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CITIZENSHIP AND RIGHTS IN BANGLADESH

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Simeen Mahmud

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Editor’s Introduction

Until recently Citizenship and Rights was not an area of mainstream research in Bangladesh, and certainly not within the major development research institutes. Since 2001, however, Bangladesh Institute of Development Studies (BIDS) has been engaged in a new and challenging research program as part of the Development Research Centre (DRC) on Citizenship, Participation and Accountability hosted by the Institute of Development Studies at Sussex University, UK. The DRC is an international research partnership dedicated to exploring the new forms of citizenship needed to make rights real for poor people. The rationale for researching citizenship and rights arose from the growing concern across the world that the relationship between citizens and institutions that affect their lives, particularly the state, was facing a crisis of legitimacy\(^1\) (Gaventa 2002). A second and related rationale was that universal notions of citizenship were being challenged today because of the diversity of how citizenship is experienced around the world, and even within countries, especially in countries like Bangladesh that are experiencing rapid economic and social transformation.

In Bangladesh notions of citizenship and experience of rights, both at the level of formal commitments and at the level of peoples’ lived realities, are changing. The Constitution of Bangladesh, promulgated in 1972, reflected the ideals of the liberation struggle and was founded on four pillars: democracy, nationalism, socialism and secularism. The Constitution guarantees the protection of fundamental universal human rights (to life and personal liberty, equality and non-discrimination, freedoms of movement, religion, and expression, and so on).\(^2\) In addition to fundamental rights, the constitution lays down basic principles of state policy, obliging the state to ensure access to food, shelter, employment, health and

\(^1\) Rising corruption, lack of responsiveness to the needs of the poor and the absence of a sense of connection with elected representatives were seen as the major factors behind growing disillusionment with government (Commonwealth Foundation 1999 cited in Gaventa 2002).

\(^2\) It also provides a specific right to enforce fundamental rights through to the Supreme Court. Bangladesh is party to all significant international human rights treaties including CEDAW, CRC, and ILO Labour Code.
education for all its citizens. In principle, therefore, there is strong constitutional commitment, coupled with clear legal obligations, to protect human rights in general and political, economic and social rights in particular.

However, today only the commitment to nationalism remains intact, while the pillar of democracy appears quite shaky. Despite provisions at the formal/legal level, the reality of citizenship experience in Bangladesh is weak, fragmented and highly unequal. Rights as citizens are enjoyed on an ad hoc and selective basis, depending upon access to resources and networks. There are many reasons for this: existing laws are outmoded or in conflict with constitutionally guaranteed rights, particularly in relation to national security or religion based personal laws; inadequate enforcement and monitoring apparatus; apathy and indifference; and vested interests of the powerful. The weak legal system means that the chances of redress for abuse of rights or obtaining justice for any citizen, but particularly for those without money or connections, are remote and random.

The huge gap between formal and real rights is embedded within a society in flux, where the concept of citizenship itself is emerging from feudal patronage relationships to state citizen relationships, and where the lived experience of rights is shaped by the tensions between the personal and the public, the local and the national (sometimes even global), between kin/family norms and civic/legal procedures, and between the traditional and the modern. The shift is from the notion of citizenship as “a national identity, which entitles one to a bundle of rights” prevalent in the established democracies of the West, to one which emphasizes the exercise of agency and the recasting of rights by citizens themselves. The elements of such a notion of citizenship are adherence to the principles of democracy (freedoms and rights, particularly the right to have a say in how one is governed), legal personhood and equality before the state, a sense of identity (not only national but as a member of the community with respect for culture, cooperation and sharing), a sense of agency (the belief that one can be and act as a citizen, define their own spaces for participation and their own entry points of change), and a sense of responsibility and obligation to demand accountability and transparency. The changing
meanings of citizenship raise questions about the ways in which state agencies, civil society and market actors hold each other to account (Gaventa 2002).

This research was initiated at a DRC workshop on *Meanings and Expressions of Rights and Citizenship* in Dhaka hosted by BIDS between January 31 and February 3, 2002, bringing together a wide range of researchers from six different countries in four continents.³ For BIDS this was an unknown and uncharted area of enquiry, requiring new concepts, new literature and new methods, very little of which was directly generated in Bangladesh or captured Bangladesh reality and experience. The conceptual challenge emerged from the fact that although we struggled for liberation from Pakistan on a Bengali identity, we had to rediscover our identity as citizens of Bangladesh, as distinct from all of our previous identities (British India, Pakistan). The methodological challenge was that this process of becoming Bangladeshis was not a linear or uni-dimensional process, unfolding over time and space to develop into a holistic story. Researching citizenship in Bangladesh thus required an approach that was very different from conventional methods of research, data generation, analysis and interpretation. In this respect the location of the research under the broader DRC umbrella, where the new citizenship discourse was actively debated and the new concepts empirically explored under a range of diverse country situations, was ideal and in many ways indispensable.

The citizenship themes covered in this volume are:

1) building citizenship from the ground up
2) institutionalizing the struggle for women’s human rights
3) enabling accountability for the rights of labor
4) promoting voice and participation of the poor in rights claiming
5) accessing justice for the abuse of rights of poor women

³ The Citizenship DRC brings together over 50 researchers based in Bangladesh, Brazil, India, Mexico, Nigeria, South Africa, and the UK. It is coordinated by the IDS in the UK and by the BIDS in Bangladesh. DRC website: www.ids.ac.uk/drc-citizen/.
The huge gap between formal definitions and the lived experience of citizenship is the focus of Naila Kabeer’s paper “Growing citizenship from the grassroots: Nijera Kori and social mobilization in Bangladesh.” The social characteristics of corruption and clientilism cause the state not only to fail in the protection of rights of citizens, but actually contribute to the violation of rights. The legal system provides little or no recourse to justice and resources are only accessible through political or kin based networks that exclude the poor and women, or allows participation on extremely unequal terms that deprive them of voice and agency. Patron client relationships also contribute to disunity among the resource poor and prevent the formation of “horizontal” class based networks.

Naila documents the historical emergence of Nijera Kori (NK), a grassroots membership organization that concentrates on building citizenship from the ground up by mobilizing the “collective capabilities of the poor to demand their rights.” NK is different from other such membership organizations in that it determinedly has kept away from engaging in any form of service delivery to its members. NK mobilizes those men and women who have no assets of their own but must sell their physical labor or its products to earn a living. From the beginning NK saw poverty not simply as the lack of resources but also lack of voice, agency and most important organization; and as the manifestation not simply of individual deprivation, but also of underlying structural inequities.

The paper analyzes NK goal to nurture values of solidarity, self reliance and collective action rather than individual prosperity, and explains why its strategies of mobilization have emphasized transforming consciousness (poor peoples’ resignation and unwillingness to challenge forces) and build solidarity (based on collective identity and shared interests of the poor). These are the foundations upon which the poor can mobilize for economic, social and political rights. In this way NK positions itself as an agent of social and economic change that reflects a different world view than the conventional view of actors in the NGO sector: “critical conflict worldview” where change can come through challenging deep rooted social structures and inequalities. Such change is often more
lasting since what is learned – the possibility of challenging injustice and hope of a better future - is not easily forgotten.

The “practice” of accountability for ensuring women workers’ right to earn a livelihood and their right to respect for their labor is the theme of the paper by Simeen Mahmud and Naila Kabeer titled “Compliance versus accountability: struggles for dignity and daily bread in the Bangladesh garment industry.” Accountability has gained currency in conventional development discourse as key to ensuring that institutions and markets respond to the needs of poor people. This attention has intensified with the tension between promoting a rights based approach to development and increased emphasis on the market as the mechanism for distributing resources. However, it is argued that accountability is more than an improved system of management and audit, and the right to demand accountability assumes relations of power (Newell 2006). In understanding how institutions and markets fail to be accountable to people, it is crucial to understand how abuse of that power affects people (Newell 2006). Thus, the “practice of accountability” in development consists of ways to prevent abuses by restraining power within established rules, but the diversity of understanding of rights, duties and responsibilities of social actors across the world indicates that there is no “global grammar of accountability” (Newell 2006).

The paper provides a grounded analysis of accountability mechanisms prevalent in the export garment manufacturing industry of Bangladesh. Over 80 percent of garment factory workers are poor little educated women in a context where women have historically been regarded as a vulnerable group, in need of protection and hence confined to the shelter of the home and where working conditions are known to be in gross violation of national laws. The paper confirms that accountability cannot be reduced to state reform and good governance alone, that there is over reliance on state agencies and on law as a mechanism to generate accountability with little attention on the enforceability aspect of accountability, and without assessing how social mobilization can

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4 The absence of written contracts and benefits, long working hours, delayed payment of wages and routine violations of health and safety standards.
also help to ensure accountability. In other words, “accountability is not an apolitical process” (Newell and Wheeler 2006).

The poor working conditions in garment factories, which are not unique to Bangladesh but prevail to a lesser or greater degree in export garment factories across the world, have led to various international campaigns by coalitions of trade unions, students, NGOs and consumers. Faced by the threat of boycotts of their goods, the major buyers in the global market for clothing have adopted codes of conduct to regulate the conditions under which those goods are produced. The intense concern with garment workers’ rights reflects both the publicity generated by international campaigns and the unusual visibility of its largely female workforce. The consequences of the intense public scrutiny on the working conditions have led to the imposition of codes of conduct by the various international buyers anxious to avoid adverse attention from their consumers at home.

The attempt at self-regulation on the part of garment manufacturers reflects the fact that non-compliance with basic labor standards carries real penalties in the form of lost orders from their international buyers. It is worth noting that the compliance in question is not with national labor laws and that there is clearly a gap between compliance of this kind and the practice of accountability described above. The question addressed in the paper is to what extent has the proliferation of these codes in the Bangladesh garment industry and the pressure to comply brought about a “culture of accountability.” The adoption of codes of conduct (primarily labor standards) is only the beginning of a process of translation, and a variety of different actors have a role to play in ensuring that the translation does indeed occur: the state which has overall responsibility for enforcing national labor law and upholding the rights of workers; the international buyers who draw up the codes; the employers who are responsible for their implementation; the trade unions who are considered to be the organised voice of workers; and, of course, the workers themselves, who have most to gain from the growth of a culture of accountability. The paper highlights the rising influence and power of corporate actors in the practice of accountability, possibly
Editor's Introduction

diminishing the ability, and perhaps the responsibility, of the state
to act as the enforcer of accountability.

The growing struggle for women’s rights in Bangladesh is vividly
portrayed in the first person account by Shireen Huq in her paper
“Bodies as sites of struggle: Naripokkho and the movement for
women’s rights in Bangladesh.” Inequality in citizenship suffered by
women is the result of both inferior legal status and inferior social
status. The situation is aggravated by women themselves being
unable or not inclined to challenge violations against women or
injustice meted out to women because of lack of knowledge,
confidence and skills. Shireen relates the initiative by a group of
Bangladeshi professional (also relatively elite) women engaged in
development work to create voice that mattered and make demands
that were heard. Their goal was to build an agenda for action and to
give these processes an institutional shape through their
membership organization Naripokkho (NP).

The paper charts the conceptual journey of NP from being a
group of women who were victims of discrimination to becoming
women with rights, and the organizational journey from an informal
discussion group to becoming a leading voice in the movement for
women’s human rights in Bangladesh. Perhaps somewhat boldly,
but not surprisingly, the entry point in this struggle/journey was
women’s bodies: how women’s bodies are seen and defined, what
physical activities women are permitted, what work is acceptable for
women, what spaces they can occupy and can be seen in. From the
beginning NP laid down certain basic principles for engagement.
First, every issue taken up was on the basis of personal experience
and identification: “we speak about ourselves and we speak for
ourselves.” Second, the primary demand was for fair treatment and
respect for dignity as human beings, and only thereafter to claim
rights and entitlements as citizens. And finally, the inevitable
concern was with “body politics” given the centrality of women’s
bodies in countless trivial as well as significant ways, and the
realization of how profoundly women’s bodies affect every aspect of
their being, experience and consciousness as women.

The particular strategies adopted by NP for the recognition of
human rights of all women were to make violence against women
visible and a concern for advocacy and mainstream policy,
particularly the horrific act of acid violence; advocating for and demanding appropriate services for women experiencing violence; and expressing solidarity with sex workers as citizens and workers with rights. In these efforts they have made considerable contributions, but also raised uncomfortable questions. Recognition of the human rights of women engaged in prostitution brought the issue of work and what constitutes work to the centre of the public debate: if sex in prostitution is work, then is sex in marriage work as well? There were also uncomfortable issues around the “culture” and body politics of development organizations, including sexual harassment, non-recognition of women’s reproductive and caring responsibilities, and lack of concern for women’s physical security. Naripokkho has brought discussion of these thorny issues into the realm of the professional and hence public domain.

The fourth paper in this volume addresses the issue of participation, which along with accountability is seen as the twin pathways of reducing the gap between citizens and institutions. Participation is the process through which poor people and excluded people exercise voice to inform and influence institutions and policies. But increasingly it is evident that participation will only lead to voice without influence if there is no attention to power and politics and no engagement with issues of institutional change (Gaventa 2002). Thus, to be meaningful participation must become grounded in a conception of citizenship rights, turning “beneficiaries of development to its rightful and legitimate claimants” (Cornwall 2000). Indeed, “participation in community life requires at a minimum threshold a sense of full citizenship, of being accorded rights that define one’s equal status” (Higgins 1999). Those who do not participate do not feel full or equal citizens; they often feel forsaken by society, disrespected and unimportant. The inability to participate derives precisely from a fragmented sense of citizenship.

In the health sector participation is equated with empowerment in terms of acquisition of skills, abilities and knowledge that enable people to have a say in and manage delivery systems better. It is also seen as a political process that enables people to identify and undertake actions they believe are essential for their own health development, reversing exclusion of people from the benefits of
development. For the most part, however, community participation continues to be defined as an additional ingredient in health care delivery and valued primarily for its instrumental role in making health services more responsive and appropriate.

