected by having a talk with the *karbari* (ethnic minority community leader) and the local authority. The benefit of this approach is that it can be educational, entertaining and less abstract than other forms of information dissemination.

CLS grantees also tapped into **existing institutions and networks**. In Rajshahi, the NGO Lighthouse complemented the typical yard meetings with gatherings of local school managing committees, organising school debates, meeting with community police committees and more (#17R). These interactions take on a more serious educational element that is missing from yard meetings. Similarly, in Satkhira, Uttaran has conducted a school campaign on corporal punishment and sexual harassment in 31 unions. Working in schools is an interesting approach. However, longer-term sustainability would require its inclusion in the school curriculum, which in turn requires greater commitment by the state education bodies to these issues.

Direct campaigning can also have an impact. Green Hill distributed billboards, posters, festoons and leaflets

8. The term ‘primary organisations’ has been used by some CLS grantees. They typically refer to NGO-formed groups that regularly join in with specific activities, akin to a community-based organisation.

9. Examples include Brotee’s youth forum, YPSA’s coalitions, Uttaran’s People’s Organizations (POs), SUS’ MSP groups, ASD’s Rights and Entitlements forums.



'Street Drama' for raising mass awareness on legal rights and entitlements in Shibchar Upazila, Madaripur District, 2016 © Asif Mustakim Niloy

in every union. These materials provided information on crimes, punishments, and ways to prevent various (often gender-based) issues. Importantly, they included the telephone number of NGO staff who could respond to issues as they arise. We documented one example where a boy wanted to prevent the early marriage of his sister. He could not find a way, but then came across a leaflet from Green Hill, called them, and they managed to persuade the family not to let it happen with the help of the police (#24C). Such ad hoc work has helped numerous individuals resolve their problems without the use of the formal courts or even *shalish*.

What do all these awareness raising activities add up to? Clearly, these activities have reached a huge number of people. For example, in Satkhira, Uttaran claims to have organised 600 'primary organisations'.¹⁰ These groups comprise around 30-35 people, who aim to meet once a month to receive legal information (#1S). If one looks only at this NGO partner, this adds up to 21,000 people. A comparison of the baseline and end line data provided by CLS indicates between 2013 and 2016 there were large increases in 'awareness of legal rights involving women and girls' in CLS project areas. These include

rights related to dowry (17% to 87%), divorce (15% to 89%), and maintenance payments (9% to 91%). In the same CLS areas, understanding that rape is a crime to be addressed in court that cannot be the subject of traditional or alternative dispute resolution grew (31% to 75%). Although correlation between CLS activities and increased awareness does not imply causation, if proven, this remains a remarkable shift worthy of further investigation.¹¹

Changing social norms

The legal information provided by CLS grantees largely comes from formal Bangladeshi law. These laws often clash with long-held (if changing) and socially-dominant ideas. In all research areas, CLS NGOs deliberately make an effort to reach out to poor and vulnerable groups who are perceived as lacking awareness of formal laws.¹² The challenge is that members of these communities may view attempts by the state or NGOs to engage with them on legal issues as unnecessary interference. For example, as one field facilitator of Brottee stated, 'when we conduct a legal aid clinic in a new area, we often hear that these outsiders have come to make our life a mess with legal cases!' (#13R). Such a finding is not new

10. We use tentative language here as we cannot independently verify this large a number of groups.

11. As the full end line report and associated methodology was not available to us at the time of publication, we cannot verify these findings, and as such, treat them with caution.

12. For example, in Satkhira, Uttaran works with Munda communities. In Rajshahi, Brottee deliberately reaches out to Santhal communities; Green Hill works directly with hill tribes and Bengalis. CLS supported groups who were working with indigenous groups with specific training sessions. The customisation requires sufficient time, appropriate human resources and adequate finances, which various NGOs suggested were not always present.

in Bangladesh. Ahmed (2013: 161) found that ‘NGO social-transformation activities have caused trouble in the household (*shangshare oshanti*) by encouraging wives to talk back to their husbands (*mookher upor kotha bole*)’.

This sentiment is not limited to male elites, but also shared by some women who face domestic violence. For example, in Satkhira, participants in a female-only focus group said that ‘minor’ violence by husbands such as slapping, verbal abuse and public humiliation was acceptable. They would only complain if it crossed their limit of tolerance (#19S). Therefore, we cannot view ‘awareness raising’ as pure information provision – it is also norm and power contestation (see Box 2).

When conducting awareness-raising activities around **gender equality**, the challenge for NGOs is to ensure they are perceived as legitimate and balanced while still challenging power imbalances. Finding appropriate messaging was difficult. For example, some NGOs addressed gender inequalities from an Islamic perspective, or through highlighting logical inconsistencies – as one project coordinator from Satkhira phrased it, ‘You wouldn’t let someone beat your daughter, so how can you beat your wife?’ (#6S). These attempts engaged men and local understandings of justice. Others arguably reinforced gender stereotypes through relating messaging to women’s actions, not men’s. For example, one NGO in Rajshahi offered awareness messages that said ‘do not marry off your under-aged daughters as that will be harmful for them’ but did not consider saying ‘do not marry off your sons to an under-aged girl’.

A wider problem for the CLS project is that it targeted activities primarily at women and girls, largely ignoring

the role different men play in creating and resolving legal problems. For example, most awareness sessions are held during the daytime, leaving most males and working female members out of reach. As we outline in Section 5, these problems have occurred, in part, due to a narrow focus on ‘women and girls’, which has been encouraged by DFID’s corporate global target of increasing access to justice for them.

4.2. Access

- **Key finding 1:** The CLS project has increased access to justice, by reducing social and geographic barriers. This has required NGOs to work on both the supply and demand side of disputes at the village level.
- **Key finding 2:** The vast majority of disputes, particularly those that involve violence in the family, will still not be made public. Attempts to make disputes public are fraught with personal risk, particularly for women.
- **Key finding 3:** The ability of CLS grantees’ staff to challenge social barriers to access to justice depends upon their own beliefs and ability to convince influential elites of the value of an alternative justice mechanism or outcome.
- **Key finding 4:** Current CLS modalities do offer support to women; however, given the scale of risk women face in making their disputes public, the process for supporting them is insufficient. There is a danger that women are put at further risk of violence, if there is no sustained follow up or broader social and economic support.

The CLS project explicitly seeks to expand community legal services to poorer and more socially-marginalised groups across the country. Its aim is to deliver or support access to different justice mechanisms. We look at the project’s strategies to improve access in the following areas:

- Pathways to justice
- Overcoming barriers (social, economic and geographic)
- From community to national access.

Pathways to justice

The vast majority of disputes, particularly those associated with violence in the family, will not be made public. The reasons for this are manifold and include personal preference, social constraints, or powerful groups in communities discouraging it. In particular, women fear taking their disputes into the public sphere, due to the perceived shame it will bring on them and their family. The majority of Bangladeshi women, once married, move to their husband’s village and home. Many have no independent income with data showing that only 33.5% of eligible women were in the labour force in

Box 2: NGOs and power relations in communities

Many of the groups we met had close associations with NGOs for reasons beyond accessing services. For example, in Satkhira, we spoke to a group of women of the Munda ethnic group. They settled in the area after cyclone Alia devastated the coastal region of Bangladesh in 2009. Some of the issues they learned about through a yard meeting were not relevant to them – for example, their community does not practice dowry. However, they continued to attend, in part, for strategic reasons: they hoped that if a future conflict arises between them and another community, the NGO may be able to support them. This highlights the perception of NGOs as a powerful local actor, which influences NGO’s ability to work on justice issues. Many NGOs use this perception to convince disputants to attend mediation, or to maintain an agreed resolution. Their access to resources from Dhaka-based or international organisations is key element to this. NGOs are not just influencing power relations – they are part of them.

2013, compared to more than 80% of eligible men (ILO, 2013). The 2015 ‘Violence Against Women’ survey (with 21,688 women respondents) conducted by the Bangladesh Bureau of Statistics reveals that 72.6% of married women have experienced a violent husband, and 54.7% had been subjected to violence by their husbands in the preceding 12 months. Despite this, 72.7% of those who suffered such violence had never reported the violence to others (BBS, 2016). Many women remain in abusive marriages.

A CLS client in Satkhira informed us that when she wanted to get divorce due to domestic violence inflicted by her husband and mother-in-law, community people advised her, ‘As you have a daughter, don’t leave your husband, rather, try to adjust. A Muslim woman should stay with her husband, no matter how difficult it is’ (#11S). Another client said that her parents discouraged her to sue her husband for maintenance. Her father told her, ‘It is disrespectful for a woman to go to the formal court. I will provide for you. Please don’t sue your husband and shame us’ (#12S). These particular women managed to file cases. But many more women are prohibited from making claims at all.

In our research, we mapped out the different justice institutions in each community, their links with one another, and what local people’s views were of each. This relates to the wider institutional environment that affects each part of the justice chain. What emerges is a messy picture. Legal pathways differ depending on the specific issue at hand, an individual’s capabilities, their social networks, existing (yet often changing) practices of dispute resolution, among many other issues. Once an issue is no longer personal, there are typically a discrete number of people and institutions people will go to. These frequently include senior family relatives, a UP (Union Parishad) member or the UP chair, village leaders (either traditional or religious) or, in certain limited situations, the police. Much of what we heard confirms findings from the literature outlined in Section 2. For example, there is an increasing tendency for claims to be made in political offices, such as the UP chair.

As our examples throughout this section and the next show, increased awareness of rights and information on different options to seek justice has supported a degree of ‘forum shopping’. This refers to clients placing their cases strategically in specific legal venues (Humfress, 2013). However, the more powerful parties in disputes also make strategic choices over where to deal with a dispute, and have greater resources to ensure justice is delivered in their favour. As such, poorer and more vulnerable people’s choices remain constrained.

Overcoming barriers

The CLS grantees seek to increase access to justice, either by directing disputants to specific institutions (such as the UP, DLAC or the police) or attempting to facilitate a resolution themselves (through NGO-led mediation,

legal aid and litigation). The major question is whether CLS grantees have worked to reduce some of the social, economic and geographic barriers to accessing justice, when disputants desire it.