The paper by Simeen Mahmud on “Increasing voice in the health sector in rural Bangladesh: Is there a role for citizen participation?” explores the Bangladesh experience with citizen participation in public health care delivery initiated under the health sector reform program as part of the Health and Population Strategy Program (MoHFW 1997) launched in 1998. The paper identifies structural factors like decentralization, putting in place a mechanism for deliberation and reducing the gap between community and provider expectation as essential for participation in the health delivery system. It analyzes the experience of mobilizing community participation to establish a community owned and managed local level health facility with the aim of providing accessible essential health services to the most deprived population groups (women, children and the very poor). This effort within the public health sector is compared with initiatives by non-governmental organizations to establish community clinics managed by local communities as a response to the low quality of public service at the local level. The analysis indicates that citizen participation in the newly opened public spaces at the community/village level has failed to take root and points to a number of constraints that were probably not obvious from the reading of existing literature.

The final paper by Lena Hasle “Too Poor for Rights?” analyzes the attempts made by non-formal judicial systems to enable poor people to access justice in Bangladesh. It is set within the framework of the international human rights perspective that associates poverty with the denial of rights and the formal legal system that accentuates this association. The concept of “inclusive” citizenship or “inclusive rights for all people” is stated as key to a rights based perspective on development (DFID 2000; UNDP 2000, cited in Gaventa 2002). However, traditional citizenship practice based on class and gender, by perpetuating social inequality, can be a powerful barrier to the process of building inclusive citizenship. The identities and affiliations of the family, kinship and community when carried over into the public sphere of state and
civil procedures, shape access to state resources (Joseph 1997 cited in Kabeer 2002), including access to the formal justice system. In many societies, as in Bangladesh, the demands of kin and family take precedence over civil procedures and civic rights are conditioned upon relationships that people are able to mobilize (Kabeer 2002). It is now recognized that formal entitlement to the same rights to all citizens does not necessarily promote equitable outcomes (Cornwall 2000).

Poverty is associated not only with a denial of rights but also the denial of the right to have rights, as promoted and protected through an effective legal system. In Bangladesh the absence of a “culture of rights” is sharpened by poverty, causing poor people and especially poor women to believe they have very few rights or even the right to have rights. Deep rooted social structures generate much class and gender based inequality, and lead to the tacit acceptance of considerable social injustice. Since state policy and implementing agencies reinforce existing political and social structures of exclusion, rights are not articulated similarly for all, or even if articulated similarly, they are not provided equally (Mahmud 2002). This is particularly the situation with respect to women’s legal personhood and poor women’s right to the legal system and to justice.

This paper examines the mediation program (in the form of shalish) for alternate dispute resolution adopted by Nagorik Udyog, a human rights NGO, through the justice seeking experiences of a specific group of rural people, largely women. Strategies for improving poor people’s access to justice are aimed at making the legal system more responsive to poor people’s needs by addressing hurdles that hinder their access to court. Given the resilience of these hurdles (cost of legal representation, lack of information and illiteracy, lack of resources and networks to influence legislative processes), there is also increasing attention given to the non-formal justice system, including the extent to which traditional mechanisms for dispute resolution can play a role in promoting greater respect for human rights. Since access to justice requires more than being able to present a grievance in front of a court or, as in this case, before a mediation panel, and implies that the claim is recognized as legitimate and includes an effective remedy,
women’s actual access to justice may be limited. However, in assessing its enforceability and its ability to deliver “substantive justice”, Lena concludes that the NGO shalish does provide a space for the recognition of women as right-bearers and allows them incrementally better access to justice.

All the papers seek to address the “empirical void” (described by Lister et al 2005) surrounding the meanings of citizenship where the perspectives of ordinary people are absent. These papers bring precisely that perspective, i.e. the perspectives of the resource poor and women on their own citizen identities. As Naila Kabeer comments, “We do not know what citizenship means to people – particularly people whose status as citizens is either non-existent or extremely precarious – or what these meanings tell us about the goal of building inclusive societies” (Kabeer 2005). The value that people attach to their own citizenship and how they are recognized by others has a direct bearing upon the rights they enjoy and how they act to claim those rights. The fragmented sense of citizenship of resource poor people causes them to view their rights as being more limited in comparison to the rights of the rich. Sex differentiated notions of citizenship define women’s “legitimate” rights as distinct from men’s rights and more restricted.

The papers also speak to the theme of the “actor oriented” perspective on citizenship (Nyamu-Musembi 2002), believed to have the potential of turning formal commitments into reality or of “making rights real.” Such a concept of citizenship puts emphasis on people as active participants in articulating, claiming and monitoring rights, rather than as passive bearers of rights, where the state is not seen as the sole repository or custodian of citizenship. This new concept of citizenship is embedded in the rights based approach to development, in which concerns with livelihoods and sustenance (economic and social rights) have been integrated with concerns with human rights and freedoms (political and civil rights) (Kabeer 2005). According to this new concept citizenship is attained through the agency of citizens themselves (Gaventa 2002). However, participation for rights claiming and monitoring has costs that, unless shared by state and other non-state agencies, can overburden resource poor people and women, so
that a rights based approach may not automatically be pro-poor and pro-women.

The papers in this special volume bring together a selection of the citizenship and rights research conducted recently by BIDS, as well one piece of outside research, the paper by Lena Hasle. We gratefully acknowledge the support of the Development Research Centre on Citizenship, Participation and Accountability at the Institute of Development Studies, Sussex University, UK in the production of this volume. Some of the BIDS research under the DRC has already been disseminated in the international academic arena apart from being shared with the international aid and policy community. However, the Bangladesh academic and policy community has remained largely outside the ambit of this dissemination process. Given the relevance of the research to the current socio-political situation in Bangladesh, we are particularly indebted to ZED Books, London and New York, for allowing us to publish relevant materials from the Claiming Citizenship: Rights, Participation and Accountability series.

REFERENCES


Growing Citizenship from the Grassroots: 
Nijera Kori and Social Mobilization in Bangladesh

by

NAILA KABEER*

I. FORMAL DEFINITIONS AND LIVED EXPERIENCES OF CITIZENSHIP IN BANGLADESH

The constitution of Bangladesh is committed to uphold certain universal human rights, including the right to life and personal liberty, privacy, equality and non-discrimination, and freedom of movement, religion, expression, thought and conscience, and property. It also contains fundamental principles of state policy that address the need for the state to ensure the availability of food, shelter, employment, health and education for all its citizens. Though non-justiciable, the constitution provides that these principles should be fundamental to the governance of Bangladesh, applied in its laws, and a guide to constitutional and legal interpretation.

The reality, however, bears very little relation to these constitutional provisions. It is characterized instead by corruption and clientelism. The state does not merely fail to protect the rights of citizens; it actively contributes to their violation. The legal system offers uncertain recourse to justice: cases can be dismissed, prolonged or delayed for the right price. Extensive control over the allocation of resources by state officials has given rise to rent-seeking and corruption. There is widespread reliance at every level of society on membership of social networks and the ability to pull strings to get anything done. The poor and marginalized are either

* Professorial Fellow, Institute of Development Studies, Sussex University, UK.
excluded from these networks or can only participate on terms that deprive them of independent voice and agency. The pervasiveness of these patron-client relationships serves to fragment and disunite such groups, and prevents the emergence of horizontal, class-based solidarities that could be mobilized to defend and promote their interests.

The non-governmental organization (NGO) sector, which emerged in Bangladesh in the aftermath of its war of independence in 1971, was partly a response to these institutional deficiencies. It has expanded rapidly in recent decades, not least because of funds made available by international donors seeking to implement a neo-liberal agenda of reducing the role of the state. There are around 22,000 NGOs in Bangladesh today. Eighty per cent of its villages have some form of NGO presence, and around 35 percent of the country’s population directly benefit from their activities (Thornton et al. 2000). In a country of 130 million people, this suggests an astonishing outreach.

Most NGOs have certain characteristics in common. They are partly or wholly reliant on foreign funding, they see their mission as working with the poor, and they tend to rely on group-based activities to achieve their goals. In addition, over the years they have increasingly engaged in some form of service delivery. The provision of micro-finance services dominates because its stress on building micro-entrepreneurship fits neatly into the neo-liberal vision of a market-based society. However, NGOs are also involved in the delivery of health, education, safety net programs, low-cost housing and so on.

The focus of this paper is on Nijera Kori (NK), an organization that is an exception to this general rule in that it has determinedly refused to engage in any form of service delivery. Instead, it concentrates entirely on building up the collective capabilities of the poor to demand their rights. The paper will draw on both secondary studies and primary fieldwork¹ in order to examine NK’s vision, goals and activities, and what these imply for the understanding and practice of citizenship within its constituency.

¹ I would like to thank Arif Kabir, who carried out a number of the interviews cited in this paper.
II. NIJERA KORI’S VISION, GOALS AND STRATEGY

NK has been involved since 1980 with the working poor in a number of districts in Bangladesh.² It defines its constituency as those men and women who have no assets of their own but must sell their physical labor, or its products, to earn a living. Early documents spelt out what it saw as the key factors that led to the disenfranchisement of this constituency (see, for instance, Ahmed 1982).

• In economic terms, they had to sell their labor to meet their basic needs, but had little control over the terms and conditions on which this labor was sold. Consequently, they often earned barely enough to feed themselves and their families.

• In social terms, their reliance on patron–client relationships served to fragment them along vertical lines and prevent the emergence of horizontal, class-based alliances that could challenge these hierarchical structures. Their capacity for agency was further suppressed by norms, beliefs and ideologies that explain and justify their poverty and marginalization as the product of fate, fault or failure, and by practices that kept them ignorant of their basic rights.

• In political terms, they were denied voice in the collective structures of decision-making through which rules were made and resources distributed within the society. This was true in relation to decision-making forums such as the shalish, the informal body responsible for resolving conflicts and dispensing justice. It was true at the level of local government, which was responsible for the delivery of state programs, many intended explicitly for the poor. And it went without saying that it was also true in relation to national processes of decision-making.

From the outset, therefore, NK has defined the problem of poverty not simply in terms of lack of resources but also in terms of lack of voice, agency and organization; as the manifestation not simply of individual deprivation, but also of underlying structural inequities. This explains the holistic nature of its vision of social change: “To establish an exploitation-free society by changing the

² Although it’s founding members had all been active in the field since independence in 1971 (Kabeer 2003).
present system of social exploitation with the aim of emancipation of working class people” (Nijera Kori, Annual Report 1998–99).

It also explains the holistic nature of its strategy for change. NK believes that the struggle for social transformation has to be carried out in all spheres of life and at all levels of society, starting with the individual and extending to the local, the national and, where relevant, the international. And it explains key aspects of NK’s strategy for change: the purposive construction of social relations that reflect horizontal alliances of the poor and that displace the vertical patron–client relations that have kept the poor fragmented and isolated for so long. Consequently, it seeks to nurture the values of solidarity, self-reliance and collective action, rather than those of individual prosperity, personal advancement and competition associated with the neo-liberal vision of social change.

It is this reasoning that has led NK consistently and firmly to reject any form of service delivery role and to remain one of the few NGOs in the country to resist the widespread “turn to micro-credit” evident in the NGO sector since the mid-1980s. It fears that such a role could create new forms of dependency between NGOs and their constituencies, diverting the energies of both from the larger goals of transforming society and democratizing the state.

In short, in a climate that is characterized by a flourishing culture of corruption and clientilism, NK’s strategy can be described as one of “growing citizenship from the grassroots.” It is sowing the seeds of an alternative culture of rights, first, in the consciousness of its marginalized constituency, then in their relationships with each other and finally in their relationships with the rest of society.

At the heart of this strategy is a process of group formation – groups created not for administrative convenience or as social collateral for micro-finance services (as with most other NGOs), but as the basic units of new sets of social relationships between the poor and marginalized, and the foundations for the longer-term transformation of society.

Currently, NK has a total of 8,622 groups around the country, which translates into over 180,000 members, of whom half are women (Nijera Kori, Annual Report 2002). The groups meet on a weekly basis, contribute to a collective savings fund (intended to reduce their dependence on moneylenders or patrons), elect members to take on organizational responsibilities, and participate in various forms of training. As groups mature, they become more independent of NK, calling their own meetings, initiating their own
collective actions and acting as local-level leaders for the wider community. NK remains involved in providing support for activities that cover larger areas and require mediation and advocacy at local, regional and national levels.

III. TRANSFORMING CONSCIOUSNESS

As noted earlier, ideological factors play an important role in NK’s analysis of the disenfranchisement of the poor in Bangladesh. The problem of “collective inaction” is seen as a reflection of poor people’s resignation in the face of what appear to be the invincible forces ranged against them, and their unwillingness to challenge these forces and risk what little security they might have. In addition, of course, many simply do not know, or believe, that they have any rights. For poor rural women in particular, whose devalued sense of personhood reflects the intersecting asymmetries of class and gender ideologies, the sense of powerlessness is often deep-rooted.

Despite its highly structuralist analysis of injustice, therefore, NK’s strategy for social change takes the individual as its starting point. Training plays a central role in this process. It provides members with information about their rights and entitlements, and gives them the opportunity to reflect on and analyze their individual situations and how these relate to wider social inequalities. It gives them exposure to various theoretical explanations of these problems – which locate them in the deep structures of class, gender and social organization – and it discusses news and events that illustrate how these structures are manifested in other parts of the world.

NK also attaches great importance to cultural dimensions of training, and has staff with specific responsibility for developing its cultural materials – songs, theatre, stories and role play. This is not only because cultural activities liven up its training courses, but also because, as one trainer pointed out, they constitute an essential element in NK’s vision of social transformation: “We want to create a different kind of person. And to be a different kind of person, you need a different kind of culture.”

Some of this change was evident from our interviews with members of NK groups. They talked about the way in which poverty had constrained their capacity for voice and agency in the past:
Poor people were afraid to be united at that time. They were worried because they had no money, no assets. They didn’t have the perspective that would have allowed them to unite. They didn’t even have that little bit of courage that you must have in order to do something like that. They were afraid because they thought that if they challenged someone who was rich, they would lose out later because the rich would not help them out. They were scared. And they faced pressure from all directions. And as long as they were afraid like that, there was nothing that they could do.

Before we did not protest even when there was a lot of injustice and oppression within the village. We were afraid of the chairmen, the village leaders, the members of the councils. We could not even see any reason to protest. After all, they were our leaders; we used to honor them. We used to think to argue with the chairman was to commit an offence.

The changes they described as a result of their association with NK reflected both the training they had received about their rights and its organizational practices:

Now the difference is that those who are powerful in society, those who have money, they can no longer do things in the same way that they used to. A poor person now has a different understanding of things, of themselves and what they can do. And because of that, the rich cannot put pressure on the poor in the way that they used to. The laws that were there before, they are still the same laws. But we didn’t know about them, we didn’t understand what they all meant. And because of that, they could easily just force something on us. In my father’s day, my father was a farmer, he was not educated ... but now, I have some education so I understand more about society than he did. And because of that, maybe, if someone tries to trick us, blame us for something or treat us unjustly, we can protest.

Those people who were silent then now give speeches in meetings, processions and conferences. Where we have always seen that ministers and MPs are the ones who always stand on the stage and deliver speeches, now a landless person is standing in that place and giving a speech.

Now we can talk to the chairman; not only the chairman, we also face the upazilla [administrative unit] administration, the
TNO, police station and so on. Earlier we did not even know what a TNO was. Now we talk to the TNO and if there is any injustice, we protest, we *gherao* [surround in protest], we bring out processions. Before we did not have a chance to see their faces; now we sit beside them in a chair. Through our protest we hope to change society.

Some of the changes described by women members were often more dramatic than those of men because of the greater constraints they had faced:

> Before we even feared talking in front of our husbands, nowadays we do not even fear talking with the magistrate.  

> Earlier, before we joined Nijera Kori, we were afraid. We didn’t even leave our *para* [neighborhood]. Now it is completely different, we move everywhere. We even travel to Comilla [for court cases], we don’t care any longer. Before joining, I felt like an orphan, but not any longer. The group’s unity gives me strength. Now people reckon with me, respect me.  
> *(Christensen 1999, p.70)*

The women interviewed also testified to the changes that had taken place in their beliefs and attitudes:

> In the past, women in this area were confined to the home. Now they have learnt to fight the *jotedars* [landlords]. It is not possible to fight hunger sitting at home. My first right from society and from the state is a place to live. If I have a safe and secure place to live, I would be able to manage, to look after myself. But society does not give me this simple right. In addition, I have rights as a woman. I believe that men and women are equal, that having to stay within the home is against women’s rights. If the prime minister of the country can be a woman and she is able to run the country, then why do we have to stay at home?

### IV. BUILDING SOLIDARITY

Changes in individual definitions of selfhood were bound up for members of NK groups with recognition of a collective identity based on the shared interests of the poor and marginalized. NK uses a variety of means to actively reinforce this sense of identity.

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3 TNO stands for Thana Nirbahi Officer.
among its group members. The starting point for group formation is the joint savings program, which not only serves to reduce their dependence on the wealthy to tide them over in times of crisis, but also forms the basis of various kinds of collective activity. Members decide how much they will contribute each week, who will manage the funds and how they will be used.

In general, they are encouraged to think of collective rather than individual uses for their funds: the collective leasing of land or purchase of technology for use or rent. In addition, groups use their funds to support each other in various ways. The interviews came across several examples of group funds being used to tide an individual member through a period of crisis or to meet expenses incurred during participation in social movements: for instance, helping out the families of members who have been arrested or sharing their litigation expenses; rebuilding the house of a member that had been burnt by the henchmen of a local landlord during conflicts over land (see also Khan and Khan 2000). Group members also raised donations from the local community to mount various campaigns and protests.

The effectiveness of the process of building group solidarity is evident from the way in which group members talked about each other and about their relationship with the staff of NK:

When we five women stand together, then no man can get away with misbehaving with us. Because we have solidarity among ourselves, we will catch him and question him as to his misbehavior. If it is one woman, anyone can insult her without fear. It is the same for men. If poor men stay united, no one will be able to get away with deceiving or insulting them.

Many of us in this group knew each other before. We live in the same village. But since our association as a group, our attitudes have changed. Before we used not to share each others’ problems. But now we have got united, each one’s problem influences the other ... we all take care of each other.

Before, people used to lose everything by going into debt. But now we try and make ends meet through our own efforts. The basis of all our activities is to be united under the same umbrella. Nijera Kori provides us with that umbrella. The organization has brought us close to each other.

A recent review of NGOs in Bangladesh noted striking differences between the groups formed by social mobilization organiza-
tions and those formed by organizations engaged in financial service delivery (Thornton et al. 2000). Groups formed by microfinance organizations were found to be made up of members from differing social, economic and political backgrounds and to have differing lengths of membership. Their members appeared to have very limited contact with each other or with the organization’s staff outside of the weekly meetings. Meetings were focused primarily on the collection and distribution of money, and often referred to as “collection meetings” by NGO staff and group members: “During the actual samity [group] meetings, members arrive at different times, make whatever transactions they have to and leave. There is no need to sit together since there is nothing really to discuss” (ibid, p. 11).

This was in considerable contrast to experiences of those groups – NK groups were the example cited – that had been organized around the goal of social mobilization: “Most of these samities [groups] had recorded minutes of their meetings and the range of issues discussed was very wide... The samity may also meet outside of the established timings if circumstances require. In these types of samities, the role of the fieldworkers is very distinct. The fieldworker is not a “collector”, but a brother or sister, and their main role is one of advising and supporting the samity” (ibid p. 11). As a result, members of samities organized by bodies like NK “have a stronger sense of belonging to the group, and a greater set of common goals and values. For many the samity has become a central reference point in their lives.”

Discussions with a group of NK women, some of whom also belonged to Grameen Bank micro-credit groups, provided an opportunity to explore what these different forms of NGO membership meant to the women in question. When they were asked why they chose to belong to both Grameen Bank and Nijera Kori groups, given that this required them to attend two sets of group meetings a week and that there were no obvious material benefits from NK membership. This elicited the following responses:

We are all poor people. For us to get hold of 3,000 or 4,000 takas at one time is not easy. That is why we are members of Grameen Bank. If we get a loan of 5,000 takas, we can then go and get some material to work our looms. We can go and buy thread ... and we can make a good profit... With Nijera Kori, we have savings when we need it ... and we are united. No one can stop us. If someone comes to beat one of us, we all sort out the
matter together. Grameen would not do this for us. They just give us loans and take them back. That is what they are concerned about.

With Grameen Bank, it is like this: my relationship to them is based on the loans. Even if someone has died in your family, you have to pay the installment. That is the agreement you reach with them when you join. They say, ‘Even if you have a dead body in the house, you have to pay the installment. On that basis, if you are willing to take the loan, then you take it.’ But as to how we might change our ideas, how we can be given a way to improve ourselves, this is not something that they do. With Nijera Kori ... they don't give us money but they give us good advice: how we can improve our lives, or what will be good for us in order to create a better future for ourselves. We were ignorant before; now we have become wise.

Being in a Grameen samity brings you one kind of benefit, and you get something else from being a member of Nijera Kori. NK gives you knowledge. Say if my husband throws me out, if he threatens me with divorce ... then I will come to the samity. Then they will definitely do something to help me, definitely they will. And these ideas were not part of our thinking... If someone comes to the Nijera Kori samity, and informs people about some injustice like this, they will protest. Grameen people will not do that. With them the relationship is based on loans.

V. MOBILIZING AROUND RIGHTS: ECONOMIC, SOCIAL AND POLITICAL

The transformation of individual consciousness, the strengthening of analytical capacity and the construction of relationships based on horizontal forms of solidarity are the foundations on which NK members are able to engage in collective action to challenge the manifestations of social injustice in their lives. As can be seen from Table I, their collective actions straddle different spheres and combine strategies of co-operation and contestation, depending on the issue.

Economic Mobilization

Although NK does not provide any direct material resources to its group members, it does mobilize to fight for resources to which they are entitled. In areas where there is a considerable amount of khas (unclaimed) land to which the landless have a legal entitlement, struggles around land rights have been a key focus of
NK group activity. The confusing plethora of legislation surrounding land rights in Bangladesh has allowed local power-holders not only to evade legislation aimed at curtailing the size of their holdings, but also to seize government *khas* land and water bodies to which

**TABLE I**

<table>
<thead>
<tr>
<th>Issues involved</th>
<th>By Divisions</th>
<th>Khulna</th>
<th>Dhaka</th>
<th>Rajshahi</th>
<th>Ch’gong</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender issues (dowry, divorce, polygamy, rape, kidnapping and assault); resistance to fundamentalist forces and the issues of <em>fatwas</em> which attack women’s rights.</td>
<td></td>
<td>49</td>
<td>37</td>
<td>148</td>
<td>56</td>
<td>290</td>
</tr>
<tr>
<td>Movements against corruption in local government: corrupt legal practices, decisions which undermine the interests of the landless, misappropriation of wheat from food for work and food for education programs, false cases.</td>
<td></td>
<td>26</td>
<td>17</td>
<td>62</td>
<td>20</td>
<td>125</td>
</tr>
<tr>
<td>Establishment of rights over local resources, including <em>khas</em> land, water reservoirs, regaining possession of disposed land, etc.</td>
<td></td>
<td>30</td>
<td>26</td>
<td>58</td>
<td>203</td>
<td>317</td>
</tr>
<tr>
<td>Environmental issues: resistance to spread of saline shrimp culture; excessive use of chemical fertilizer and pesticides.</td>
<td></td>
<td>52</td>
<td>28</td>
<td>8</td>
<td>13</td>
<td>101</td>
</tr>
<tr>
<td>Resistance to attacks and harassment by local power holders, including eviction of the landless, illegal harvesting of their paddy, burning their houses, physical assault, etc.</td>
<td></td>
<td>76</td>
<td>36</td>
<td>69</td>
<td>44</td>
<td>225</td>
</tr>
<tr>
<td>Protesting micro-credit malpractice.</td>
<td></td>
<td>6</td>
<td>7</td>
<td>17</td>
<td>8</td>
<td>38</td>
</tr>
<tr>
<td>Fundamentalists/ <em>Fatwabaz</em>.</td>
<td></td>
<td>6</td>
<td>6</td>
<td>10</td>
<td>14</td>
<td>36</td>
</tr>
<tr>
<td>Wage-related struggles.</td>
<td></td>
<td>22</td>
<td>13</td>
<td>22</td>
<td>26</td>
<td>83</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>267</td>
<td>170</td>
<td>394</td>
<td>384</td>
<td>1215</td>
</tr>
</tbody>
</table>

**Source:** NK Annual Report.
the landless are legally entitled. With economic liberalization, and the emergence of the industrial farming of shrimps for export as a profitable new activity, local entrepreneurs have also become active in the illegal occupation of khas land, often using violent means, with a view to transforming it from agricultural use to shrimp farming. The threat presented by this new industry to the livelihoods and rights of the poor, and to an already fragile environment, has taken NK from collective action at the local level to participation in global efforts to mobilize against industrial shrimp production.

Elsewhere in the country, the focus of collective action has been on fairer wages and working conditions. The leverage that individual wage laborers can bring to bear on their employers varies considerably across the country. In more prosperous areas, where alternative avenues of employment are available, group members have been able to mobilize the support of non-members in their struggle to raise wages paid during the slack season by organizing boycotts during the busy season (Ali et al. 1998, Christensen 1999). Where, however, there are few local opportunities, so that men from landless households have to migrate outside for work, the capacity to negotiate over wages is extremely limited.

Struggles over remuneration take a different form when they relate to entitlements in the context of state-provided safety-net measures. Here, NK groups appear to have been more consistently successful in ensuring fair treatment. By holding demonstrations, “gheraoing” responsible officials and going on strike, NK members have been able to obtain their due as well as to negotiate increased rates of remuneration.

Attempts to claim their entitlements have brought NK members into direct confrontation with local elites. According to NK organizers, while rural elites continue to rely on armed lathials (muscle-men) to undermine the collective struggles of the poor, they are increasingly resorting to the use of false litigation and police harassment to achieve the same ends. As a result, at any one time, there can be up to ten false cases lodged against an NK group member. This has made legal activism an important corollary of NK’s struggles over resources. The costs associated with fighting these cases and providing support for families are met through contributions from NK’s budget and from members’ group savings. NK has also built networks of supporters among concerned journalists, lawyers, students and others within the local district
towns where it works. These provide advice and support, and draw public attention to what is going on.

**Social Mobilization**

Collective action around social issues concerns attempts to bring about change in the sphere of family, community and civil society. Gender-related violations of rights constitute the most frequent cause of collective action after economic struggles. These include such practices as verbal marital repudiation, polygamy, child marriage, dowry and violence against women. Where such violations occur within families of group members, they are addressed through group action such as threat of ostracism or group adjudication. Where they occur outside the group, members resort to protests and campaigns, as well as legal action or the threat of it.

Evidence from Ali *et al.* (1998) suggests that NK members reported lower likelihood of marriages with dowry, fewer polygamous marriages and a greater likelihood of legal divorce as opposed to verbal repudiation. They also note that NK women were more likely to take action against violations of their rights than non-members: pressuring rural elites to ensure that women’s rights were respected during *shalish* (village tribunal) hearings; filing cases with courts of law; and public mobilization and signature campaigns to ensure fair trials and so on. According to one of the women interviewed, their group activism around gender violence may have served to curtail its incidence. The fact that NK groups were prepared to demonstrate to demand justice for incidents of violence that had occurred in other districts warned those contemplating such acts to be careful: “They will know that we are protesting about incidents in faraway places; they are getting proof that our organization is strong; as such, they won’t have the same courage as before to commit such acts.”

NK’s activism on gender issues has brought its members into direct conflict with local mullahs, who use *fatwas* (religious pronouncements) as weapons of social control. Since mullahs rely on village elites for their livelihoods, their pronouncements are rarely impartial. *Fatwas* usually concern issues of morality and tend to be directed against women, although they may also implicate men. Here again, NK training and group activities have helped their members to challenge the (mis)use of religious authority to uphold class and gender privilege. NK members believe
that local religious leaders have become more circumspect in their interpretation of religious law in areas where NK groups are active because they know they are dealing with a more informed population. Group members, in turn, know that not everything that the mullahs claim in the name of religion has the sanction of religious texts (Netherlands Ministry of Foreign Affairs 1998).

NK groups have also challenged the impartiality of the *shalish*, which is often used by the powerful sections of village society to discipline, punish and dispossess the weak. NK members are now often invited to participate in *shalishes* to represent the interests of the poor. In many villages, they have set up their own *shalishes* to settle disputes, thus creating a parallel structure of jurisdiction. In one of the areas studied by Christensen (1999), around 90 percent of *shalishes* were organized by NK groups, suggesting that confidence in the NK *shalish* procedure to dispense justice extended considerably beyond its group members. The NK *shalish* often overturned the verdict of the village *shalish* or came to the aid of those who had been unfairly treated (Khan and Khan 2000).