Social barriers

Firstly, NGOs do support women to bring their cases into the public sphere, but face huge challenges. We found that many NGOs tried to help women facing violence to overcome social barriers through a direct approach, such as home visits, or encouraging them to visit a legal clinic, which could be relatively private compared to community spaces. In community mediation, where the NGO plays a significant role, women are able to come and represent themselves, and they are given time to state their case. The creation of legitimate, less discriminatory alternatives, can be a powerful tool for supporting women to access justice. Field facilitators play a valuable role in all locations: often it is only through day-to-day visits in various communities that people are aware of the different options, thus creating the opportunity to forum shop. Typically, women will know the field facilitator personally due to his/her work on previous development projects, which can help build trust.

The scale of the social challenge in this area, however, was overwhelming. We witnessed pressure from all sides – NGO staff, legal aid lawyers, police, and DLAC – to resolve the case in the family. However, in the vast majority of cases, this is pragmatic. There are simply not many options for women who bring cases into the formal court system. Even if a case is registered, the court case backlog is huge. More importantly, there are major risks to women’s long-term livelihoods if they bring a case forward, due to the potential social and economic backlash they may face from family and kin. We address this in more depth in Section 4.3 on ‘Quality’.

This is also a procedural issue. When cases are filed with an NGO, it commonly sends a notice to the disputants, setting a date for a *shalish* or appearance at NGO community mediation. While waiting for their *shalish* or mediation date, women have little choice but to return home, even in cases of domestic violence. This puts them at risk. In serious cases of violence, sometimes the NGOs refer women to government or other NGO-run shelter facilities, but this is the exception.

Secondly, there is a broader social challenge for NGOs, to be seen as trusted and legitimate local actors in the justice system. They cannot create access if their suggested pathways to justice are not viewed as legitimate. In all project locations, CLS grantees’ legitimacy was largely determined by their reputation and associated relationships with key stakeholders. Particularly in areas where there are longstanding traditions of dispute resolution, and where the state law has had less influence, attempts to provide legal services may be viewed as confrontational. Many such groups, such as indigenous peoples of the Chittagong Hill Tracts, have consistently found themselves under cultural,



'Community Legal Aid Clinic' for providing legal information and advice in Mohadevpur Upazila, Naogaon District, 2016 © Asif Mustakim Niloy

physical and economic threat. It is therefore unsurprising that outside influences are viewed with suspicion. Often it is only when it is necessary, for example when there is a dispute with a Bengali over land, that people bring their disputes to 'outsiders' such as CLS grantees.¹³

In Rangamati, the vast majority of local indigenous people seek assistance from headmen and *karbaris*. Green Hill provides training to these headmen and *karbaris*, making them aware of the country's laws and fair and lawful *shalishes*. However, many view such capacity building as an intrusion to their indigenous social and cultural system. Green Hill still managed to conduct their work in this area, but this was premised on their organisational history. Since 1994, Green Hill has been working with both indigenous and Bengali communities on a range of development programmes. They have a clear understanding of the local politics, economy, land management and other important social issues, and are well-connected with indigenous groups, armed groups and local traditional leaders.¹⁴ In other research areas, we sometimes found that NGOs were not as well integrated, which made their work harder.

There are also disputes that became too serious for CLS, given their limited power and legitimacy. For example, it is

tough for grantees to get directly involved in land disputes with armed groups involved in Chittagong Hill Tracts or shrimp cultivation disputes involving powerful business people in Satkhira. It is only right that NGOs do not try and engage in disputes if they have a limited chance of resolving them. Even when the issues are not perceived as particularly sensitive, CLS organisations can come under threat (#24C). This is not a critique of these NGOs or CLS, rather it simply illustrates the real limitations faced by organisations. Moreover, it suggests that NGOs can only work on disputes when the disputes themselves are not perceived as overly serious by local leaders.

We also found that female NGO workers faced problems when trying to support female disputants. In Rajshahi we heard how the field facilitators became victims of teasing by bystander boys when they go into communities. In some rare cases, estranged husbands even planned to retaliate against the field facilitators as these men perceived the NGO workers as a problem. It is common that some men in communities do not think that the field facilitators are working for the welfare of the community, rather they perceive them as nuisance potentially affecting their personal life (#13R).

13. We observed this in the Santhal community of Rajshahi. For personal and family related matters, the Santhal community prefers using its own traditional dispute resolution system. For land-related cases and violence against women cases involving Bengali perpetrators, the Santhals came to Brotee. But, as the Santhal people rarely possess relevant land-related legal documents, the NGO cannot help them much (#16R).

14. *Rajas* are 'kings'. There are three *Rajas* in the three Hill Districts: Chakma *Raja*, Marma *Raja* and Bom *Raja*. As per the 1900 Hill Tracts Act, these *Rajas* are Circle Chiefs. In Rangamati, Green Hill officials are the close relatives and associates of the *Raja*, which means certain problems can be resolved with his support.

Economic barriers

The CLS project reduces some of the economic entry barriers to the formal justice system, through providing:

- Free legal information
- Legal aid
- Referrals to DLAC (which is state funded)
- Small travel stipends for the first court date

Our research suggests that the CLS project has created a valuable space for people to receive legal information and aid, specifically in relation to family-related issues. In some cases, where the legal aid lawyer is supportive, it offers women a route to the formal court. Shabana's case (Box 3) demonstrates how legal services create options for people suffering. However, it also shows that such service providers themselves may reinforce discriminatory social norms (#7R).

The CLS project referrals to DLAC create options for accessing the formal justice system. Financial assistance for travel to the first court date is a good first step. For poorer or vulnerable groups, the threat of using the law can be a powerful tool in their disputes. However, this assistance is often too limited. Court cases commonly require several visits to the district court, in part due to the distances to travel required for many people in villages. This can be expensive. We also have considerable concerns about the quality of DLAC services, which we address in Section 4.3 on 'Quality'.

Geographic barriers

Expanding access assumes that currently, some people are geographically far from informal or formal justice forums. Through creating regular legal aid clinics, or having staff live in nearby areas, CLS has certainly reduced the average distance people need to travel to access a lawyer and support of an NGO.

A bigger challenge is expanding services in hard-to-reach areas. Often, remote groups have developed their own longstanding forms of dispute resolution. In that respect, they are not geographically isolated from some form of justice – rather, they are not close to the kind of justice that CLS is promoting. As previously highlighted, reaching out to such groups may be more difficult. Where there are discriminatory practices, the CLS work remains valuable. But it is crucial that there are NGOs present who are sensitive enough to local practices and understand how to work with them.

One geographic challenge for NGOs is around cross-border disputes. These are particularly common in Satkhira, where many problems are related to the movement of people across to India. For example, one

case involved a husband who had fled to India and was working there illegally. He had beaten his wife in India, and when she came home she wanted to file a case but she was unable to since the case was deemed by the courts as occurring outside of their jurisdiction (#12S).

From community to national legal services

The design of the CLS project aimed to ensure that communities also have access to organisations who can channel cases to the higher courts, for example through PIL cases. While rare, such cases could address issues that are most common or pertinent for legal challenge in the higher courts. Equally, community organisations could have been involved in the implementation of national level legal decisions. CLS made some attempts to build these relationships, with a degree of success, but there was not any systematic relationship established between development and legal organisations. We return to this in Sections 4.4 and 5.3.

Box 3: The case of Shabana

In a courtyard meeting, the participants informed the Brotee field facilitator that a woman named Shabana was in need of legal assistance. The field facilitator went to her house and heard her story. Shabana split from her first husband and eventually got divorced, taking her infant daughter with her. After four years, she remarried and another daughter was born. After several years, her second husband's first wife and children returned to their homestead. Her husband and his first wife abused Shabana and forced her to leave. She went to the female UP member for support, but this route was unsuccessful and Shabana returned to her father's house. The Brotee field facilitator advised Shabana to file two cases: one against her first husband for alimony for their daughter and another against her second husband for dower and alimony for her and her second daughter.

Both the cases are now ongoing. However, Shabana is not satisfied with how some of the lawyers dealt with her case. While one was informative, another criticised her for having two husbands. The lawyer's clerk asked her for money, but she does not have any income. Regardless, it costs 200 taka (\$2.50USD) for two persons to go to court for each hearing. Both husbands now want to settle the cases out of court, but Shabana is unwilling. She hopes for a positive court verdict and money from both husbands and to live separately with her two daughters.

4.3. Quality

- **Key finding 1:** NGOs can improve the quality of justice *processes* through providing timely, clear and respectful support to disputants. Even where the final outcome does not work out in a disputant's favour, they are likely to value this support.
- **Key finding 2:** When NGOs use the law as a threat, particularly with abusive husbands, this can be effective. However, this is a double-edged sword: threatening men with a legal procedure can also put women at risk.
- **Key finding 3:** Community mediation, designed and run by NGOs, has been shown to be an effective model of justice provision in Bangladesh. Further training and support to traditional *shalishkars* can influence the more widespread *shalish* model, although it's unclear this influence can be sustained.
- **Key finding 4:** Attempts to improve the quality of justice for people in politically-sensitive places is possible, but only through local organisations who have longstanding relationships, trust and legitimacy in the community. There are limitations to such support, as overtly political issues will not be suitable for them to resolve.

This paper does not aim to fully assess the quality of each justice mechanism in the CLS project. However, in this section we do look at issues of:

- Improving process
- Improving outcomes.

Improving process

NGOs can improve the process of justice in two main ways: i) ensuring a timely and effective process through the justice chain as a whole and ii) influencing the fairness and equitability of specific justice forums' norms and procedures. Effectiveness in the former may come down to the perceived threat of the law, and financial resources that the NGO can leverage. For the majority of disputants, access to formal legal support would be almost impossible without NGO support, or at least the support of a well-connected or rich family member. This returns us to a recurring theme of the paper: the ability of CLS grantees to improve the process and outcomes of legal services for poor and vulnerable groups depends upon their ability to navigate local political, social and legal dynamics. Even when a beneficial outcome is not achieved, our research suggests that disputants appreciate an improved process (see Box 4).

NGOs can improve their own processes through being sensitive to the needs of specific groups, giving them time to state their case, and providing options without forcing any of them, among other approaches. We saw mixed practice across our research NGOs. Green Hill, who had limited legal experience, had surprisingly strong

processes. During our research, some clients came to Green Hill's offices where field staff gave a range of options to the disputants and told them the possible benefits and downsides of each. They were careful to understand their own role in the justice chain, both by working with the formal and informal power brokers and legal authorities, but also by taking the time to work with local people and follow up cases to conclusion. During our research, we found many similar examples. Our research indicates that CLS grantees have generally managed to build up relationships with the DLAC representatives, and in some cases, with the UP members and chairman. This contributes to creating a stronger set of links between the different parts of the justice system.