NK group action to assert their entitlement to legally-set wage norms on government food-for-work programs can be seen as part of a wider movement on the part of the organization to hold the public sector accountable to its poorer constituency. Field interviews with NK group members suggested that they were aware not only of their *rights* as citizens, but also of their *contributions* as citizens. They saw the variety of indirect taxes and tolls that they had to pay – to purchase certain essential goods, to use bridges and public highways, to sell their wares in the marketplace – as their contribution to the public budget and the basis on which they could demand their entitlements, as well as greater accountability on the part of government servants.

The demand for greater accountability has led NK groups to organize against those who are officially responsible for ensuring service delivery. Case studies of such actions can be found in most studies or reports on NK, and also came up during fieldwork. They included a campaign against a local hospital that had not given proper treatment to a member; a refusal to pay the illicit fees routinely charged by health officials; a demand for compensation from the railway department for land that had been acquired to build railways; successful pressure on a local administration to locate cyclone shelters within easy reach of the landless; and group monitoring of the distribution of vulnerable group feeding cards and

**Political Mobilization**

While much of what NK does is political in nature, actual participation in the formal political domain was not a priority in its early years. However, this has changed as the initiation of a limited process of decentralization offers more opportunities at the local level. NK has increased the number of group members it fields as candidates in areas where it is strong, while it actively mobilizes support for pro-poor candidates, regardless of their party affiliations, in other areas. It has used its political clout wherever possible to demand that those running for local and national elections explain the policies they stand for.

Political awareness appears to be higher among NK members. Ali *et al.* (1998) found that NK members were less likely to have voted in the national elections according to the *mattabars*’ (rural elite) wishes and more likely to have voted along political party lines. NK women were less likely to vote according to husbands’ wishes than non-NK women, particularly in local elections. They were also more likely to have engaged in political mobilization than non-NK women. NK group members interviewed offered the fact that they no longer “sold” their votes as an indicator of their greater political awareness.

In their case study of local election politics in one district in Bangladesh, Westergaard and Hossain (2002) found that NK members were approached for their support by many candidates from middle-income groups, suggesting that the poor were becoming a local power factor to be reckoned with. This, as much as the number of seats they won, was a measure of their effectiveness as a political force. The authors concluded that clientelist relations of domination were weakening in the area as a result of the exploitation of new political opportunities by advocacy NGOs like NK, and the emergent political agency of mobilized groups of the poor (ibid p. 229).

**VI. GROWING CITIZENSHIP FROM THE GRASSROOTS: NK AS AGENT OF SOCIAL CHANGE IN BANGLADESH**

NK positions itself as an agent of social change in Bangladesh, challenging deep-rooted inequalities within the wider society through the provision of intangible resources, such as information,
ideas and knowledge, which build the “collective capabilities” of the poor: their ability to mobilize as rights-bearing citizens on their own behalf. The unevenness of its impact reflects the contradictory nature of the environment it is operating in. On the one hand, it is dealing with extremely resilient structures of constraint, which have an in-built tendency to reproduce themselves. Wood (2000), for instance, has suggested that these structures constitute a “prison”, whose inmates must accept the prevailing rules in order to survive, despite the fact that these rules perpetuate the arbitrary and inequitable nature of the social order.

On the other hand, however, there have been a number of changes in the institutional environment of Bangladesh that have been conducive to the project of social mobilization. Economic growth in recent years has been accompanied by a gradual decline in poverty but a fairly rapid rise in levels of social development and a diversification of economic opportunities. One result of this is that poor people are no longer as dependent for work on a few powerful landlords as they used to be. Nor are they dependent on them for credit, partly because of their improved earning capacity and partly because of the proliferation of microcredit organizations. Migration as a source of livelihood has also taken them out of the orbit of local power structures.

These changes have combined to weaken earlier patron–client relationships, as poorer sections of rural society are less likely to see an advantage in blind loyalty to powerful elites. In addition, the transition to democracy and the opening up of new opportunities in local political structures have served to bring participation in certain forms of decision-making closer to realities at the local level, while the spread of education has undermined the culture of deference that characterized relations between the powerful and the weak.

While some of these changes reflect the hidden workings of economy and society, others have been the product of purposive efforts to influence the direction and quality of change by a variety of institutional actors. The thriving NGO sector has clearly been at the forefront of these efforts, engaging with different sections of the poor in order to build their capacity to participate in newly emergent spaces. By providing alternative models of social relations that diverge to a greater or lesser degree from the earlier hierarchical models, and by disseminating new norms which help to counter older, disempowering ones, NGOs can be credited with
helping to democratize the processes of social change in the
country.

However, as noted at the outset, NGOs do not constitute a
homogeneous sector, and it is worth reflecting on what their
differing visions, goals and strategies might imply for the kind of
society that Bangladesh is evolving into. There is clearly a difference
between the models of change adhered to by NGOs that focus on
individual empowerment through the provision of various resources
and services, and models of change that focus on collective
empowerment through social mobilization, as embodied by NK.

This difference in approach reflects differences in underlying
worldviews. The first is closer to the neo-liberal worldview, in which
rational, self-interested individuals seek to improve their lives
through the pursuit of a greater share of material goods. Compe-
tition arises because the availability of material goods is finite, but
structural conflict is ruled out. Change occurs incrementally as
individuals adjust to new constraints and respond to new
opportunities. NK’s approach, on the other hand, is very clearly
rooted in a “critical conflict” worldview. It sees the problems of
society as rooted in structures that reproduce inequalities on a
systemic basis. Change can only come about through challenges to
these structures, and can take a confrontational form because of
the resistance likely to be encountered from those who benefit from
the status quo.

There is no doubt that the efforts of various NGOs in providing
credit and social services have played an important role in bringing
about change in the lives of the poor and marginalized. However,
many of these interventions have failed because of their
individualist focus, to have much effect on the deeper structures of
inequality. Any improvements they may achieve in the lives of
individuals are constantly undermined by various forms of unruly
practice on the part of more powerful sections of society.

Moreover, the ability of NGOs to seek greater accountability to
the poor on the part of government is often compromised by their
own role in service delivery. A recent World Bank report on
corruption in Bangladesh made this point, noting that while NGOs
can play an important role in monitoring and checking government
corruption, they are likely to be most effective when they do not
attempt to combine this watchdog role with participation in
government-funded development and service delivery programs. The
point is also made by Thornton et al. (2000), who note that there is
a basic tension between NGO service delivery organizations (whether government-funded or not) and their capacity to demand accountability and responsiveness from public sector services.

This was precisely the rationale behind NK's decision from the outset to eschew any form of direct delivery role, leaving this to the government and other institutions. However, while NK sees the state as the only institution with the reach, the authority and the mandate to uphold the basic rights of all citizens, it also recognizes that the state in Bangladesh is unlikely to perform this role as long as it is dominated by powerful interests who benefit from the status quo and have neither the incentive nor the sanction to lead a process of change. Pressure for such change must come from those outside the state who have no stake in the status quo.

This is the role that NK sees for itself. By providing the poor and marginalized with knowledge about their rights, and with some degree of security in their dealings with more powerful sections of society, it seeks to shape the direction of social change through the purposive collective agency of the poor, rather than leaving it to the "unintended consequences" of market forces or the arbitrary actions of the state. And while the size of the organization limits the scale of the change it is able to bring about, there is certainly evidence that NK's impact goes beyond the immediate confines of its group members. Rao and Hashemi observe that the actions of NK groups in challenging instances of economic injustice have far-reaching implications, both "in terms of increasing group solidarity and exhibiting the power of organization to other poor people as well as the rural elite" (1999, p. 28). Similarly, Christensen notes that NK group mobilization around gender injustice may be leading to important changes in what are perceived as acceptable norms of behaviour: "This change in social norms is directly linked to women's greater acknowledgement of their rights. They have learnt that there are rules beyond the jurisdiction of their kin and the village shalish that recognize rural poor women and protect them. The language of the law allows them to invoke the law to their advantage in family conflicts as well as in village struggles" (1999, p. 55).

Moreover, the transformative effects associated with membership of organizations like NK can continue long after the group may have disbanded: "The rights of the poor may still get trampled but they do not get ignored" (Rao and Hashemi 1999, p. 35). This is because what members learned through their membership –
including the possibility of challenging injustice and the hope for a better future – is not easily forgotten or abandoned. I end the paper with what two NK members had to say on this matter:

If I was to talk about the main strength of our struggle, I would say that before, we poor people did not realize many things. My father was a sharecropper, that is also what I did. We used to think that we would have to spend our days doing what our fathers had done. Those with assets would make money. The poor would remain poor. Since joining Nijera Kori, I have come to know the poor are not born poor; they are made poor through exploitation. They too have a right to what there is in society. As citizens of Bangladesh, the constitution gives them the right to food, shelter, education, health and housing.

Nijera Kori may not be there in the future, but its ideals and objectives will remain with us. Our main strength lies in our organizational base. NK works as our umbrella. But if in the future it ceases to exist, even then the landless associations will be able to survive because of their strong identity. The basis of our existence will be what the members have learned about the difference between what is just and what is unjust.

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Compliance Versus Accountability: Struggles for Dignity and Daily Bread in the Bangladesh Garment Industry

by

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The women workers in the Bangladesh garment industry have had more public attention to their rights than any group of workers in the entire history of the country. (Journalist, Development Research Centre (DRC) Inception Workshop on Inclusive Citizenship, Bangladesh, 2001)

I believe that the “culture of compliance” is far ahead in the garment manufacturing sector and changes in the RMG [ready-made garments] sector are dramatic compared to other sectors. (Director, Labor Department, Bangladesh, 2004)

I. INTRODUCTION

The process of globalization has brought workers in the poorer countries of the global South into direct competition with workers in the wealthier countries of the global North, exposing the stark inequalities in the conditions under which they work to the full glare of international publicity. Trade unions, the media, human rights activists and others in prosperous Northern countries have made consumers aware as they never were before about the conditions under which some of their regularly purchased consumer items are made. The international garment industry is one that has consistently attracted the attention of these groups

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and given rise to various campaigns, including Students against Sweatshops, the Clean Clothes Campaign and OXFAM’s Make Trade Fair (Luce 2006).

The working conditions of Bangladeshi export garment workers, predominantly women, have featured regularly in these campaigns: the absence of written contracts, long working hours, delayed payment of wages and routine violations of health and safety standards. Since working conditions in the garment industry are no worse, and generally are considered to be better, than those prevailing in the rest of the economy, the intense concern with garment workers’ rights, referred to in the first quote above, reflects both the publicity generated by international campaigns and the unusual visibility of its largely female workforce in a society in which women have historically been regarded as a vulnerable group, in need of protection and hence confined to the shelter of the home. Currently the export garment industry employs 1.8 million workers, of whom 1.5 million are women. The mass entry of women workers into a sector hitherto dominated by men dramatically changed the character of the urban manufacturing labor force in the span of a few years¹ and explains some of the attention they receive domestically.

The second quote comes from the Director of the Labor Department, the government department responsible for ensuring that workers’ rights are upheld. It testifies to one of the consequences of the intense public scrutiny on the working conditions prevailing within the export garment industry. This is the proliferation of codes of conduct imposed by the various international buyers operating in the export garment sector and anxious to avoid adverse attention from their consumers at home. The Director pointed out that the attempt at self-regulation on the part of garment manufacturers reflected the fact that non-compliance with basic labor standards in this sector carried real penalties in the form of lost orders from their international buyers.

¹ The percentage of working women in manufacturing rose from around 4 percent in 1974 to 55 percent in 1984-85, while urban female labor force participation rates rose from around 12 percent in 1983-84 to 26 percent in 1999-2000 (Kabeer and Mahmud 2004a).
It is worth noting that these observations were couched in the language of “compliance” and that the compliance in question was to a voluntary code of conduct drawn up by the affected section of the private sector. He was not referring to compliance with national labor laws drawn up by the state to set out the rights of all citizens of Bangladesh, including its garment workers. There is clearly a gap between compliance of the kind the Labor Director is referring to and the kind of accountability that is essential for making rights real.

There are two key elements to the concept of accountability: answerability, the right to make claims and demand responses; and enforceability, the mechanisms for ensuring that answers are backed by actions and for sanctioning non-responsiveness (Newell 2006). Accountability thus gives “teeth” to the concept of rights and hence is indispensable to the status and practice of citizenship. A “culture of compliance”, on the other hand, refers to the willingness to abide by a given set of regulations (whether laws or codes). It is not the same as a culture of accountability, but it needs not be incompatible with it, and may even contain the seeds from which such a culture can emerge. Whether it has done so or not in Bangladesh is a matter for empirical investigation, one that will be addressed in this paper. We will be basing our analysis on in-depth interviews with 20 garment workers, with relevant officials of the Department of Labor, employer representatives and factory managers, with trade union officials and NGO workers. The paper also draws on previous research carried out by the authors as well as media reports and the secondary literature. In the next section, we sketch out the context in which our analysis is located.

II. THE CONTEXT: POVERTY AND PATRIARCHY IN A LABOR-SURPLUS ECONOMY

There are a number of features of the Bangladesh context which represent “the initial conditions” from which cultures of compliance and accountability have had to grow. Bangladesh was, and remains, a poor, largely agrarian economy, with 45 percent of its population below the poverty line; it is one of 49 “least developed countries” in the world, according to the United Nations (2002). Although industrialization dates back over a hundred years, it has
been very narrowly based, confined largely to the processing and manufacture of jute, until recently its main export. The spread of market relations and infrastructural development has led to increased rates of economic growth and a small but steady decline in poverty over the 1990s. However, growth in agriculture has not been sufficient to absorb this annual increment and there has been increasing diversification into off-farm activities in rural areas, partly assisted by the spread of microfinance activities, and migration into urban areas.

Bangladesh was, and remains, a society that continues to be largely governed by patron–client relations. The intersection of patron-clientelism and a modern state apparatus with monopolistic control over rules and resources created a particular type of patrimonial ruling élite in Bangladesh (Khan 2001), whose search for political power and personal profit is pursued through the granting of special privileges to politically influential actors – including industrialists and trade unions – in return for their support at national and local levels.