One opportunity for an improved legal process is at **legal information or aid sessions**; in the latter, disputants will have access to a free lawyer. Nevertheless, we have concerns about many of the practices we either witnessed or heard about through our research. In some cases, we found that panel lawyers quickly send cases back to a *shalish* (such as in Satkhira), or try to make money from referred cases (such as in Mymensingh). People are likely to be disempowered by these approaches and then lose confidence in the justice process. There were additional challenges for women facing domestic violence. The majority of the panel lawyers are men, resulting in some

Box 4: Improving the justice process

Begum married her husband when she was 12. Her family was poor, but still paid a substantial dowry. Over time, she suffered verbal and physical abuse inflicted by her husband, who came from a richer family. She believed her husband was gambling, and an alcoholic and drug addict. She wanted a divorce, but her husband and his family refused, as they did not want to return the dowry. Begum and her family spent years in trying to negotiate this with mutually respected family members, but no progress was made. Finally, she was recommended to get in touch with a field staff member of a locally based NGO – Sabalabmy unnayan samity (SUS).

SUS recommended bringing both parties together for a *shalish*, a recommendation that was at first ignored. SUS staff then used their personal relationship with the union chairman to pressure the husband to meet. Although a resolution was reached at the *shalish*, the husband did not comply. SUS helped Begum file a case in the court, which would have been impossible for her to do on her own. While the outcome of this case is not yet known, SUS has made a first step in supporting Begum to address the abuse that she has suffered for years. The *shalish* process was also fairer than the disputant was used to, in part because she was offered options by the facilitator.

discomfort from female disputants discussing marital issues. CLS Quality Standards make clear that wherever necessary, NGOs or legal aid lawyers should seek privacy. However, in practice, they often hold legal aid clinics in a local UP office or school, where people are free to come and go – and listen in.

There is a strong preference for **community mediation** by CLS and their grantees, which seeks to draw on the accepted model of *shalish* and reform it. Seven out of 18 of the main CLS grantees practice this in some form. A relatively successful example is Madaripur Legal Aid Association (MLAA), which was started in 1978 by a group of lawyers. MLAA has a team of full-time lawyers and paralegal workers providing free legal assistance on cases of land disputes, dowry, torture, and abandoned women (CLS, 2012). Its village mediation committees are based on the *shalish*, but are altered to eliminate discriminatory practices. Nagorik Uddoyog has also attempted to co-opt traditional *shalish* and make them more equitable, particularly for women, in part by creating space for female *shalishkars* (Valters and Jahan, 2016). We did not look into these models in our research in depth, partly because they have been the subject of previous studies (Harrold, 2007; Hassan and Ali, 2006; Higgitt, 2011; Kolisetty, 2014; Valters and Jahan, 2016). However notable conclusions include taking a long-term, cautious approach that considers the need to both challenge and co-opt elites into the dispute resolution system.

In 2016, CLS introduced the possibility of **training traditional *shalishkars*** to its grantees. This was viewed as a supplement to their preferred long-term solution of an NGO community mediation model. The decision of CLS to work with traditional *shalishkars* in 2016 was, in part, because they realised that few existing *shalishkars* in practice are co-opted into NGO versions. They were therefore missing opportunities to work with large numbers of people who were involved in justice processes. In Satkhira, traditional *shalishkars* who were trained by Uttaran suggested they found what they had learned helpful, as it strengthened their position in the *shalish*. Having recourse to formal legal teachings gave them an additional tool to use in their cases. One *shalishkar* stated: ‘Without proper knowledge of the law, I cannot know when to follow the law and when not to ... Now we have some good knowledge about law, we can implement our intellect in the case’ (#7S). This could be beneficial to disputants, particularly where they make clear the illegality of domestic violence, for example.

However, these *shalishkars* also highlighted the contradictions between what they learn, the views they hold, and what they practice in traditional *shalish*. One mediator stated: ‘If we reconcile, then we can manage the thing in the community level ... If we go through the legal way, then we need to prove someone’s fault. If we do that, then it might be the chance for the wife to take advantage of the law’ (#7S). This quote refers to the restorative

nature of *shalish*, where people aim to avoid recourse to adversarial legal routes. It also highlights how many men seem to support the idea that women take advantage of the law, in part reflecting how proper use of the law can challenge male privilege. It would take a longer and more sustained engagement with such *shalishkars* to see if such ideas can be shifted. These negative views extend to perceptions of female *shalishkars*. As one male mediator in Satkhira put to us, ‘I’ve done a lot of mediation. It’s my experience that there are many people in the community who do not want a woman as a mediator’ (#7S).

Improving outcomes

To assess whether CLS had improved outcomes, the research team conducted 27 random interviews with disputants. The majority were with women who faced violence, even if the cases also involved other issues of land, finance or dowry. Reviewing these cases reveal several common themes:

1. In the majority of cases involving domestic violence, such violence had been going on for years before the women came for legal support. Often, women wanted to stay with their husbands and for the violence to stop. If that option was not possible, they wanted their dower money paid back along with maintenance.
2. Women went to different forums including UP chair, police stations, and formal courts before, and after, coming to the CLS NGO.
3. In cases where the NGOs were successful in settling a dispute, women ended up accepting a negotiated lump sum (in most cases that was equivalent to one’s dower money). They often did not receive any alimony or dowry money back.
4. In many cases, the CLS NGO could not reach a settlement through *shalish* or mediation, and the cases resolved themselves in the home. This is concerning, considering that women were going back to abusive husbands.
5. Where women were helped to go to court, many complained about cost and the unprofessional behaviour of the lawyers and court officials. While the NGOs have done their best, fixing these issues was often beyond their power.
6. In most instances where resolutions were made through NGO *shalish*, these were better than traditional *shalish* or non-resolution. However, overall, many women still did not receive equitable and fair solutions.

By making women aware of their rights, and by supporting services, CLS is encouraging women to bring their disputes into the open. Where a woman gains **the support of the NGO**, there is a reasonable chance of an improved outcome – often, in practice, this involves a promise of changed behaviour from the husband, receiving money or getting a divorce. Initial CLS end line survey



'Courtyard Meeting' for raising awareness on legal rights and entitlements in Rangunia Upazila, Chittagong District, 2016 © Asif Mustakim Niloy

comparisons indicate a shift to use of NGO legal services and a corresponding rise in disputant satisfaction rates from 2013 to 2016 for the dower, divorce and maintenance payment issues involving women and girls.¹⁵ While correlation does not equal causation, the improvements in satisfaction of people tackling such disputes in CLS project areas is a good sign.

This is complicated by the reality of gender relations across Bangladesh. For example, where women secure money as part of the outcome of a case, they often quickly lose control of it (Box 5).

Furthermore, as outlined in point four above, after a case is registered with an NGO, women often have to return home to wait for mediation. This is not always necessarily a negative outcome. For example, the threat of the law, including the social shame of this issue being made public, may encourage a husband to change his behaviour. The couple may come for mediation and may resolve the issue then and there. Or the women may have a chance to go to court and get a beneficial settlement. However, it is also plausible that if a husband is abusive, and receives a letter stating that he is due to discuss this issue, it could lead to further abuse.

Box 5: Male control over financial outcomes of the *shalish*

In one case, Lighthouse helped mediate and secured 50,000 taka (\$625USD) for a Muslim woman for her dower. In another case, they secured 170,000 taka (\$2,180USD) for a Hindu woman from her in-laws. In both instances, the women lived in their parental home, and the fathers invested the money in buying and selling of cattle (#17R). Similarly, Shakila complained to BLAST in relation to the divorce from her second marriage. At the mediation, her husband agreed to a divorce and payment of 100,000 taka (\$1,246USD) as her dower money. The mediation officer counted the money himself and gave the money to her. Shakila gave the money to her father to keep, who was with her throughout the process. After several days, Shakila came to the BLAST office and complained that her father refused to pay the money to her. This time, BLAST arranged another *shalish* with her parents. They returned 80,000 taka (\$997USD) to Shakila and promised to pay the rest later.

15. According to data provided by the CLS team, the percentage of respondents reporting either use of courts or no settlement dropped for dower (61% to 13%), divorce (60% to 37%), and maintenance payments (79% to 57%), while the proportion of those using NGO services grew from zero to 44%, 49% and 37% respectively. At the same time, those respondents that were 'very satisfied' with the service provided rose dramatically for dower (8% to 43%), divorce (6% to 49%), and maintenance payments (0% to 44%).

This is a complex challenge. It may be that after raising their concern, women themselves decide that they no longer wish to proceed, not least as there is insufficient protection being offered by NGOs and the state. Much of this is also out of the control of NGOs. But it raises the question of whether and how strategies could be developed to mitigate risks for women facing violence. CLS NGOs do conduct follow up with people who lodge cases, checking in with them three times before closing the case. Such inquiries are valuable but ultimately have limited power, since NGOs are not mandated to do thorough investigations or compel anyone to mediation. Some of the groups organised through CLS grantees did use their collective power – for example through social shaming – to ensure men attended such *shalish*. But there remained a serious risk that abuse can get worse because a woman has raised the issue in public.

Women who access the formal court system often face the biggest challenges. Where multiple *shalish* are arranged and fail, cases can go to court with the support of an NGO or legal aid lawyer. However, this often results in a prolonged and unresolved case in court (see Box 6). Though court cases may still be of value in certain instances, it does raise the question of what can be done, outside legal pathways, to support women facing violence. We return to this in Section 5.1.

We had major concerns with the quality of service available with the DLAC. From January-December 2016,

Box 6: The case of Shukhi

Shukhi got married when she was only 14 years old. Her mother paid 12,000 taka (about \$150USD) as dowry. Her in-laws then abused her and demanded an additional 50,000 taka (\$623USD) of dowry. Shukhi went back to her parent's house, and filed a case of dowry in the court. After getting court notice, her mother-in-law and husband came to her mother's home and admitted their wrongdoings. They agreed to stop, and took her back. However, her husband started beating her regularly. Shukhi again returned to her mother's home and filed a case. Police arrested the husband and locked him up for 12 days. He got out by taking bail and lived for some time with Shukhi at her mother's home. The beatings persisted. Shukhi filed an assault case against her husband with the help of BLAST. After the husband failed to come to a *shalish*, Shukhi filed a case in court with BLAST's help. The case is ongoing. Shukhi also claims the panel lawyer has asked her for money that she cannot afford to pay (#1R).