Finally, Bangladesh was and remains an extremely patriarchal society, with strict cultural constraints on women’s participation in the public sphere and their confinement to reproductive work and the domestic domain. Socialized into this role from an early age, denied independent access to economic resources and defined as life-long dependents of male breadwinners and guardians, women occupy a subordinate position within the family as well as the wider society. Women have consequently constituted a significant proportion of the country’s pool of “surplus” labor, particularly in more close-knit communities in rural areas, where gender-specific constraints on their ability to take up paid work are more severe.

The expansion of export-oriented garment manufacturing in Bangladesh coincided with a period of radical economic reform. Under the aegis of the World Bank/IMF, the Bangladesh government had undertaken a series of measures since the late 1970s to move away from a strategy of protection for import-substituting domestic industry towards a more liberalized, open and export-oriented economy. Various incentive schemes channelled domestic investment into the export sector so that around 95 percent of garment factories in the country are owned by local
private capital (Kabeer and Mahmud 2004a). However, foreign direct investment was also encouraged through the establishment of export processing zones (EPZs) outside Dhaka and Chittagong, where the country’s few joint ventures are located.

The dramatic expansion of the export-oriented RMG sector has also seen a substantial expansion of its workforce from a few thousand workers in the early 1980s to around 1.8 million workers in recent years, of whom 80 per cent are women (Kabeer and Mahmud 2004a). There has been a gradual growth in the share of knitwear to woven garment manufacturing and here there is a somewhat higher percentage of men. Although the export garment sector is, strictly speaking, in the formal economy and hence subject to national labor legislation, it is characterized by informal economy characteristics: easy entry and exit, an absence of written contracts, irregularity of payments, violations of health and safety regulations, long hours of overtime, low levels of unionization and high rates of turnover in the workforce. The main exceptions to this are to be found in the country’s EPZs, where more formal conditions exist, but these account for a very small proportion of total garment employment.

These working conditions, which are not unique to Bangladesh but prevail to a lesser or greater degree in export garment factories across the world, have led to various campaigns by coalitions of trade unions, students, NGOs and consumers including the living wage campaign described in Luce (2006). Faced by the threat of boycotts of their goods, the major buyers in the global market for clothing have adopted codes of conduct to regulate the conditions under which those goods are produced.

The question we are addressing in this paper is the extent to which the proliferation of these codes in the Bangladesh garment industry has brought about a “culture of accountability.” Their adoption is only the beginning of a process of translation, and a variety of different actors have a role to play in ensuring that the translation does indeed occur. Along with the buyers who draw up the codes and the employers who are responsible for their implementation, there is the state, which has overall responsibility for upholding the rights of workers; the trade unions, who are considered to be the organized voice of workers; and, of course, the
workers themselves, who have most to gain from the growth of a culture of accountability. We will consider the views and roles of each group in turn.

III. MONOPOLY POWER AND CONSUMER CLOUT IN BUYER-DRIVEN GLOBAL VALUE CHAINS

Competition in the clothing market revolves around prices and brand names. The major clothing retailers are constantly driven by the need to respond to fashion-led fluctuations in the demand for clothing at increasingly competitive prices. The fact that it is a highly labor-intensive industry means that this price competition has revolved to a significant extent around the cost of labor. The production process lends itself to subdivision into an increasing number of routine tasks, each of which can be carried out by increasingly unskilled, and hence increasingly low cost, labor.

The increasing divisibility of the production process allows different stages of garment manufacturing – from design to delivery – to be located across the globe on the basis of comparative advantage, giving rise to an internationally networked production system in which the same item of clothing may be designed in one location, cut in another, assembled in another and delivered for final sale in yet another. The producers of garments, particularly those involved in its labor-intensive assembly stages, are mainly based in the low-wage countries of the South, so that these countries enter the production chain as providers of low cost labor, competing with each other for orders from buyers of clothing in the international market for garments.

The restructuring and concentration of the clothing retailers over time mean that today buyers are operating in a buyer-driven commodity chain in which large numbers of producers compete for orders from a relatively small number of transnational volume retailers. They are consequently in a position to use their monopolistic power to threaten to withdraw orders from a factory or a country and to dictate conditions to producers. At the same time, their drive to reduce costs continuously has led them in search of ever-cheaper labor working in ever-more exploitative conditions.

However, this footloose strategy and its consequences have attracted the attention of trade unions, consumers and labor
activists across the world. As a result of the threat of adverse publicity and consumer boycotts exercised by their campaigns, most of the major garment retailers now espouse the principle of “corporate social responsibility.” They have drawn up their own codes of conduct regarding the conditions on which they are prepared to place orders, and have set up departments and full-time staff to promote the socially responsible face of their business.

IV. THE STATE AND PUBLIC POLICY IN AN ERA OF DEREGULATION

While the interest of the buyers is focused on profits and working conditions in the export sector of Bangladesh, the state is, in principle, responsible for promoting the economic growth of the country and the welfare of its citizens. The pursuit of growth and foreign exchange explains why the state played an extremely active and innovative role in the promotion of the export garment industry from its inception. The fact that many of those in government own garment factories may have also contributed to their active engagement.

The New Industrial Policy of 1982 introduced various incentives to encourage local entrepreneurs, including tax concessions and special duty-free import facilities. However, as far as the interests of its workers are concerned, the state has displayed an attitude of apathy bordering on indifference. The Bangladesh constitution, adopted in 1971 after independence from Pakistan, spelt out the fundamental rights of its citizens and asserted the state’s responsibility for emancipating “the toiling masses” from their exploitation. In reality, however, less than 3 percent of the workforce is protected by the existing legislative framework (Mondol 2002: 121). Instead, labor legislation in Bangladesh both reflects and reproduces a dualistic economic structure in which a small formal sector coexists alongside a large and growing informal economy.

A great deal of existing labor legislation is inherited from the period of colonial rule in the subcontinent, when it was formulated for the benefit of workers in the urban industrial sector who had the potential to make trouble for their rulers. In the Bangladesh context, this was largely confined to a small number of textile and
jute-related manufacturing units. At present there are 51 labor laws in existence: while only 13 of these were actually passed in the colonial period, most of the others draw on rules and regulations which originated in that period (Mahmud and Ahmed 2005). Today they mainly benefit the urban, male workforce employed by the public sector and a tiny formal private sector found in financial services and larger-scale manufacturing. The vast majority of the workforce – which is employed in agriculture, services and cottage industry, the informal or so called ‘unorganized’ sectors\(^2\) – has little or no legal protection.

Labor legislation in Bangladesh not only excludes the majority of workers in Bangladesh, but also fails to protect those it formally includes. There is an elaborate and hierarchical infrastructure for ensuring compliance with national regulations within the labor ministry, also inherited from the British period, which exists only on paper.

Because the number of inspectors is far lower than is required, there is an implicit institutional bias in the inspections carried out in favor of more dramatic accidents and “dangerous occurrences” at the expense of the routine violations of labor rights that the more vulnerable sections of the workforce are likely to face. And a blind eye is often turned to those violations that do come to the attention of inspectors if factory owners obtain necessary clearances through the payment of bribes to poorly paid and generally overworked inspectors. Finally, officials interviewed for the research suggested that penalties for non-compliance with the existing laws were not severe enough to act as a deterrent. The flaws in the procedures for enforcing labor legislation are evident from the fact that over 10,000 court cases are pending and collection of fines in the last 10 years has been miniscule (personal communication with Director of Labor Department, Bangladesh, 2004).

The government took a decision in the early 1990s to reform its labor laws in order to bring them up to date to deal with the challenges of the contemporary economy. A high-powered commission was set up in 1992 with a view to dropping or

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\(^2\) In 2000 three-quarters of the workforce was employed in the informal sector (calculated from the 1999-2000 Labor Force Survey, 2002).
modernizing old laws, introducing new ones and developing a unified labor legislation that would cover workers in both formal and informal sectors. A draft code was drawn up in 1994, but with changes in governments, has yet to be finalized and adopted. There has been a long process of consultation around these changes and unprecedented participation by different sections of civil society, including the trade unions. The next challenge, of course, is to get the law finalized and, even more challengingly, implemented. The country’s track record on implementation does not inspire optimism: in the words of a senior official from the Department of Labor, “We will need a law to implement the new law.” However, one of the new trade union federation leaders was hopeful:

If the new Labor Code were passed, it will improve the situation a great deal. The New Labor Code has had much more airing than any other. There was a tripartite consultative committee, and workers had more input. If this code is passed, we can make more reasonable demands – demands that we can stand by.

V. EMPLOYERS’ STRATEGIES AND THE INFORMALIZATION OF THE LABOR CONTRACT

The initial emergence of the export garment industry in Bangladesh was almost accidental, a product of the search by East Asian firms using “quota-hopping” strategies to bypass the Multi-Fibre Arrangement (MFA) regulations in the late 1970s. The subsequent adoption of a more liberal trade regime brought into existence a number of domestic entrepreneurs, many with no previous experience of running industry but who were able to take advantage of the opportunities available in a largely informal economy with a large pool of low cost and already “flexible” female labor. Despite its ad hoc beginnings, however, it became clear early on to the garment employers that they needed to organize themselves to deal with the challenges of operating in the global economy.

The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) was established in 1987. While it began by lobbying with government for the interests of the industry, inevitably it has been drawn into international controversies about labor standards and played an increasingly proactive role in this issue, undertaking various social programs in collaboration with the International
Labor Organisation (ILO), the United Nations Children’s Fund (UNICEF) and various national and international NGOs. In 1998, it set up procedures for arbitration between workers and management in collaboration with the leading trade union federations in the garment sector in order to avoid time-consuming processes of resolving these through the labor courts. As many as 10 federations of garment workers, representing several thousand union and even more “non-union” members, are institutional partners in these procedures. Disputes frequently go in favour of workers, primarily because employers have been accustomed to violating workers’ rights with impunity and, therefore, do not take precautions to disguise their actions. Evidence that they now search for pretexts to sack “troublesome workers”, or seek to make their lives so difficult that they leave of their own accord, suggests that the threat of immediate arbitration is having some effect.

With the proliferation of codes of conduct among the international buyers, the BGMEA has also taken on the task of developing a uniform code of conduct as the basis of future contracts in the industry. The BGMEA has thus become a key actor in developing institutional mechanisms for establishing responsibility for labor standards. This role did not emerge out of sudden conversion to the principles of corporate social responsibility, but out of the recognition that, in a ruthlessly competitive market, demonstration of compliance was becoming a source of competitive advantage. Employers have thus gone through a process of education about the nature of global competition in their sector. As the Managing Director of V Apparels commented: “In the beginning it was beyond the imagination of factory owners to provide such facilities for the workers. But now owners believe that without compliance it is not possible to stay in this highly competitive business. So there is no alternative.”

However, while employers have formalized their relationships with each other and with the government, their relationships with their workers, and their attitudes towards them, remain rooted in the mindset of the informal economy. Interviews with 13 employers carried out in the late 1980s concluded that they could be positioned on a continuum extending between those who viewed their workers as commodities to be exploited as ruthlessly as
possible and those who viewed them in clientelist terms, to be treated with benevolent paternalism (Kabeer 2000). None saw their workers as citizens with rights and obligations.

Little has changed today. There is a new breed of employers who have been shamed by the negative image that the industry has acquired in the international arena or influenced by the rising tide of women’s activism in the country, and made considerable efforts on their own initiative to improve working conditions in their factories. However, they remain a minority. Of the rest, there is at best paternalism and, at worst, ruthless commodification. Some employers present themselves as responsible for the welfare of the young girls from the countryside who have left their parents and their homes to work in the city: “they are like my daughters”. Others regard their workers as little more than bonded labor, hired to provide maximum labor at minimum cost. Some expect gratitude and loyalty in return for the privilege of a job, others use threats and coercion to impose discipline.

Such attitudes serve to reproduce and justify the informalized labor practices of employers. Some employers thought workers behaved like workers in the informal economy, coming and going as they pleased, and neither expected nor deserved to be treated like workers in the formal sector. This construction of garment workers as lacking “professionalism” and hence undeserving of formal treatment is evident in the description provided by one managing director interviewed: “Actually they don’t like to work under any rules. They work for some days, if they need to go home they leave without any notice and come back to join another factory.”

From the perspective of most employers, the imposition of codes of conduct by buyers is seen as simply another set of conditions (along with meeting their deadlines and observing quality control) that have to be met in order to stay in business. Consequently, working conditions have improved over time in their factories, most visibly in the EPZs, but also in factories which deal directly with buyers rather than on the basis of subcontracted orders. Improvements relate mainly to paid leave, maternity leave, overtime pay and medical care. However, there were two telling indicators of the limits of what company codes achieve: less than 5 percent of the garment workers reported a presence of a trade union in their
workplace (none of the workers outside the export industry did so) and only around 20 percent had heard of the country's labor laws (Kabeer and Mahmud 2004b). Codes thus appear to have more impact on workers’ welfare than their rights.

It could be argued that since Bangladesh generally lacks a culture of rights, these employers are simply reproducing the attitudes of their society. However, these employers as a group have also benefited from state largesse a great deal more than their employees or, for that matter, employers in other sectors. An equally persuasive counter-argument might be that they owed a great deal more by way of social responsibility to their workers than the simple generation of jobs. Company codes of conduct could thus be seen as the attempt by international buyers to enforce this social responsibility, given the failure of employers to do so voluntarily and the state to compel them. On the face of it, therefore, codes of conduct may indeed be planting the seeds of a culture of accountability within the corporate sector in Bangladesh.

Unfortunately, there is a great deal of well-founded scepticism on the part of Bangladeshi employers towards these codes, which somewhat undermines this interpretation. Many see them as a public relations exercise on the part of international brand name companies, concerned about their public image, to maintain a facade of social responsibility with their consumers while covertly passing the cost of compliance to their producers. A number of employers complained with bitterness about the double standards of these companies, who combined their demands for increasingly onerous and expensive quality and labor standards with a steady reduction in the prices they offered to their producers. One employer who has been in the industry for many years commented:

We follow factory laws which say that after three months, you have to make your workers permanent, that if we sack a worker, we have to 'show cause', have an enquiry. But our factory laws are not enough for US buyers. They each have their own codes – how many square feet per workers, how much light, how high the fire extinguisher should be. [...] Still I am prepared to comply with all their codes if they increase the price they give me. Smaller factories are closing down because prices are falling.
Another employer pointed to the implications of flexible business practices:

There is no such thing as a permanent contract in this business. None of the buyers will give you a permanent contract and say okay, we have booked orders with your factory for at least the next two years.... They will work from contract to contract and demand shorter and shorter delivery times.