CLS grantees referred 1,744 disputes to DLAC, among which 1,363 disputes were considered for case filing. Among those cases, 416 were resolved and 964 cases are ongoing at the time of writing. DLACs are understaffed, with only around a third of Bangladesh's districts employing a full-time legal aid advisor. These are junior judges, assigned on rotation, who deal with intake and sometimes conduct mediation. The DLAC offices then hire legal aid lawyers for specific cases, with the option of requesting extra financing from the National Legal Aid Services Organization. CLS grantees are increasingly following up on these cases each quarter.¹⁶ They are also documenting the challenges faced, in one instance challenging and changing the practice of legal aid lawyers taking fees. The proactive approach of CLS grantees is to be commended. However, we often heard of lawyers recommending that women with violent disputes reconcile their cases. Often, by the time women with these cases come to DLAC, they have had multiple instances of *shalish*. While entering the formal court does not necessarily lead to the best outcomes, it is likely their wish to proceed at that point. Their wishes should be respected.

4.4. Capacity

- **Key finding 1:** The CLS project had a thorough and flexible approach to capacity building. Importantly, training was viewed as only one means by which overall organisational development would take place.
- **Key finding 2:** Developing clear Quality Standards has been beneficial to CLS grantees. Some of the grantees have used these to develop better practices across their organisations, while for others there is a long way to go to embed them in their day-to-day work.
- **Key finding 3:** There was not as significant a degree of learning within and across the different grantees as CLS had hoped for in their initial strategy. There were challenges the team faced in terms of resources available, full project staff commitment; and willingness of the various grantees to dedicate sufficient time to capacity building.
- **Key finding 4:** Towards the end of project cycle, CLS introduced a Learning and Knowledge Management (LKM) process and produced briefs summarising conclusions that could inform future practice. However, they missed opportunities for ongoing evaluation and more depth in learning about the different approaches, modalities and activities CLS was funding.

We primarily understand capacity in terms of learning and adaptation: did CLS grantees and the project as a whole take on new information and use it successfully? If

16. This is not the case for all organisations. For example, CLS informed us that BLAST do not have a mechanism for checking on cases they've referred, despite CLS requests.

so, what were the conditions that supported them to do so? We explore these questions in the following areas:

- Existing knowledge and practice
- Capacity-building approach
- Learning within organisations
- Learning across organisations
- Learning and adaptation of grantees
- Learning, evaluation and research of the CLS project

Existing knowledge and practice

CLS were working with diverse organisations in terms of size, capacity, skills and approach. For example, one grantee was BLAST, an organisation led by expert lawyers. They provide support at a range of levels, from district legal aid offices to public interest litigation, but tend to approach issues with a preference for formal legal judgements. Another grantee was MLAA, an organisation that has been working on ADR in Madaripur for more than 30 years, focusing predominantly on reforming the traditional *shalish*. One grantee with whom we conducted research was Uttaran, an organisation with roots in supporting the struggles of landless groups across Bangladesh and with only limited recent experience of working on legal services issues. Such organisations bring different attributes to the table, but also have different deficits in their ability to deal with legal problems at the community level.

A capacity needs assessment was designed by the CLS capacity-building team as part of the grants process. This assessment outlined some key challenges where capacity building might help:

- Most NGOs are project focused, concerned with implementing projects according to donor requirements. Organisational development suffers unless projects allocate budget for it. Senior staff members tend to be those who participate in trainings. These problems are more acute in smaller organisations.
- Accountability for most NGOs means completing donor templates. While many NGOs work with communities through their local meetings and networks, there is often no formal accountability to them.
- Most NGOs do not have a sustainable business plan, relying heavily on donor funding. Those who also work as microcredit organisations have greater opportunities for sustainability.
- Some NGOs work with each other on advocacy issues, participating in networks or conferences. However, there is no clear link between organisations in terms of learning from the delivery of projects.

In recent years, Bangladeshi NGOs have suffered a funding crisis. Donors have increasingly become less engaged, and the state has cracked down on those who appear to support dissent. This has meant it has been difficult to keep staff on salary for sustained periods of time; instead, they are often hired on a project basis. The staff hired for CLS by the NGOs do not necessarily share the institutional history of the NGO, or have specific skills in legal or development work, although many NGOs did seek to find staff with such skills.

Capacity-building approach

Alongside a focus on legal skills, the needs assessment identified six broad areas for support:

1. Monitoring and evaluation;
2. Governance;
3. Accountability to communities;
4. Organisational management and good practice;
5. Skills in advocacy and research;
6. Case record keeping and case management.

The CLS team worked with grantees to develop action plans, so support could be tailored to needs. There was no assumption that training would fill capacity gaps; rather, a wider organisational development approach was required of which training could be one component. There was a recognition that partners learn at different speeds and that capacity building needs to be iterative. CLS were also concerned about the development of mid- to low-level staff.

CLS maintained a flexible approach to capacity building, which became important through the life of the project. There were internal and external challenges. There was some resistance to the overall strategy of capacity building among a key member of the core CLS team, a string of *hartals* and political unrest, and difficulties securing the required resources from the CLS core budget. The team only became fully staffed in late 2015. In early 2012 and 2013, there were limited core funds available for venues, materials and travel costs. Therefore, it was not until the latter half of the project that many partners felt the capacity building approach had the necessary depth.

Flexibility also allowed CLS to adapt to the different pace of change in organisations. For example, one might think that partners funded in round one (since 2013) would have built the necessary skills and knowledge to deliver effective services, and that their support should end, and be given to round two grantees (since 2014). However, this was not the case. Different gaps emerged over time, and some round two grantees needed less support than some in round one. Offering a wide range of support was

equally important, which became possible once the team was expanded in 2015.¹⁷

The development of **Quality Standards** was a key part of CLS capacity building. In describing her approach to the standards, the Capacity Building Component Lead for the British Council stated ‘What you don’t want to do is to impose an orthodoxy on them. They need some general principles which they can use and interpret appropriately on their own’ (#12D). As such, the Quality Standards were originally intended to be developed as part of a bottom-up process, in which various organisations drew on their expertise to generate shared principles. However due to political unrest, which prevented staff travelling, it was entirely designed by the Capacity Building Component Lead. Guidance notes have been developed on 11 key topics.¹⁸

Learning within organisations

To what extent did this capacity building approach achieve its goals? There was some success in **teaching legal skills**. The CLS grantees we interviewed had several employees with legal backgrounds, hired specifically for the project. These employees were assigned the responsibility to set up the project and train field level staff members. For example, with CLS project support, WAVE Foundation translated two CLS guidance notes into Bangla and shared these with frontline project staff. While another NGO, SUS organised a five-day training for its staff on the basis of the Quality Standards.

The **Quality Standards** themselves aimed to promote the concept of quality service provision and set a benchmark for all grantees in ensuring responsiveness to client’s needs. The full degree of uptake was largely set by the existing culture of learning within the organisation, although in some cases the CLS support appears to have moved them forward. The standards have been useful in challenging poor service delivery practice.¹⁹ For example, one grantee of CLS, Nagorik Uddyog, actively used the standards to guide both their CLS projects and to catalyse wider organisational improvement. It developed a referral policy and guidelines on how staff should treat CLS clients.

The CLS focus on **organisational management and good practice** was essential. The NGO decision-making

and upper level employees had to write the grant proposal and subsequent progress and monitoring and evaluation reports. CLS staff were supportive of these NGOs and did not preoccupy them with upwards accountability. One organisation flagged that they valued the extensive capacity assessment that went on at the start of the project since it allowed them to make broader organisational changes unrelated to the project. This is important as NGOs seek over the longer term to deal with the funding crisis they face and to establish more effective management models.

However, **the project also faced challenges**. Given our findings in Section 4, it is clear that often the Quality Standards did not filter down to the day-to-day practices of organisations. Many local staff did not receive adequate training. There was often a lack of willingness from NGOs to send local field staff for training, both due to entrenched hierarchies in organisations, and also the fact that many mid- to low-level staff are only hired on a project-by-project basis. It is likely these are challenges beyond what a project can tackle, unless it offers longer term core funding.

Learning across organisations

One of the biggest opportunities for the CLS project as a whole was to promote learning between the diverse grantees. While the original strategy includes this, evidence on whether learning happened across organisations is mixed. Based on our interviews with grantees, learning appears to have progressed much more since a full-fledged capacity building team and set of activities was in place from late 2015.

CLS have highlighted to us how there was always a slot in training events and partner coordination meetings for experience sharing. There have been increasing numbers of grantee learning visits and exchanges, made possible in part by the easing up of *hartals*. Cross-partner learning was encouraged by a series of coordination meetings conducted by the field monitoring unit of CLS, three of which took place in 2016.²⁰ The majority of grantees suggested that learning from other organisations is something they would like to do a lot more of, and spoke well of their experiences to date. For example, Uttaran said that after their exchange visit with MLAA, they changed the seating arrangements of their own *shalish* from a formal set-up of mediators at a

17. Since then, the team has undertaken a range of activities: training on diverse issues (from organisational management to specific technical skills); workshops and conferences; exchange visits with other NGOs; and support from the CLS team on M&E and implementation dilemmas.

18. These are activating and working with VC, ADR, mediation, case record management, community facilitators and paralegals’, ensuring effective referrals, quality human resources, setting up legal clinics and centres, working effectively with clients, dos and don’ts for frontline staff, guidance on training development, and guidance on undertaking community needs assessment.

19. According to CLS internal reporting, the following are the percentages of partners demonstrating either satisfactory or highly satisfactory progress towards meeting compliance with the standards: principle 1: 88.9%; principle 2: 100%; principle 3: 94.4%; principle 4: 100%; principle 5: 88.9%; principle 6: 100%; principle 7: 88.9%.

20. CLS organised a Data Quality Workshop in 2014 where grantees shared their flipcharts and documentation formats. In 2015, six grantees conducted learning visits. COAST and Wave Foundation met to understand the objectives, activation of VC and the documentation process; while ASD and MLAA met to gather experience on the case referral system and documentation; and Brotee and NU met to understand the community mobilisation approach and working with panel lawyers. In December 2015, a two-day partners’ coordination meeting brought together 51 participants from the lead partners’ organisations and their partners. This was focused on technical experience sharing, around legal knowledge, mediation techniques, gender among others.



head table to a circle arrangement. This subtle change can help influence the power dynamics in the process of *shalish* sessions.

Yet, interestingly, partners appeared to prefer the use of external ‘trainers’, including internationals, rather than learning from other NGOs. In January 2016, an online survey was conducted on the usefulness and effectiveness of existing processes for learning and knowledge management.²¹ Partners viewed training and workshops as the best way to learn and disseminate learning to frontline staff and communities. Exchange visits were viewed as one of the least helpful processes. This requires some interpretation. First, the exchange visits themselves have been one-off events to date, whereas a longer-term relationship-building approach between organisations may have been more fruitful. Secondly, it may well be the case that some NGOs do not feel that they can learn from other Bangladeshi organisations, as they have their own particular knowledge, skills and capacity. There is a degree of competition among NGOs in Bangladesh that may feed into this mind-set. Thirdly, there may be a deference to international experience.

Learning and adaptation of CLS grantees

In 2016, an online survey found that partners did not feel they learned directly from their activities. Instead, they appeared to rely on collecting specific case studies or beneficiary feedback. None of the respondents indicated any rigorous review and reflection processes with communities and other stakeholders, and they rarely documented best practices. The survey was done, in part, to highlight and address these exact problems.

The legal organisations had confidence in their legal expertise so the CLS team has had to strike a balance between respecting what organisations already know, while being willing to challenge them – when they have become too entrenched in their approach when those approaches were contributing to poor quality service delivery.

For those who had not worked on community legal services before, the learning curve has been steep, but some have demonstrated a strong capacity to learn.²² Legal organisations have also learned from development ones. The Honorary Executive Director of BLAST suggested that in one area, working with another CLS partner with presence in the community helped BLAST staff understand and improve their response to ‘indigenous peoples’.

21. *Online survey report* by Abu Said Md. Juel Miah, CLS Learning and Knowledge Management Coordinator.

22. This may have been a difficult process but one that has allowed for some innovation. For example, the rapid appraisal conducted prior to this research flagged that ‘For many of the CLS partner NGOs, developing partnership working with local legal institutions enabled them to understand the effectiveness of these institutions. In some cases, this has led to initiatives to build increased capacity within them’ (Jahan et al., 2016: 19).

Learning, evaluation and research in the CLS project

What was the capacity of the CLS project as a whole to learn and adapt? The project has had to deal with difficult contextual factors, such as a series of *hartals* preventing the movement of project staff and requiring a shift in activities. There were also staffing changes during the project, which inhibited taking a consistent approach towards grantees over time. The project also struggled to find appropriately-qualified staff to work on capacity building, monitoring, evaluation and learning. In the early stages, there were some difficulties too in the relationships between grantees and CLS, which were largely resolved at the time of research.

CLS have taken a **flexible approach**. They worked to make their processes and systems more appropriate for grantees. For example, they deemed the round one funding process as unhelpful for prospective grantees, and made it simpler for round two. They also established separate, proactive grant funding in November 2015, with nine CLS partners receiving funds. This allowed organisations to build on existing work or expand into new areas as they deemed appropriate, and included a focus on indigenous people's legal services, supporting law clinics and internships, and building a database of PIL cases.

The recent focus on adaptive programming in policy literature suggests it requires an active learning approach, one that allows for testing of parallel activities and implementation strategies (Valters et al., 2016). This can be undertaken as part of an **ongoing evaluation and learning**. Through their field visits and annual reviews, CLS came to make some useful judgements on what was most appropriate and sustainable, favouring community mediation and legal aid. The project has contributed some useful findings to inform future practice, such as the Quality Standards and some learning briefs. Towards the end of project cycle, CLS introduced a LKM process, which led to documentation of a range of what CLS and grantees saw as best practice.

However, in CLS, the broader evaluative approach was at first ad hoc, and only later systematic.²³ For deeper learning, an ongoing evaluative question could have been: What are the justice needs of poor and marginalised disputants and how can CLS interventions respond to them? To our knowledge there has never been a justice project in Bangladesh of this scale, in terms of the number of organisations supported and diverse activities undertaken. It is therefore a shame that deeper, ongoing evaluation was not undertaken.

The **monitoring** for the project predominantly focused on DFID's key indicators, as well as some basic information for case tracking. There was a baseline and end line survey conducted, and the former informed

the project location choices. The latter was still being completed at the time of writing of this report, although some initial findings were available. The **research** for CLS was ad hoc, and was not timed with key programme decision-making moments, limiting its influence on practice. For example, there was a value for money assessment conducted at DFID's request. However, we feel this was a misleading emphasis to put on a project that at its core, was seeking to improve access to justice for women and girls (see also Section 5.5). Along with a rapid appraisal (Jahan et al., 2016), we hope this research contributes to the wider evidence base for future programming in this area. We make recommendations to that effect in Sections 5 and 6.

4.5. Sustainability

- **Key finding 1:** Building on long-term models of community mediation appears to be the most sustainable approach. Working directly with traditional *shalishkars* is also promising. The development NGOs may be able to continue limited, often ad hoc services, by cross-subsidising through their other programmes.
- **Key finding 2:** When the project ends, most project staff in development organisations will move into other roles, often with different organisations. Yet a cadre of professional staff with CLS capacity will remain in the development sector and this provides the option of somewhat mainstreaming legal services in other areas.
- **Key finding 3:** The CLS project, like the majority of projects in from donors, did not have a sufficient timeframe to effect long-term sustainable change. It remains plausible that CLS has contributed to some attitudinal change around access to justice, however, it is unclear whether many of the community groups convened to spread such messages will continue to do so.

The CLS project and its grantees all agreed: five years is not long enough to bring about sustainable changes in the area of legal services and empowerment. Building awareness, increasing access and improving quality of Bangladesh's community justice systems is not a job that can be done over the lifetime of a short project. So what will remain once CLS ends?

We discuss sustainability under the following headings:

- Modalities
- Organisational practices
- Community knowledge and action.

23. This was not in the initial DFID design and subsequently not considered by the CLS project team as a viable option.



'Village Court Session' going on for settling certain disputes in Baghia Post Office in Shibchar Upazila, Madaripur District, 2016 © Asif Mustakim Niloy

Modalities

CLS have provided their own assessment of the most sustainable modalities. They saw **community mediation** 'as the most sustainable dispute resolution modality due to its positive reputation, close proximity, limited cost, contribution to community harmony, and creation of volunteer mediation groups accountable to communities' (CLS, 2016: 12). CLS also argued that **referral services** were sustainable, since NGO staff now know a wide range of services, and presumably will maintain such knowledge. **Legal advice and litigation modalities** were considered unsustainable, as they require on-going payment of lawyer's fees by development NGOs. CLS's recent work with traditional *shalishkars* was also deemed sustainable since it resides with community volunteers, rather than NGO staff who need to be paid.

Our research and the wider literature suggest this is, largely, a fitting analysis. The community mediation models of organisations such as MLAA and Nagorik Uddoyog are well developed, having been practiced by the organisations for many years. This means that quality standards are relatively high before projects start. They do, however, face the same funding problems as many other organisations. Their incomes are largely projectised, meaning that generally staff need to be hired and trained for new projects.

Legal advice and litigation by trained lawyers is often expensive. For decades, proponents of the legal empowerment approach have promoted 'paralegals' or

'barefoot lawyers' as a way of embedding knowledge at the local level in a cheaper and more localised way (Goodwin and Maru, 2014). Future projects in this area would benefit from training field facilitators as paralegals, with the explicit intention of continuing some of their practices once funding ends. The work of organisations such as BLAST will continue to have value, not least as they provide the opportunity of linking up community activists with legal specialists who can influence the higher courts. Finally, our sense is that traditional *shalishkars* will continue to use their legal knowledge to a degree, if only to reinforce their own community authority. Whether *shalish* processes and outcomes will be fairer over the long term is difficult to say.

Organisational practices

It is possible for non-legal organisations to integrate legal services into their day-to-day work, but only in a limited way. Service-providing NGOs, who have large numbers of frontline staff, are likely to do better in this area. Many of these organisations may apply elsewhere for donor funding in the future. At the very least, the pool of organisations who can support justice projects in Bangladesh has been broadened through CLS. Legal organisations tend to have a steadier source of support for such projects. For example, BLAST has been working in Rajshahi and Rangamati for the past 20 years. The district level staff members believe that BLAST will continue to receive funds from one source

or another, given the overall profile of the organisation. However, their Honorary Executive Director suggested that for truly sustainable funding, there needed to be an honest conversation about core and project costs. She stated, ‘no one is asking for 100 years funding. But if you want to see change for 20 years, do something for the core. If you do it in pure project mode, it wraps up and then everyone clears off. You have to enable a presence’ (#9D).

The majority of CLS financing has been spent on staff costs, with more than 1,000 people employed in the various organisations. Once the project ends, the majority of staff will not be kept on. If a future CLS project were to be agreed with DFID, it is likely that given the typical gap between projects ending and successors starting up, most project staff will have moved on to other work. However, that is not entirely limiting. A cadre of professional staff with CLS capacity will remain in the development sector and will most likely work in other NGOs. This will, in a light touch way, continue to spread legal knowledge and capacity. This is not the case where NGOs are working in ‘new’ areas where they have no other presence.

Beyond the above, we did not find that the CLS project team or their grantees had any specific ideas for sustaining legal services through different funding models.²⁴ This suggests that donors will continue to have a role in Bangladesh, although political shifts in many European states and the USA suggest that NGOs may need to make do with smaller investments.

Community knowledge and action

CLS awareness-raising activities are likely to have contributed in some way to changing **social attitudes**, in light of the end line survey cited in Section 4.1. However, our overall sense from interviews with all stakeholders, from NGO staff to random village focus groups, is that

the social barriers to women accessing justice in the communities of study remain overwhelming. Clearly, normative changes are slow and non-linear, and one might have to accept that a degree of harm will continue – what Harper calls ‘a balancing of less harm against no harm’ (2012: 14). Yet one must ensure that first, there are clear mitigation strategies for that harm, and secondly, that a longer-term approach is undertaken to ensure trusting relationships can be developed and ‘virtuous circles’ of institutional transformation can take place (Bakrania, 2014).