Thus, if garment producers profit from keeping their relationships with their workers as informal as possible, using the threat of dismissal to discipline their workers, international buyers in turn use their monopoly power in the global market for clothing to keep their relationship with their producers as informal as possible, using the constant threat of relocation to create a permanent condition of insecurity among their suppliers across the world.

VI. TRADE UNIONS AND THE POLITICS OF COLLECTIVE ACTION

Although not all buyers include the right to organize in their codes, international campaigns to promote improved working conditions in the export garment industry have placed particular emphasis on this. Trade unions are seen as the concrete expression of this right. Both law and constitution in Bangladesh recognize the right of workers to freedom of association, to join unions and, with government approval, to form unions. Unions in Bangladesh are enterprise-based and registered with the Ministry of Labor if 30 percent of workers in the enterprise become members. These unions form the basis of larger federations which tend to be organized by sector.

However, trade unions are virtually absent, not only from the garment industry, but from the economy at large. Our recent survey found that only 5 percent of EPZ garment workers, 1 per cent of export garment workers outside the EPZs and none of the non-garment informal-economy women workers reported the presence of a trade union at their place of work (Kabeer and Mahmud 2004b).

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3 The exceptions are government civil servants and security-related employees who are forbidden to join unions. Until recently, unions were banned in the EPZs. Under pressure from the US government, limited trade unionism will be allowed in the EPZs from 2006.
One important factor has been the hostility of employers. Unions were generally regarded as troublemakers. Some used paternalistic relationships to ensure worker loyalty, the rest resorted to a variety of coercive tactics, having workers beaten up or arrested, lodging criminal cases against them, and so on. There is therefore a high cost associated with exercising the right to organize in Bangladesh.

However, the problem also lies with the trade unions themselves. They tend to be associated in the public mind with confrontational struggles in pursuit of their own interests by a privileged and protected minority of workers. Trade unions have a history of aggressive politics towards employers because prior to Bangladesh’s independence in 1971 most employers were non-Bengalis, reinforcing the nationalist case that Bengalis faced discrimination in their own country (Mondol 2002). Nationalization of major banks and industries after Bangladesh’s independence meant that most trade unions have been confined to public sector administration, banks and industries where units are larger and easier to organize, but which are also among the better-paid sections of the workforce. Trade union membership thus accounts for less than 3 percent of the total workforce and only one-third of the formal workforce (Mondol 2002:121).

In addition, all the major unions are affiliated to political parties. Consequently, they tend to represent the competing political agendas of their parties rather than the interests of their members. During periods of political unrest, quite frequent in Bangladesh, union federations organize on partisan lines, calling for nation-wide stoppages and strikes –which, of course, lead not only to the well-publicized losses of the country’s industrialists, but also to the less well-publicized loss of income of the working poor, including their own members, across the country.

There are currently about 14 federations of garments workers unions working in the country, but some exist in name only and are not registered with the Directorate of Labor (Khan 2001). They do not have a great deal of incentive to be accountable to their membership because their bargaining power with employers comes from their party-political affiliation and is largely independent of their membership base. Some factory owners describe union leaders as “brokers” who “milk” both sides. They allege that, in
times of industrial conflict, federations take money from owners in order to “buy off” prospective troublemakers. At the same time, federation leaders take money from their largely female membership by promising protection from the police or the employers’ musclemen (Khan 2001).

The lack of accountability to their membership on the part of the federation leaders also reflects the social distance between the two. The leadership is almost overwhelmingly male and drawn from activists in political parties or former student leaders who have had very little previous involvement with the garment sector or its workers. They tend to blame the workers themselves for their lack of unionization. Many have a university degree and view the passivity of female garment workers as the product of their rural backgrounds, their illiteracy and their general backwardness: “Since the women are illiterate they do not understand what a labor union is and that we are trying to improve their working conditions. We visit them but they hardly listen to us because they cannot grasp the idea of solidarity and unity” (Dannecker 2002: 222).

Workers in turn do not appear to have much faith in unions. They spoke of past betrayals, of collusions between union leaders and management either because of shared political affiliation, in which case management is given an easy ride, or because they have been bought off. They complained that federation leaders were only visible when some factory conflict or agitation captured the newspaper headlines, but had little to do with the everyday demands and struggles of workers. As one male factory leader observed: “During our agitation, I saw lots of federations. I don’t know why they all came here, however, they don’t come here now. I cannot say why they don’t come”

However, not all attempts to organize workers can be dismissed as politically motivated machinations on the part of union leaders. As the importance of the industry has become established, as the slow but steady rise in female labor force participation across the economy has become evident, and as human rights activism has grown across the country, some of the more progressive parties have begun to devote more attention to the challenge of organizing women workers and addressing their grievances.
The Textile and Garment Workers’ Federation, for instance, has been active in the industry since 1990 and has around 6,000 unionized members who pay dues and 40,000 “non-unionized members” in those workplaces where employers do not recognize unions. The latter pay a fee when they join but do not pay dues. Most of their members are in the larger factories, as they find it too difficult to organize the workforce in the small subcontracting factories. The federation is moving towards a more formalized mode of representational politics in place of the adversarial politics which has been the hallmark of employer–union relations so far. As one of its leading representatives put it:

Unions are a right under the ILO, but they are also the law of the land. I recognize why employers won’t want a union, but the government sides with the employers. I am much more angry with the government about this than with employers…. We have agreed on procedures for negotiation. When we agree on a demand, we sign, but the employers gradually violate the agreement. The government should enforce this ... I favor social monitoring systems – civil society, unions, workers – to pressure the government to enforce laws.

The Bangladesh Independent Garment Workers Union Federation (BIGUF) was founded with United States Agency for International Development (USAID) funds and supported by the Solidarity Foundation in the US, an affiliate of the American Federation of Labor–Congress of Industrial Organizations (AFL–CIO). It has also been extremely active. It calls itself “independent” because it is not affiliated to any political party, although of course in the view of some of the labor activists, it is seen as dependent on the goodwill of USAID and the AFL–CIO. However, its leadership is made up of active, rather than token, women members who were themselves once garment workers, in contrast to the middle-class origins of most other union leaders. It pursues a variety of strategies to organize garment workers, visiting them in their homes, organizing cultural programs to motivate them, encouraging them to engage in collective bargaining with management and providing legal education as well as legal support in disputes with management.

Karmojibi Nari (Working Women) is the other federation led by a woman. Founded in 1991, it is affiliated to the leftist Workers’ Party, and partly financed by more progressive international NGOs
like War on Want. It has also opted for neighborhood-based organization of women workers and the provision of legal education and support but, unlike the BIGUF, it focuses its efforts on all women workers, not just those involved in the export garment sector:

First, we have to organize the women, then we promote the union. We work by forming cells... In Dhaka, we work in 12 areas: bidi, shrimp, construction, home-based work, industrial, digging for construction, handicrafts, printing and dyeing. Half our membership is from the informal sector ... Trade unions are very important – true trade unions. Those that are working to implement laws, enforce workers’ rights. Those that are truly in support of the workers. You can't solve any problem if workers have no union of their own. Even the health and safety laws – you can have the law, but only the workers can enforce it... Ours is a culture of favors... We say, don’t go asking for favors: demand your rights!

There are, along with trade unions, a range of other civil society organizations which focus primarily or exclusively on issues related to rights. Prominent among these is Ain O Salish Kendra (ASK), which has been working on legal issues since 1994. Initially it worked with two trade unions to provide training to garment workers on labor law and trade union rights. However, it found that workers tended to turn to them for advice on family-related rather than work-related problems. Workers were not interested in forming trade unions or in taking legal action against their employers. They preferred to change jobs if they had a grievance against an employer. The initiative closed down but the organization continued, in collaboration with a number of NGOs, to provide legal support and education to workers through its six legal clinics in Dhaka. Discussing the culture of accountability within the industry, one ASK representative felt the problem lay partly with the nature of the workforce, who “haven't developed any kind of professionalism yet. Most of them do not think of this job as a career.” He believed that women workers took on these jobs temporarily, that many would not continue to work after marriage and that, in any case, the levels of exploitation in the workplace ruled out working for more than a few years. However, he also believed that training succeeded in bringing about some change in the attitudes of workers, giving them greater self-confidence and the
willingness to challenge exploitative practices at work, something that had been almost unheard of in the early stages of the industry.

VII. WOMEN WORKERS AND THE STRUGGLE FOR DIGNITY AND DAILY BREAD

As we have seen, women workers have been variously constructed by employers as unprofessional and lacking in workplace discipline; by trade union leaders as illiterate, backward and rural, and unable to grasp concepts of unions and solidarity; and by other civil society actors as “temporary” workers, likely to leave once they get married. These negative stereotypes are not devoid of an element of truth. Certainly the vast majority of garment workers are young women, socialized into docility and subservience to authority, mostly illiterate or with very low levels of education. They have migrated from the countryside, where notions of workplace discipline, trade union organization and worker solidarity have little purchase.

What is also relevant, however, is the fact that these women come from poor households, with few options in the labor market and only their family as a safety net to fall back on should they lose their jobs. Such factors would tend to constrain militancy on the part of any worker. But additionally, in an economy in which women historically have been confined to a limited number of economic activities and where there is an apparently unlimited supply of female labor in search of jobs in the garment sector, women with jobs are particularly likely to be cautious about making demands or taking stands that might jeopardize their employment. Thus, while their illiteracy, gender and origins may play an initial role in explaining women’s reluctance to protest their conditions, it is the larger structural constraints on their capacity to act on their own behalf, and the costs they may incur if they were to try to do so, that prevent the majority of women workers from standing up for their rights.

However, like other actors in the economy, women workers have not remained untouched by the forces of change in the larger society. Intense media coverage of their working conditions, increased attempts to mobilize them and the involvement of a wider range of actors than traditional trade unions have all served to raise
their knowledge and awareness of their rights. How has this affected their capacity to take action?

Statistics on trade union membership and knowledge of labor laws may underestimate the actual degree to which workers know about their rights and are willing to take action to claim them. Time, both personal and historical, emerges as a key factor in the evolution of workers’ consciousness. Each young woman who arrives fresh from the countryside needs time to adapt to the very different rhythm of work in the urban factories compared to the rural economy, and she also needs time before she understands what her entitlements are. Recent cohorts of workers may be coming into the factory with a different level of consciousness than earlier cohorts, however. People in the countryside are now better connected with what is going on elsewhere in the country than they were in the early years of the industry because of improvements in transport, communications and media, while rising levels of female education mean that recent garment workers are at least more aware of what is going on around them. According to Shefali, a female garment leader, NGOs have also played an important role in disseminating information about workers’ rights:

   Earlier it used to be much more difficult to make the workers understand different issues. But now they understand the importance of organizations, when a worker loses their job but eventually gets it by filing a case through the labor court they stand to gain much…. Now they understand about the ILO convention and the law, and they ask for information.

Workers may also have become less willing to put up with instances of injustice in the workplace. Many take action as individuals. Resigning from the factory is still the most frequent individual response to injustice, a silent form of protest, and one that women resort to more frequently than men, but there were also instances of workers taking a more collective approach to dealing with problems, such as staging walk-outs or threatening the manager. From our interviews, it was clear that many women are learning the principles of collective bargaining. There were a number of cases when workers got together, sometimes

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4 We use the term “garment leaders” to refer to those who are active within their own units but may or may not have connections with any of the larger federations.
spontaneously, sometimes in a planned and coordinated way, to undertake factory-wide protests which often spilled out onto the streets. Most of these protests revolved around issues of wages and overtime rather than workplace conditions, because, as workers themselves said, “getting paid their wages on time is the biggest problem of garment workers.” These incidents are often reported in newspapers. In one case, workers agitating over three months’ wage arrears were arrested on charges of assault: 72 of them, all women, were given bail but 13 were taken into custody (*Daily Star*, 12 November 2004). In another case (*Daily Star*, 5 September 2004), women workers took to the street in support of a male worker who had been struck by his manager for demanding workers’ overtime dues. The management later fixed dates for settling the workers’ dues in phases.

Accounts of such spontaneous street-level protests make two points clear. First of all, women workers are active participants in many of these protests. The second point is that, perhaps predictably, the protests are generally led by male workers. One female worker explained male leadership partly in terms of their greater physical strength – which meant they were better able to look after themselves in a confrontation – as well as their greater knowledge of their rights. Another pointed to the importance of women’s earnings for their families and their fear that they would not easily find another job. Clearly, greater activism among women suggests they have been able to overcome some of the fears and inhibitions associated with being women – but not all of them.

Finally, there were examples of more organized forms of collective action by garment workers that provide insights into some of the potentials and limitations of workers’ struggles in the garment sector in Bangladesh. One example of organized collective action came from Alam, who had had long-standing connections with a union federation. He had participated in the campaign when a number of federations got together and put five basic demands to the BGMEA: recognition of the right to organize; maternity leave; an appointment letter; a weekly holiday; and a minimum wage. His view with regard to a strike he had led in 2001 against an employer who did not observe the five demands was that although they did
not win their demands, the day-to-day abusive behavior towards workers decreased:

Certainly our agitation had an impact in reducing the verbal abuse of workers. Due to the agitation, they saw that the workers had become united, if they continued their agitation, it might get spread throughout the country and in that case the buyers would also create a fuss.

There is thus no linear story of progress that emerges out of these accounts, of victories gained leading on to further victories. Some workers felt that conditions had improved after a protest, some felt they had worsened. Employers made promises in order to quell a disturbance, but used every pretext subsequently to victimize or get rid of the leaders. However, changes in consciousness were often permanent and the leadership that developed did not simply fade away when a struggle was lost but went on to other factories to start the job of organization once again.