Most CLS NGOs convened **local CBOs** or some form of action groups.²⁵ The grantees expect these platforms will live beyond the project and will support ongoing services. In close-knit local communities, these relationships will not just dissipate once the project ends. However, without the financial backing of CLS or another project/organisation, it is unclear whether such groups will be incentivised to meet regularly and work together on local problems. Further research could usefully investigate the longevity of such groups, including those convened by CLS partners.

Community mediation groups, as established by MLAA or Nagorik Uddoyog, may have a better chance of continuing. This is partly because of continued NGO support in some form. But it may also be due to the more sustained and holistic approach undertaken. For example, the female *shalishkars* trained by Nagorik Uddoyog are also part of women’s leadership networks, which support ongoing interaction and confidence building within them.

The **forum shopping** promoted by the CLS grantees is likely to be less effective. In the absence of the support of a powerful NGO, many are unlikely to move beyond their family or close village connections. Despite improved awareness of justice options, continued NGO support will often be required for people to make their disputes public.

24. There are some options here, for example creating one-stop centres at the union level in which nominal fees are charged. Kolisetty suggests that the BRAC model of income generation offers a positive model but is tough to replicate (Kolisetty, 2014: 22).

25. This includes *gono gobeshak dal* of Brotee, MSP of SUS, and the multidisciplinary committee of BNWLA.

5. CLS model

In this section, we reflect more broadly on the CLS model, looking at the overall design and implementation approach. Some of the points we discuss here were set in motion by DFID in the business case, others were decided by Maxwell Stamp in their proposal, others by the CLS project team from the inception phase onwards. These points are:

- Project modalities
- Reach and depth
- Legal empowerment
- Development organisations
- Gender.

5.1. Project modalities

The CLS team characterise their approach as ‘letting a thousand flowers bloom’. That is, they are funding a large number of NGOs, each undertaking different kinds of legal activities. The restriction was that community-based activities had to fit within the modalities of legal information and advice, mediation, litigation and referrals. One of the risks of such an approach is that implementers view these services as isolated or one-off, when in reality a broader view is required of how awareness, access, quality and sustainability link together. However, during our discussions with the CLS project team, they clearly articulated these relationships: for example awareness raising is not of much use unless you can access a justice mechanism, and access is not much good unless the justice provided is of a high quality. The modalities undertaken allowed the grantees to explore these links with some success. We learned of and saw many examples of people hearing about legal aid through awareness raising, and people visiting the lawyer the next day. The quality aspect is harder to control and our research suggests discriminatory social norms persist – both in communities and legal service providers of different kinds.

Within these modalities, some activities could have been framed differently in order to improve awareness, access and quality of service provision. First, there could have been a focus on the poor *and* non-poor. DFID are rightly interested in supporting those in poverty. But in practice, poor and non-poor are not isolated categories:

they are intimately connected through a web of social and economic relations.²⁶ Therefore, one cannot work with one without taking account of the other. Even if disputes are primarily between poor people, it is the elite in communities who most need to be convinced of the need for change, since they often the powerful party in disputes or adjudicate over decisions. Secondly, organisations could have been given the flexibility to work primarily on issues with which they had experience. For example, Uttaran could have been encouraged to work on *khas* (state-owned) land issues, and Green Hill could have worked on documenting customary laws and *shalish* processes used by different small ethnic communities. Not all community needs are interchangeable, and the drivers of injustice are quite specific. Flexibility from DFID and their implementers could allow organisations to work where there are opportunities for change that are based on their own knowledge.

DFID’s focus on purely ‘legal’ modalities also constrained what could be achieved. Past research on Bangladesh has suggested that joined-up approaches, in which people are offered analytical and leadership skills, given the chance to build relationships across social groups, legal education and are supported to tackle injustices as they arise, has led to remarkable improvements (Kabeer, 2003; Kabeer et al., 2009). Yet we found that CLS NGOs did not offer such possibilities. At a minimum, a joined-up approach would require providing women involved domestic abuse disputes other opportunities, including some form of paid work. This challenge is common in development projects, which typically take a specific policy angle. The project mindset can encourage implementers to overlook the fact that the problems of legal service delivery in Bangladesh are not just the lack of capacity in organisations to provide services, but are a result of a more entrenched malaise related to the political, economic and social systems in which Bangladeshis live their lives.

5.2. Reach and depth

There is a tension between expanding service coverage and deepening it in certain areas. Arguably, CLS has expanded, in part, due to the politics of numbers – that is, DFID Bangladesh had to support the UK government’s push to reach targets for increasing access to justice for women

26. It may make more sense to think in terms of ‘horizontal inequalities’ (Stewart, 2008).

and girls. Plenty of monitoring and evaluation data collected by CLS went beyond this, to look at how many cases were filed, resolved, referred and left open. Behind these statistics lie individual stories of people's experiences of the justice process. The push for numbers affected CLS's decision to work with development organisations, since it meant reaching a lot more people with services. In some respects this was a positive development, which led to supporting improved justice in particularly remote or under-served areas – such as the through the work of Green Hill in Chittagong Hill Tracts.

However, we also saw the adverse effects of this approach. The work of NGOs at the local level is deeply political, often involving contesting the views and role of powerful elites. Raising legal issues can expose clients to risks, as well as opportunities for redress. Some organisations did not have the time to give the due attention required to such sensitive situations. This affected the extent of organisations' awareness-raising activities, available support for clients and the possibilities for rigorous follow up. These issues are part of a broader push in development assistance to ensure projects can 'scale up'.

5.3. Legal empowerment

The CLS project adopted the language of service delivery, although also made reference to legal empowerment, in its early theories of change. Overall, a binary view of community legal services and legal empowerment is not helpful. Whether a justice project is framed as 'service delivery' or a form of 'legal empowerment', it typically performs activities that could be construed as both. This is true for the CLS project, which combined support for access to specific services (legal aid, NGO mediation, *shalish*) with community awareness raising and some limited community mobilisation.

One recent advancement in the legal empowerment literature has been to explore the relationships between participation of poor people in local justice processes with that of national level organisations and advocates (Domingo and O'Neil, 2014). In their research on legal empowerment in Bangladesh, O'Neil and Valters (2015) found that advancing the interests of the poor and marginalised will often require linking community legal services with litigation in the formal court system, including public interest litigation in the higher courts, as well as with national advocacy.

The CLS project did take a broad view of the justice sector and the possibilities for legal change. There were some attempts to encourage shared learning and coordinate community and national organisations. Bangladesh has a fairly strong legal framework on major issues of concern to CLS, including domestic violence, dowry and more. The major challenge is often implementation. As such, CLS arranged a public interest

litigation workshop for the development NGOs where BLAST, Bangladesh Environmental Lawyers Association (BELA) and BNWLA provided orientation for them on sexual harassment, corporal punishment and *fatwa*. This led to development organisations undertaking community work to support implementation of legal judgments in these areas, particularly around sexual harassment and corporal punishment.

These issues are important ones, but the direction of travel was from the legal NGOs to the community NGOs. We did not hear of any instances where a development NGO flagged an issue that a legal NGO then picked up in the courts. For instance, land disputes are a major problem in all study areas, yet this has not translated into a national platform for change. Legal NGOs are already working on urban (slum/bostee) settlement cases. Indeed, *khas* land is a politicised and long-running issue that might not get much national traction. PIL rulings are often not enforced, therefore they should be used as a strategic tool when local activists feel there is potential of it changing practice on the ground. However, we are unaware of any analysis undertaken at the behest of DFID or CLS that sought to analyse such possibilities in depth.

5.4. Development organisations

Development organisations have shown themselves capable of encouraging awareness and access to legal services. Implementing mainstream development programmes increases the legitimacy of the NGO to communities. The development NGOs usually have staff members with diverse skills and expertise who speak to the community in non-technical ways. These NGOs have shown that with short, targeted and adequate training, regular NGO frontline staff members can become CLS workers. This is a success of the project, even if we have concerns about some outcomes, particularly for women suffering from violence. In part, this has worked because the development NGOs have been reasonably responsive to capacity building and the CLS Quality Standards.

The challenge has been to ensure development organisations play to all their strengths. Often, organisations do not work on the issues they have in the past, in part due to the push to work with specifically women and girls. Some organisations have also expanded into regions in which they have never worked before. In doing so, some of the benefits of being a 'local' organisation is inevitably lost, even if they try to take a similar approach. One further challenge is that some organisations may try to do too much in the legal sphere, without the adequate skill set to do so – for example, one NGO was determined to do a PIL, but was prevented from doing so as the CLS HQ assessed that the organisation lacked the necessary capacity.

5.5. Gender

Most CLS grantees worked with issues relating to violence against women and marital disputes. This focus is justified as women are often less powerful and more disadvantaged compared to men. CLS NGOs helped many women disputants receive at least partial remedies to their problems. Some good gender-sensitive practices have been integrated into CLS guidance. In the more recent field visits, CLS staff have given advice on this issue, particularly emphasising to staff, lawyers or mediators to give disputants time to speak, ensure confidentiality and to provide mechanisms for feedback and complaints. In October 2015, a three-day practical training session took place for all consortium partners on gender and human rights.

Despite some good practices, the grantees often struggled to tackle the overwhelming barriers to women accessing and gaining good quality justice. In part, this is because the focus on women and girls has been taken

too literally, when a broader gender focus was required. The vast majority of people participating in yard meetings and other groups were women, at times because meetings were held during the day when housewives had better availability to attend. In 2015 CLS data, the overall split of clients was 76% women, 24% male. Where there is an overemphasis on female disputes, there is a risk of creating the perception of NGO bias and that they are seeking to disrupt community norms. This perception can be counterproductive. In reality NGOs are indeed trying to change gender norms; however, this shift in norms requires a careful approach so as not to create a major backlash. Part of the problem is that there was not a substantive gender analysis of the causes of violence against women, women's experiences of the justice system, and what this meant for strategies to support them. Effective strategies in this area would include engaging with a diverse range of men - from those who are sympathetic to those who are hostile to progressive changes in women's social position.



6. Conclusion: what have we learned about strategies?

In this concluding section, we draw out what we have learned about strategies to improve community legal services and legal empowerment.

6.1. Strategies for implementers

Based on our research and the evidence base, we suggest there are four main strategies implementers and their partners need to follow to support effective community legal services.

Firstly, work closely with elites as part of a collective action approach. Working with elites was a major focus of previous rapid appraisal of CLS by Jahan et al., which argued effective strategies may involve ‘co-opting elites into the processes, not only to provide them with capacity building, but also with a supervisory role over processes that will engage them and increase their community accountability’ (2016: 3). In Bangladesh, important groups to work with may range from women’s family members, local civil society, microcredit groups, political and religious leaders, legal officials, armed groups and more. Relationships with these ‘gatekeepers’ can be and often need to be positive for NGOs to be able to conduct their work without obstruction. Indeed, in many cases NGOs may need their active support. As detailed above, this often requires a long-term presence and a degree of personal relationship between NGO staff and key power brokers. This may give NGOs the knowledge of and sensitivity to social norms and the risks of unintended consequences, as well as an ability to bridge different interest groups to allow them to conduct their work.

However, there can be a fine line between contesting and reaffirming power asymmetries. NGOs must be careful not to reinforce elite power in a community. Where local politicians are involved in dispute resolution, NGO support for them can reinforce their power base and expand their patronage networks. Of course, NGO’s themselves are often part of the local elite. This focus on elites may lead to different forms of bargaining that neglect the key mission of improving justice for people in Bangladesh. A good start is to aim for a collective action

approach, in which local coalitions for change are formed between people in different positions of power – from the CBOs, to the local politician, to the business leader. Careful contextual analysis will determine whether this is possible. Lewis and Hossain (forthcoming) recently revisited areas they had researched 10 years earlier, and found fewer opportunities for win-win coalitions, due in part to the strengthening political patronage structures and the decline of rights-based NGO work.

Secondly, acknowledge and work with diversity. There is diversity in terms of legal pathways, individual capabilities, and socio-political contexts. Our research documented the legal options taken by all disputants, but we were unable to point to any linear pathway. The variation for female disputants depends on their different capabilities. Furthermore, there are significant differences in the socio-political, cultural and economic context of each area we conducted research. These influence disputants’ belief systems (what they view as ‘justice’), where they might go to seek justice and whether that is deemed permissible by their wider family environment. Moreover, differences include the presence of armed groups, past or current conflict situations, and significant variations in the intrusion of local political interests and power elites into the operation of NGOs (Jahan et al., 2016). This diversity means legal advocates need a good understanding of community and individual needs, both through ongoing assessment and long-term relationships.

Thirdly, offer a holistic approach. This means engaging diverse relevant institutions to tackle blockages in the justice chain – and also looking beyond legal solutions. In Bangladesh, relevant state institutions include the formal courts, law enforcement agencies, the Ministry of Women and Children Affairs, among others. For example, in some cases law enforcement agencies may need to intervene to ensure compliance of both parties of a *shalish* resolution or court verdict. Many of the partners of CLS did engage with these diverse stakeholders, albeit in a limited capacity, mainly discussing the provision of legal services. However, engagement of all relevant institutional stakeholders is just one part of the story. The evidence gathered through this

research has shown that winning a legal battle is not an end in itself. Specifically, when it comes to women, many end up being socially and economically disempowered after a winning a dispute or court case. Legal, economic and social pathways are needed to ensure access to justice.

Finally, put local first. As O’Neil et al. note: ‘Only local organisations know what issues to pursue, how and when. For local organisations to make this contribution, development agencies need to allow them to select issues and problems to work on’ (2015: 26). The CLS project did well to engage a strong range of such local organisations as grantees. There was space for them to submit grant applications within the different modalities that CLS offered. This was also somewhat flexible as organisations were encouraged to conduct community needs assessments on legal problems and offer ways to address them. Working with local organisations meant CLS had a better chance of working sensitively with local power dynamics and understanding of community justice norms. This was key where CLS grantees were looking to work with minority communities with their relatively unique understandings of justice. However, having to fit within the legal service modalities that the project offered was also somewhat restricting, since it did not offer the opportunity to pursue activities that were not legal in nature, but influenced people’s daily disputes and options for resolving them.

6.2. Strategies for international donors/ DFID

DFID’s support to NGOs in this area is admirable, not least because it took, as its starting point, the day-to-day legal problems faced by poor and marginalised groups in Bangladesh. This is to be welcomed and more support in this area would be worthwhile. The following are recommendations for how such a project might be improved in the future.

Firstly, have a wide-ranging focus on violence against women as part of any justice programme. This would mean budgeting for a good gender analysis that looks at the different justice options women have when facing violence, and continuing that analysis to understand the nuance of tackling different gendered issues as they arise. This is not a new area for DFID. Indeed, many of the recommendations we might make in this area have been outlined in a range of DFID-commissioned papers.

In a DFID guide for security and justice programmes tackling violence against women, it is suggested that ‘interventions must have the safety of women and girls as their primary concern. At a minimum, this entails conducting a systematic assessment of the risks and unintended consequences that programming activities may have for women and girls, and developing a strategy

to reduce or mitigate these risks, including providing protection’ (DFID, 2013: 10). Equally, this report suggests that more work needs to go through grassroots women’s human rights defenders, who are ‘acutely aware of the risks faced by women and through their networks may be able to monitor the situation of individual women and girls at risk and survivors and offer vital support and protection’ (DFID, 2013: 11). Both the government and development partners have invested significantly on violence against women. We suggest there are productive conversations to be had around how these groups and any future CLS project might learn from each other to effectively and sustainably help women who face violence.

Secondly, take a multi-sectoral approach. We found that the CLS project eventually worked well to address community-level justice issues within its modalities. However, it seems to have been held back in part by its singular ‘legal services’ lens. While there was a distinct focus on women and girls from a ‘results’ perspective, that did not translate into a broader view of how women specifically engage in justice, or the wider drivers of violence against women. In the DFID paper, ‘Shifting social norms to tackle violence against women and girls’ (Alexander-Scott et al., 2016), it is suggested that a multi-sectoral approach is required, while finding ways to ensure a focused programme. From DFID’s findings and the evidence presented in this paper, remedies to violence cannot just be legal, but must be social, economic and sometimes political in nature. As outlined by Kolisetty, ‘many non-profit legal aid programmes both in Bangladesh and other developing countries lack linkages to other social services, and also have significant limitations by taking only very specific types of cases’ (Kolisetty, 2014: 28). Addressing this issue is challenging, but not impossible.

The CLS project also shows how the focus on breadth can negate a focus on depth. Work on the latter is less tangible and less attributable to DFID, but arguably more important in the long term. One relatively low-cost way to encourage a multi-sectoral approach is by exploiting links with other projects. However, while the CLS project is part of broader security and justice support to Bangladesh, the links, in practice, are few.²⁷

Thirdly, recognise that extensive capacity building is a key part of sustainability. We found the CLS capacity-building strategy to be a strong one that could be built on in the future. Developing a large, well-trained cadre of development staff with good legal knowledge will in itself support continuing legal action. However, the CLS strategy rightly pointed out that many NGOs do not have sustainable management and governance structures, nor a wide range of funding opportunities. To address the former, as CLS as done, makes a lot of sense even though it does not pertain directly to legal services.

27. There are also possibilities to link with wider rights, governance, voice and accountability programmes such as with Manusher Jonno Foundation. There is also a new extreme poverty programme with a rights and social mobilisation component.

More could be done, however, to encourage NGOs to reconsider their funding structures. Alongside numerous other criteria we've highlighted in this report, the ability of organisations to sustain their work in their geographic region should be key to future funding. Bangladesh has many examples of such organisations that sustain themselves through microcredit or other forms of social enterprise. While we do not suggest all organisations should focus on microcredit (given the controversy over its poverty reducing effects), there are other modes that exist for developing and sustaining worthwhile NGO activities (LDP, 2016). It may mean considering providing longer term but smaller investments for core funding of certain organisations, to allow them to develop their staff and funding base. This is rare from donors. Yet given the increasingly cautious approach to aid being taken in the UK, an approach which encourages sustainability makes sense.

Finally, encourage a politically smart and adaptive approach. Being politically smart means being politically informed, with the best knowledge about local political economy dynamics, and finding ways to engage with these politics with intelligence and creativity (Denney and Kirwen, 2015). The practical implications of this are

numerous. For DFID, it means taking a wider strategic view of what is possible in the justice sector and in relation to violence against women, and to fund ongoing action-orientated political economy analysis in any future project. For CLS, it suggests grants are only made to organisations who can demonstrate their understanding of these political dynamics locally.

Being 'adaptive' is increasingly *en vogue* in the development sector – for good reason: too many projects follow fixed log frame targets that do not incentivise learning, testing and adapting as required. There has been a continual set of changes at DFID HQ seeking to reduce bureaucratic red-tape (the 'Smart Rules') and open up space for more flexible, adaptive programming. Yet there are few good examples of this being operationalised in the justice sector at large. For the CLS project, 'adaptive' programming would have meant clearly testing the different modalities that were being undertaken, and offering the chance to evolve into wider social or economic issues as necessary in a given context. For any future project, taking an explicitly adaptive approach would be a good step. This would encourage continuous reflection about how to support access to justice for poor and marginalised groups across Bangladesh.

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Annex 1: Methods details

Location profiles

Rangamati: A district of Chittagong division in Bangladesh. It is bounded by the Tripura state of India on the north, Bandarban district on the south, Mizoram state of India and Chinpradesh of Myanmar on the east, Khagrachhari and Chittagong districts on the west. It includes numerous indigenous communities. The area was engaged in armed conflict over the Chittagong Hill Tracts area until the 1997 Peace Deal, although to this day, the accord has not been fully implemented. The district security is still under the control of the Bangladesh Army. Currently, different mainstream political parties are active in the area. There are various religious and cultural groups, of which an estimated 49% are Bengali settlers. The main source of income is agriculture. The main crimes and disputes appear to be in the following areas: land, community tensions, gender-based violence, kidnapping and armed violence.

Rajshahi: A district under the northern east division (Rajshahi) of Bangladesh. It is bounded by the Naogaon district on the north, West Bengal state of India, Kushtia district and the Ganges river on the south, Natore district on the east, and Nawabganj on the west. The region consists of Barind tract, Diara and Char lands. All mainstream political parties are active in the district, although Jamat-E-Islam is dominant. The majority of Bangladeshi silk products are produced in Rajshahi. Agriculture is the main economic activity. The main crimes and disputes appear to be in the following areas: land, domestic violence, political violence, child marriage, family disputes, gender-based violence.