VIII. COMPLIANCE AND ACCOUNTABILITY IN BANGLADESH

The question that we set out to answer in this paper is the extent to which the emergence of what a government labor official described as a “culture of compliance” within the export garment sector in Bangladesh has contributed to the growth of a culture of accountability. We have described some of the elements in the process by which this perceived “culture of compliance” came into existence. We noted that efforts of trade unionists, students, consumers and human rights activists to exert pressure on buyers to take greater responsibility for working conditions have resulted in the proliferation of codes that garment manufacturers now have to accept before they can win an order from these buyers. Indeed, the BGMEA, at least (though not necessarily all its members), has realized that compliance with codes holds the key to future survival in the post-MFA competitive environment. As a result, there has been a marked improvement in health and safety standards in the major factories as well as a range of other benefits, such as payment on time, proper overtime rates, maternity leave, and so on.

The setting up of arbitration procedures by the BGMEA has reduced the employers’ prerogative of sacking workers and also
given rise to some degree of cooperation between the BGMEA and unions, in place of the relentless confrontations of earlier encounters. Representatives of both workers and management have come to recognize that submitting to a joint process of conflict resolution is likely to yield longer-term gains for both parties outweighing any short-term defeats. From the point of view of the federations, having a place at the negotiating table has opened up a novel way of recruiting members, by responding to their most pressing everyday concerns (being paid on time, getting proper overtime, increasing their wages) rather than relying on the promise of political patronage. For women workers in particular, the former is a far more appealing incentive to join unions than the latter.

While these various developments are certainly steps in the right direction, do they constitute evidence of a “culture of compliance” within the garment sector? There is certainly evidence of greater compliance in the garment sector than in other industries, as asserted by the Director of the Labor department, but this is primarily because other sectors are not under the same external pressures to comply. It is thus the vulnerability of the export garment producers within a buyer-driven global value chain which has led to “compliance” on their part.

The concept of a culture of compliance, by contrast, suggests the internalization of the norms embedded in the codes of conduct, so that they become a routine and accepted part of the way that business is done. We did not find widespread evidence that this is the case in the garment industry. Despite the fact that higher labor standards did prevail within the industry, and that some garment employers have clearly embraced the principles of corporate social responsibility, we found persistent attempts by many, perhaps most, employers to evade their responsibilities. Many sought to comply only with the more visible aspects of the codes while they reneged on the less visible, some of which were of greater importance for their workers. Moreover, the codes are not applied to the smaller factories, which are not members of BGMEA and deal only indirectly with the buyers.

While many workers expressed the belief that buyers were their allies against the owners, since they had introduced the codes of conduct, it was clear from the employers’ accounts that they had a
less benevolent view of buyers for very good reasons. If most Bangladeshi employers have not internalized the concept of corporate social responsibility, neither have most of their buyers. Consequently, employers sought to comply with buyers’ codes of conduct in response to the threat of withdrawal of orders, while buyers sought to impose the codes in response to the threat of negative publicity and the accompanying loss of sales. Although they made sure that their suppliers were monitored for code compliance, they generally used the threat of withholding orders rather than any positive incentives to promote compliance. In fact, their demands for compliance have been accompanied by the demands for shorter delivery times and lower unit prices. Not surprisingly, employers in Bangladesh do not generally view codes of conduct as a manifestation of social responsibility on the part of international buyers, but as a cynical marketing strategy which allows the latter to keep their brand image with their consumers “clean” while passing on the costs of maintaining this image to the former.

From this perspective, it is difficult to describe changing practices on the part of employers in the garment industry as evidence of a culture of compliance, although there is certainly evidence of the enforcement of compliance. To what extent, then, has the enforcement of compliance led to a growth in the culture of accountability? A similarly qualified response is required. There is certainly a greater willingness on the part of many workers to make claims and demand responses from employers, while the adoption of the arbitration procedures by the BGMEA has also certainly contributed to the enforceability of some of these claims. However, changes in the visible segments of the garment industry should not be conflated with changes in the entire industry.

The reality is that many of the workers in the export garment sector are to be found in small units in the informal economy, beyond the reach of buyers (and their complicated codes of conduct), the BGMEA and the major trade union federations. Furthermore, the vast majority of workers in the country are not in the export sector at all. For them, the new accountability structures of the garment industry have very little relevance. Of greater relevance to them are the activities of the government and of
organizations prepared to represent their interests. For this larger and generally poorer workforce, there are a number of developments, directly or indirectly triggered by the rise of the export garment industry, that could have positive future implications. First of all, the new labor code is a step in the right direction – but getting the law right is, of course, only a first step in changing the reality.

Second, there are proposals to reform the trade unions themselves. The widespread politicization of trade unions in Bangladesh is a product of the structure of political parties in the country rather than of the nature of trade unionism itself. Not only have the political parties failed to curb the rent-seeking activities of trade union leaders, but they have actively benefited from their partisan activities. It is, therefore, the responsibility of the political leadership in Bangladesh to transform their relations with the trade union movement in such a way that they can perform their function of representing the interests of their membership and ensuring that employers are held accountable. Such reform is difficult but essential if an environment is to be created that will allow a genuine workers’ movement to flourish.

Finally, and most hopefully, in spite of the unpromising political situation in Bangladesh, we may be seeing the emergence of a “new” form of trade unionism that is more responsive to the needs and interests of its membership, and to its women members in particular. These new forms of labor organizations are seeking to reach out to women workers who have been bypassed by both development NGOs and by trade unions. Like women workers all over the world, women workers in Bangladesh need organizations that address their needs and interests as women as well as workers. These new organizations provide hope that a genuine labor movement may yet emerge in Bangladesh, one that is more closely aligned to the interests of the workers that make up its membership. They appear to be far more cognisant of this than the older, male-dominated unions, indeed, some are led by articulate and experienced women activists. Furthermore, a number of these organizations have moved beyond the focus on codes and conditions in the export garment sector, which has been the sole preoccupation of global campaigns for labor standards, to
organizing all women workers, both within the export sector and outside it, both within the formal economy and outside it. It is in this willingness to take on the challenge of organizing those who are most vulnerable within the economy, who have little strategic importance internationally because they do not earn the country’s foreign exchange or compete with workers in the North, but who nevertheless make up the majority of the working poor in the country that we may find the seeds of a genuine culture of democratic accountability being sown.

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Bodies as Sites of Struggle: Naripokkho and the Movement for Women’s Rights in Bangladesh

by

SHIREEN P. HUQ*

I. INTRODUCTION

Women in Bangladesh suffer both an unequal legal status with regard to many important rights and an inferior position with regard to cultural beliefs and practices. This situation is aggravated further by what appears to be a lack of social and political will to deliver justice on violations that women routinely suffer, and, on the part of women themselves, by a lack of knowledge, confidence and skills to challenge such situations. The most frequent violations that women suffer in Bangladesh have to do, first, with their personal status and cultural identity as females – they are frequently treated as minors with few rights but disproportionate responsibilities – and, second, with their legal status as unequal citizens, because of which they are routinely and systematically the recipients of lesser resources, opportunities and rights.

Attempts to challenge women’s subordination in Bangladesh reflect a number of different forces. Bangladesh’s independence in 1971, a few years prior to the United Nations International Year of Women, meant that, from the outset, policy interest in “women’s issues” tended to be subsumed within the rubric of women and development’, in particular women’s contribution to production and

* Member, Naripokkho.
The author wishes to express her gratitude to Professor Naila Kabeer and Professor John Gaventa at the Institute of Development Studies, Sussex, for insisting that activists can write and not giving up on her, and especially to Naila for insisting that the Naripokkho story needed to be heard and helping to pull out a coherent piece from the longer “stream of consciousness” narrative she had embarked on.
a preoccupation with family planning. The interest in women’s issues among even progressive political parties tended to be rhetorical and limited in scope arising out of their own adherence to middle class norms of gender propriety.

This paper deals with the experiences of Naripokkho, a women’s organization that seeks to carve out an autonomous space for feminist politics in Bangladesh that is neither driven by the women and development agenda nor subsumed within a male-dominated party politics. This has allowed the organization to bring onto the public agenda various new, often controversial, issues that emerge out of the organization’s commitment to link the personal experiences of women to a political analysis of their subordination. One of the issues, one that constitutes a continuous and central thread in its activism is related to women’s bodies as a site of oppression. This paper will deal with the reasons this politics emerged and the form it has taken.

II. THE FOUNDING OF NARIPOKKHO

A number of us, all women who were engaged in one way or another with the situation of rural women in Bangladesh, had come together in 1980 to try to forge a collective identity from wherein we could intervene on the woman question. We wished to pursue, both professionally and politically, our vision of social change and women’s emancipation. The choices we had made in our personal lives reflected our desire and our determination to be free and different from what was destined for women in Bangladesh.

Naripokkho was founded as a result of that collective desire. The catalyst was a three-day workshop on women and development, organized in 1983 by the Asian Cultural Forum on Development (ACFOD), that brought together 33 women development workers from non-governmental organizations (NGOs) all over the country. They came to the workshop expecting to make, and listen to, the usual presentations about their organizations: how many women “beneficiaries” they were reaching, what kind of income generation programs they were supporting, and so on. However, a number of us felt that there were ample opportunities to talk about what

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1 Naripokkho means “pro women”.

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development NGOs were doing about “poor and disadvantaged women”, but few or none to talk about the women employed to reach them.

Despite initial resistance to the idea of talking about “ourselves”, I was able to use my influence as one of the facilitators to help transform the workshop into a first-person discussion of the life and experiences of the women who were attending: the women in development work. Who were these women? How did they end up in jobs that represented a dramatic and often unacceptable break with tradition? What life circumstances had led to the choice of a job or a career that required women to be visible and mobile in unprecedented ways? Frontline female development workers, going from village to village, many on bicycles, were considered by some as pariahs and a bad omen. They represented a significant departure from the cultural norm of remaining within the confines of one’s home and at best venturing out into “accepted” female occupations, such as teaching in schools. What did these women face that their male colleagues did not? What problems and challenges did they face in the villages they worked in? What problems and challenges did they face within the organizations that employed them? These questions had never been addressed.

The workshop allowed us to reflect on a number of questions that touched on our personal experiences: our first memories of being discriminated against as females; the circumstances that had led us to opt for a role different from those destined for the majority of women in Bangladesh; and the problems we faced in our personal and professional lives that male colleagues did not. We had no idea of the intensity of the sense of injustice that lay beneath the surface, ready to explode. Many women had literally never spoken about themselves before. A few still could not say the words, and simply cried. Others could not stop speaking, describing

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2 There has been a considerable expansion in the scale – and visibility –of female employment since that workshop. The erosion of male incomes, the rising cost of living, the pressure on women to contribute to household income and the emergence of new opportunities for them to do so – particularly in the export-oriented garment industry, but also within the NGO sector itself – have all led to a far more visible involvement by women in paid work.
events and situations that testified to how deep, how widespread and how constant the experience of discrimination was, and how poignant and long-lasting the pain it inflicted.

III. CHARTING NEW TERRITORY: THE FIRST ‘SMALL STEPS’

By the end of the workshop, we were clear that we did not want this process of discovery to end and that we wanted to stay connected. The genesis of Naripokkho was thus in the realization of the links between personal experience and societal discrimination, and this formed an important dimension of its organizational strategy from the outset. The seeds of the organization were laid at a workshop, and workshops have remained an important way in which the organization has sought to achieve its goals.3

The discussions at our workshops have evolved over the years to encompass a number of different issues. One set of discussions, which stems from the questions we set ourselves at that first workshop, focuses on women’s observations and experiences of gender discrimination at home and at work, and what these might have in common with those of the women who were targeted as beneficiaries by the development NGOs that employed them. This helps both to establish the grounds for a personal engagement with the issues of discrimination, violence and injustice, and to form the basis for identification with “others”. This has become a significant feature of Naripokkho’s strategy for change – a first person engagement in the movement for change and the emergence of a collective “we”.

A second set of discussions focuses on the position and treatment of women in law. The first workshop had revealed how little women knew about their legal rights and how little they understood about discrimination in the content of the law itself. Personal law in Bangladesh, as in India, is governed by religion. This means that religious rather than civil law governs such areas as marriage, the dissolution of marriage, custody and guardianship of children, and inheritance. Given that all religions discriminate

3 We often observe that Naripokkho began as it meant to go on: by challenging externally determined agendas to create a space for women to find their own voice.
against women, women from different religious communities not only enjoy different rights from each other but also have fewer rights than men in their communities. Legal discrimination thus formalizes and justifies customary inequality.

These discussions have a subversive potential. They open women’s eyes to the injustices encoded in law and suggest that litigation and courts cannot always be relied on for justice. This was a revelation for many, who until then had thought the only problem women faced in relation to the law was lack of access to the judicial system. These discussions have brought out the important distinction between “law” and “justice” (ain o nyaybichar); a distinction that enabled us subsequently to evaluate everything from the point of view of nyaybichar and nyajjota (justice and fairness).

And finally, the workshop discussions focus on women’s bodies, providing a safe space in which women are able to share some of the more private and intimate aspects of their “embodied” experiences of deprivation and discrimination, and re-examine their personal lives. Understanding and appreciating their bodies, unravelling their attitudes to their own bodies and sexuality, and analyzing how others have treated them have been an important part of this re-examination. These discussions have clarified how much of the discrimination, ill treatment and violence women suffer is connected to the ways in which their bodies, their sexuality, their reproductive roles and their health are perceived, valued and constructed by their families, their colleagues and by society at large.

These discussions have also revealed how little so many women in Bangladesh know or understand about their bodies, and how little they acknowledge their sexuality. The discovery by some women of where their uterus was located was a revelation! The opportunity to talk about these aspects of their lives opened the floodgates to other more private areas of suffering. In some cases, women described unwanted sexual advances by men taking advantage of their vulnerability in particular situations. In other cases, they spoke of rejection, often in hurtful and abusive terms, by their husbands. The issue of sexuality has become central to our
discourse on rights and freedoms, and women from the brothels have become our sisters in struggle.

What has transpired in these workshops has helped to determine who we have become as an organization. First of all, from the start, we opted for a strategy that stressed process over blueprint, and a process that entailed continuous learning and clarification based on the participation of women and the sharing of first-hand experiences. We wanted engagement on the basis of personal identification with the issues. As a result, every issue that we have taken up has a basis in the reality of our lives and of women’s lives more generally. We say that “we speak about ourselves and we speak for ourselves”.