Mymensingh: The leading district of Mymensingh division. It is bounded by Garo Hills and the Meghalaya state of India on the north, Gazipur district on the south, Netrokona and Kishoreganj districts on the east, Sherpur, Jamalpur and Tangail districts on the west. Before 2015, it was under Dhaka division. All mainstream political parties are active in the district. Mymensingh has a rich mainstream Bengali and indigenous cultural history. The main source of income is agriculture. The main crimes and disputes appear to be in the following areas: property, gender-based violence, child marriage and family matters.

Satkhira: Under the Khulna (southern-west) division. It is bounded by Jessore district on the north, the Bay of Bengal on the south, Khulna district on the east, west Bengal state of India on the west. All mainstream political parties are active although, Jamat-E-Islam is dominant. Satkhira is one of the coastal districts where the biggest mangrove forest in the world, the Sundarban, is situated. The main source of income is agriculture. The main crimes and disputes appear to be in the following areas: land, religious/communal, gender-based, political and armed violence.

Interview process

Interviews and focus groups were all semi-structured, with guiding questions prepared in advance (see interview guide in Annex 2). The guiding questions were established collaboratively during a week-long visit to Dhaka by the international researcher. In each of our four research locations, every effort was made to conduct the following interviews, focus groups or observations. We managed to achieve the following key respondents nearly exactly, with 97 interviewees, focus groups or observations taking place outside Dhaka.

#	Interviewee	Number	Location	Type
1	CLS Grantee – Legal	1	District	Interview
2	CLS Grantee – non-legal	1	District/union	Interview
3	DLAC	1	District	Interview
4	Implementing partners	1	District/union	Interview
5	Disputants – Legal NGO	2	District/union	Interview
6	Disputants – Non-legal NGO	5	Union	Interview
7	Lawyer/paralegal	1	District	Interview
8	Mediator	1	Union	Interview
9	Community mobiliser	1	Union	Interview
10	UP Chair/members	1	Union	Interview
11	Traditional <i>Shalishkas</i> /religious leaders	1	Union	Focus Group Discussion
12	Observation – Legal NGO	1	District	Observation
13	Observation – NGO activities	2	Union	Observation
14	Community - random	2	Union	Focus Group Discussion
15	Women's group	1	Union	Focus Group Discussion
16	Community groups formed by CLS	1	Union	Focus Group Discussion
17	Other non-CLS NGOs	1	Union	Interview
Total	N/A	24	N/A	All

Data gathering, transcription and analysis

Interviews were conducted in Bengali by Bangladeshi researchers. The lead author, an international researcher, was present for several interviews in Satkhira and led all Dhaka interviews. Translation and note-taking took place in real time. Interviews, focus groups and observations were not recorded. All notes in Bengali were translated into 1-2 page English summaries. An analytical report was written in full for each of the four research locations. This qualitative material was triangulated in a number of ways. First, we produced an annotated bibliography and literature review of the key material, as identified by the lead researcher. Secondly, we reviewed CLS's own internal documentation, which included log frames, theories of change, capacity-building reviews, and more. We also drew briefly on the baseline and end line survey conducted by CLS contractors. However, we did not do so in depth as the full end line report and associated methodology was not available to us at the time of publication.

Limitations

The primary research for this project involved a period of nearly 50 days of qualitative interviews and focus groups. Considerable effort went into triangulating research findings and drawing on expert advice, but the amount of time and resources available was necessarily limiting. It was not possible to have full transcripts of semi-structured interviews as they were not recorded. Access to disputants and other key stakeholders was facilitated by CLS grantees, but the choice of interviewee was random. The position of the researchers, as either internationals or Dhaka-based, will have influenced the responses of our interviewees to a degree. Where deemed necessary, we changed up the composition of our team. For example, where we thought the presence of an international researcher would draw unnecessary attention to a vulnerable group, the local team went alone.

Annex 2: Interviewee checklist

The following guidance is to support semi-structured interviews and focus groups in field research locations. Some topics will be more relevant than others for specific interviewees. Researchers will need to use their judgement to ascertain this.

1. Introduction and basics

- Thank the interviewee
- Interviews will take one hour, FGDs up to 2 hours.
- Research funding: UK government
- Permission to be quoted in online report, anonymised as necessary

Then take down the following information:

- Name, age, gender, education, occupation, organisation, contact details

2. Overall community situation

- General (political, social, economic)
- Disputes/legal issues/crimes
- Gender roles, power dynamics and religious views
- Where do people go with legal/justice problems and why
- History of legal service interventions in the area

3. Quality of services of CLS

This may include **litigation, referral, mediation, legal advice, awareness raising** and other activities. The experiences of access, process, implementation and impact can be **positive** and/or **negative**. We are concerned with whether disputants feel the whole experience is **fair** and **equitable**.

- Why go to this service?
- Access to service (geographical, financial, social)
- Experience of process
- Perception of fairness of outcome (and for who)
- Implementation/compliance
- Long-term impact

4. Marginalised groups

- Why go, access, experience, outcome, implementation/compliance, impact
- Any specific support received/given from CLS or other local actors
- Approach by CLS and relevant justice actors (language, social, financial, security barriers)

5. NGO strategies

- Which legal services are most/least effective and why
- What can be done to make services effective with/without CLS
- New ideas for improving access to justice (not just services)
- Challenges faced by NGO and why (community, CLS)
- Competition with other NGOs or legal services
- How they deal with challenges

6. NGOs and social norms

- Challenging, reflecting or reinforcing gender norms
- Challenging, reflecting or reinforcing elites interest
- Challenging, reflecting or reinforcing religious/cultural norms

7. NGO relationships

- Relationships with elites (community/religious leaders, political parties, etc.)
- Relationship with other government institutions (police, courts, armed actors, relevant officials such as land officer)
- Relationships with other NGOs (referrals to similar/other projects)
- Relationship with other CLS grantees (at the district/community level AND national)

8. Capacity building

- General NGO staff capacity and resources
- Relevance/ Impact of training and advice on legal knowledge, organisational practices, administration
- Knowledge sharing within the NGO (including of CLS training)
- Knowledge sharing with other grantees
- NGO relationship with CLS

9. Sustainability

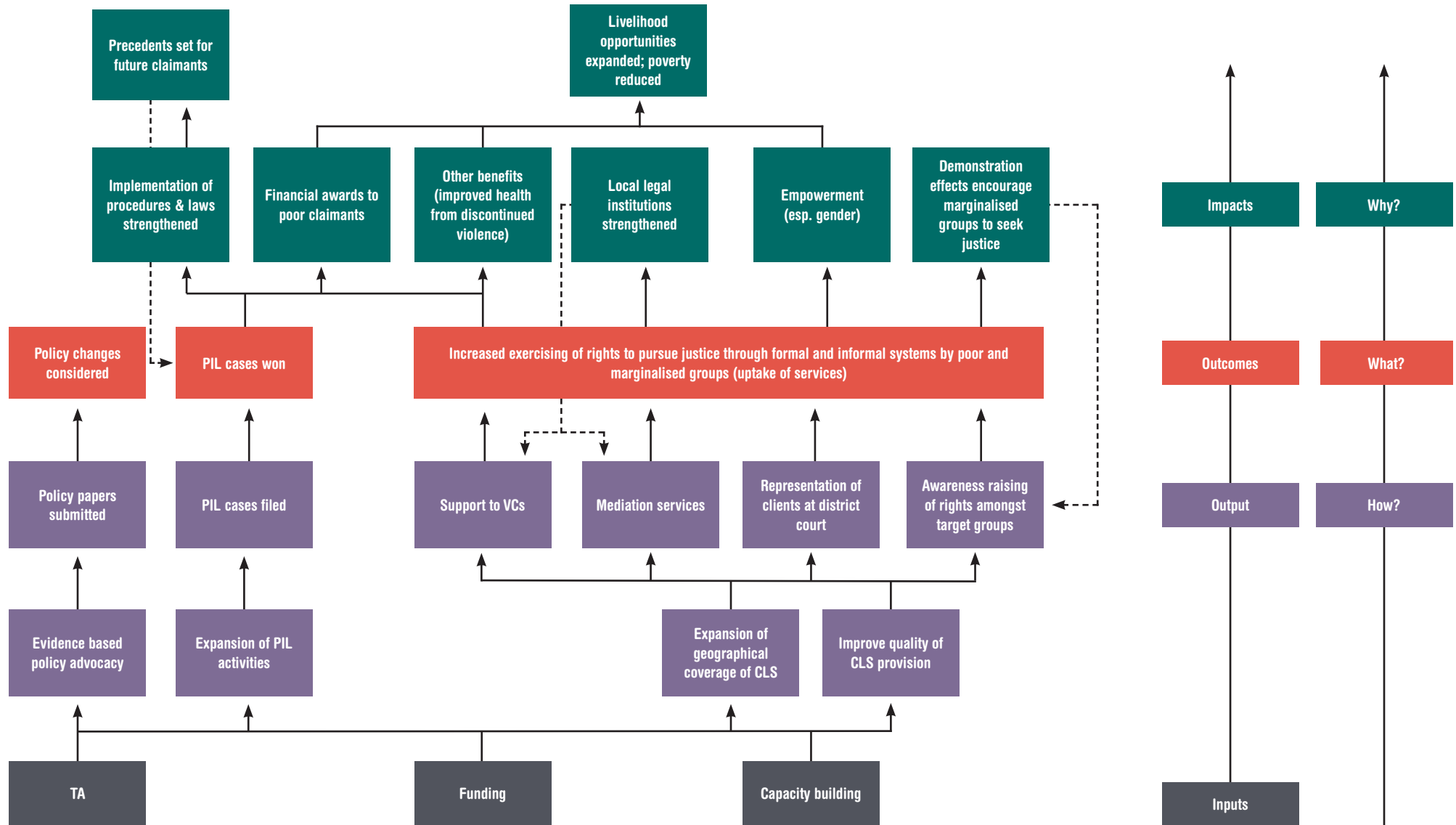
- Project activities after CLS
- NGO knowledge and relationship with key stakeholders after CLS
- Impact in the community after CLS
- Service availability after CLS
- Spillover/demonstration effect
- Effects for women and men; specific ethnic/minority groups

10. Community reflections

- View of project activities
- Improving project activities based on community needs
- Specific reflections on CLS and gender, power or religion/culture

[Checklist ends]

Annex 3: Project theory of change





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