Secondly, our concern with various aspects of women’s self-determination – their right to freedom of speech and movement, to freedom from violence, to control over their bodies and their sexuality, and so on – meant that we were, in effect, redefining ideas about personhood as they related, in the first instance, to women, and by extension to men. The first understanding of rights for most of the women we work with comes from the recognition of discrimination, and with it the understanding of discrimination as injustice. The right not to be discriminated against – that is, the right to non-discrimination – was then our starting point; the basis on which we demanded equality and justice. Our experience of discrimination as women led us to demand fair treatment and respect for our dignity as human beings, and only thereafter to claim our rights and entitlements as citizens. It was only through the process of seeking redress for unfair treatment and discrimination, demanding changes in the law and cultural behaviour, and requiring accountability from the state, that we became aware of ourselves as citizens and bearers of rights.

And finally, given our approach, it was inevitable that a concern with “body politics” would be an important theme in Naripokkho’s work. The centrality of women’s bodies in the countless trivial, as well as significant, instances of oppression that have been recounted in our workshops, was striking. Over time, the connection between these instances and the processes by which male power over women is maintained and reproduced in Bangladesh has become increasingly clear, and we have come to
realize how profoundly our bodies affect every aspect of our being, experience and consciousness as women.

Bangladesh has long been characterized by the dramatic absence of women in public spaces. Women were not visible in the streets, on public transport or in markets. In rural areas, women rarely ventured beyond the boundaries of their *bari*, and in towns and cities women stayed away from streets and parks. Although this scenario has changed considerably in the past two decades, the norm continues to relegate women to the “shelter” of the family and the home; their enforced dependence on men for both protection and provision reinforces their cultural devaluation.

We are socialized into “becoming women” on the basis of a combination of Islamic strictures and Bengali cultural norms of gender propriety whereby we are not to be seen or heard. We are expected to speak quietly, to keep our eyes downcast, to cover ourselves in the presence of strange men and to eat when everyone else has eaten. Despite constitutional provisions and policy declarations regarding the advancement of women, and the entry in recent years of large numbers of women into the formal workforce, societal norms continue to value women primarily as bearers of children – or, rather, sons – even though many have died from too early, too frequent and too many pregnancies.

Although economic pressures have forced women to defy social and often, family, expectations, and take up work in public space, it is assumed that only women without male provision or protection do this. A woman outside the boundaries of her family and home is therefore either destitute – an object of pity – or immoral – an object of shame. And yet, despite this stress on the protection of women and their confinement to the “safety” of the domestic sphere, we have found that violence against women appears to be a part of everyday life, within the domestic sphere and outside it: wife beating, dowry deaths, assaults, rapes and, more recently, fatwa-related violence and acid attacks are common. Consequently, although Naripokkho has been active on a variety of issues and on

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4 The ‘bari’ is the shared compound in which members of an extended family reside, usually in independent houses.
IV. THE ‘POLITICS OF THE BODY’ IN NARIPOKKHO’S AGENDA

Making Violence Against Women Visible

Not surprisingly, the first issue around which Naripokkho mobilized, and one that continues to dominate our agenda is violence against women. Not only is this woven into the everyday experiences of the women who came together in the workshops, but more generally, fear about their personal safety acts as a crippling constraint on what women can be and do in Bangladesh.

Our standpoint on violence has evolved partly as a critique of the way the issue has been handled by the mainstream women’s movement, and partly as a response to the specific instances that have come onto our agenda. The mass rape of women by the Pakistan army during Bangladesh’s independence war in 1971 continues to be referred to by our politicians, intellectuals and public leaders as “the loss of honour” of Bangladeshi women rather than as a war crime. We challenged this interpretation. If “loss of honor” was at all an issue, then surely it was that of the rapist. The raison d’être for protest on the issue of rape should surely be the necessity to shame the rapists. However, the idea that women are the repositories of family, community and national honour is a deep-rooted one. It continues to dominate the political discourse about the national struggle for independence. And it leads communities to congratulate themselves upon successfully forcing the rapist to marry his victim! This practice is common, especially in rural communities, and is seen as the only way of recouping lost honor.

Naripokkho’s first involvement in a campaign on the issue of violence against women was in 1985, when the then military government had imposed a temporary ban on all political activities. Denied their usual source of news, journalists filled the front pages with reports of crimes, including violence against women, that previously had been relegated to obscure sections of their papers. Opposition groups saw this as an opportunity to mobilize public opinion against the ruling regime. By choosing to focus on violence
In terms of women’s safety in public space, it was able to define the issue as a law and order problem and cast it in terms of the failure of the government to maintain law and order. The fact that the majority of the violence reported in the media occurred within the home and had been perpetrated by family members offered little possibility for political capital. Thus, the issue of domestic violence was ignored.5

At about the same time that year, newspaper reports of the sale into prostitution and subsequent death of a ten-year-old girl named Shabmeher sparked off unprecedented public anger. In the same week, newspapers reported the rape of a five-year-old girl. The fact that both these incidents represented the violation of “innocent minors” evoked unprecedented sympathy, even among those who appeared to have become immune to the daily reports of violence against women all over the country. A high-profile campaign against violence against women was mounted by various women’s organizations and other social groups, convened by Bangladesh Mahila Parishad, the largest women’s organization in the country. Naripokkho was invited to join the eighteen-member National Steering Committee.

Naripokkho’s concern with women’s safety and security, our belief that violence against women is a product of systemic discrimination rather than a purely individual act, and our conviction that women have to be both visible and audible in the fight against violence if they are to transcend their status as passive victims led us initially to become involved in this campaign, and also explain our subsequent decision to leave it. From the outset we found ourselves at odds with the politics and strategy that animated the campaign organizers, in particular their reluctance to take on board the issue of domestic violence and their desire to promote “important men” as patrons of the campaign in a bid to give it social acceptability and defuse any “feminist” connotations.

1 In fact, Naripokkho’s study on violence against women, conducted during 1995–7, found that 60 percent of the women interviewed across all classes had experienced conjugal violence, and that 63 percent of violence-related injuries requiring hospitalization occurred within the home.
We were not happy with this framing of what is a critical issue for the women’s movement. The focus on law and order as the fundamental problem was, in our view, born out of a partisan politics that sought to use the campaign to mobilize against the government in power. It reflected neither an analysis of the patriarchal power relations that permitted, condoned and even encouraged various forms of violence against women, both within the home and in the public domain, nor any intention of building a serious campaign against such violence. We welcomed the support of men, but not their leadership or patronage. We wanted the public face of the campaign to be female, and we wanted the campaign to project the image of women fighting back. We suggested that the campaign highlight positive programs that contributed to reducing women’s economic dependence. We also proposed the promotion of martial arts training for girls so they could defend themselves rather than wait passively for male protection. The slogan we mobilized our members around was “nari nirjaton rukhbo shobey, haath achey hatiar hobey” (We will fight violence against women, our hands will be our weapons).

We also wanted to give space in the campaign to survivors of violence. Our proposal to have one such survivor speak at one of the main public meetings organized by the committee was turned down in favor of their chosen “important” men. We did manage, however, through ‘guerrilla action’, to bring someone who had experienced such violence on stage and have her speak.\(^6\) We felt that it was important to give those who were perceived as “victims” the opportunity to take back control over their lives through such engagement in public action. However, our attempt to include the issue of domestic violence in the campaign agenda met with strong opposition, and we were effectively silenced.

The abrupt collapse of the campaign with the lifting of the government’s ban on political activities confirmed to us that it had

\(^6\) We had the support of a leading woman lawyer in Bangladesh who was a speaker at this meeting, and who at the end of her speech invited the survivor to come on stage and address the auditorium. It was not possible at this point for the organizers to intercept her.
Huq: Bodies as Sites of Struggle: Naripokkho and the Movement

merely been a stick to beat the government with at a time when other sticks had been banned. This made us keenly aware of the use, and misuse, of women’s issues to further partisan interests, and wary from an early stage about coalition politics. We have, since then, stayed clear of coalitions, and instead opted to work with others in alliances formed on the basis of shared stands on particular issues.

**Action on Acid Violence**

For reasons not fully understood, among the many different forms of violence against women in Bangladesh is the deliberate use of acid as a weapon. While this is not the most common form of violence, it is significant both because there is a much higher incidence of such attacks in Bangladesh than anywhere else in the world, and because of the horrific physical and psychological damage they can inflict. Given the importance of appearance to women’s chances in life, and to their chances of marriage—long considered the only acceptable destiny for women in Bangladesh—the psychological damage can be particularly devastating.

In 1995, a journalist following up on the case of Nurun Nahar, a young girl who had been attacked by a rejected suitor, first drew Naripokkho’s attention to the devastating effects of acid violence. Naripokkho mobilized government action to ensure that Nurun Nahar received appropriate medical treatment, and that those responsible for the attack were prosecuted. Above all, Naripokkho provided her with the emotional support she so badly needed not to give up on life.

In 1997, Naripokkho organized the first workshop of acid survivors. A total of nine young girls from different parts of the country and their mothers were invited to participate in the workshop. We were determined to avoid any media sensationalism of this event, so we decided not to inform the press about it. Instead, we focused our energies on arranging meetings with the Ministers of Health and Family Welfare, Home Affairs, Women’s Affairs and Law, Justice and Parliamentary Affairs. We needed government action to ensure that these girls and others like them received appropriate medical treatment and police investigation of the crime and prosecution of perpetrators was taken seriously. We
also arranged a meeting with UNICEF to take on board what was largely (at that time) a form of violence targeting young girls.\footnote{Acid is now used as a weapon for vengeance in all kinds of enmity arising out of marital discord and dowry demands, family feuds and land disputes and the number of male victims is on the increase.} These meetings succeeded in bringing home to ministers and government officials the severe consequences of this crime, and motivated them to make declarations about the serious nature of it and their intention to take stern action. UNICEF followed this up by supporting an initiative to set up the Bangladesh Acid Survivors Foundation in 1998, to provide support for acid survivors in the form of medical treatment, prosecution and rehabilitation.

Our encounter with acid survivors on this first occasion taught us a number of important lessons. First of all, our attention had been on the girls themselves, and on their mothers, because we thought they were the ones who suffered most from the attack itself and from dealing with its aftermath. However, at a meeting held at the start of the workshop to introduce the survivors and their families to members of Naripokkho, we found that many fathers and brothers had also come. We had not thought of inviting them at all.

As we went around the room introducing ourselves, some of the girls broke down, saying they wished they had died instead of having to live with the consequences of the attack. One girl in particular said she wanted to die because she could not stand the pain this had inflicted on her mother and her family. At this point, we were startled by a heart-rending cry from one of the young men, a brother. He broke into what can only be described as inconsolable weeping. Then the older man sitting next to him, a father, started crying. Soon we were all crying. Why hadn't we thought of the pain that fathers and brothers suffered? We understood then that our most important allies in the fight against violence against women were the fathers and brothers of women who had suffered.

The second thing that took us by surprise was when some of the family members asked that we organize a meeting of the acid survivors with the press. While we had been bending over backward
to avoid giving the media any opportunity for sensationalism, one of the fathers told us firmly, “People need to see and know what kind of damage acid attacks can cause”. On the last day of the workshop, we organized a meeting with selected journalists who were known to us and who we felt would be sensitive. We also invited the Secretary of the Ministry of Women’s Affairs.

At this meeting, the girls presented on a flip chart what they had identified during the workshop as the causes and consequences of such attacks, what their needs were, what they wanted to achieve and what they dreamed for themselves. It was front-page news the next day, and apart from one newspaper that actually printed a photograph of one of the girls at the flip chart, all the other papers carried close-ups of their badly disfigured faces. We had not been able to prevent the sensationalism we had feared. From then on it was a snowball effect: special features, television, CNN, ABC and so on. We tried wherever possible to inject our real and serious concerns about all forms of violence against women, but violence against women was too common an occurrence. The acid story, by contrast, had shock value.

Our focus in the workshop was to make these girls want to live again, and to know that there is a lot to live for. On their last evening with us, the Theatre Centre for Social Development – a theatre group that has been a friend and partner for Naripokkho through the years – organized an evening of entertainment. A drag show was followed by music, and a makeshift dance floor helped to transform these girls, who had become used to hiding behind veils and holding back from living, into young teenyboppers having fun. Selina’s mother beamed as she watched her daughter, who had not spoken since the attack six months prior to the workshop, laugh and begin to speak a few words. Empowerment for these women has meant the journey from victim to survivor, and then from survivor to activist. We wanted not only to let the survivors find their voices but also to bring them into the movement against violence against women. The torchlight procession organised by Naripokkho on the eve of International Women’s Day in 1998 was led by Bina, Nurun Nahar and Jhorna, victims who had made the journey to activists and no longer covered their faces.
Advocacy Around Services for Women

The work with acid survivors saw an expansion of Naripokkho’s activism from protest to advocacy. We lobbied the government for better services for women who had suffered violence, and for changes in both the policies and institutional arrangements through which services were delivered and justice administered. We began a new project called “Monitoring State Interventions to Combat Violence Against Women” in 1999; this has regularly monitored all 22 police stations in Dhaka Metropolitan area, the two major public hospitals (emergency, gynaecology, burns and forensic medicine departments) and the special court which tries all cases involving violence against women.

At quarterly meetings with service providers, findings from the monitoring are presented in a spirit of dialogue. Representatives from these institutions, together with Naripokkho, prepare recommendations for improvements, and the dialogue is sustained on the basis of trust. Naripokkho’s commitment to constructive engagement with the problems has meant an unwritten agreement on our part not to publicize these findings in the media. It has also helped that we present this work as action research rather than as “monitoring”. Most service providers put forward lack of resources as the major problem. While the resources issue is often a real one, and we do offer to lobby to address it, we also try to get providers to focus on their own behaviour and attitudes (identified by violence survivors as a primary problem).

Naripokkho has also been active around women’s health and reproductive rights. The urgency attached to population control in the country had led to the imposition on family planning providers of numerical targets, a practice fraught with potential for abuse. In 1987, one of our members reported the death of a woman from tetanus infection following a sterilization operation in a Model Family Planning Clinic. Closer investigation revealed that the woman had actually approached the clinic for an abortion. The clinic staff decided she was a good candidate for sterilization and did not want to miss the opportunity of increasing their performance figures. Instead of giving her the anti-tetanus serum with her abortion, which would take a number of days to take effect
and require her to come back for the sterilization, they decided to operate there and then.

This incident raised serious questions regarding the government’s preoccupation with numerical targets over women’s right to choose and the safe delivery of services. In 1989, we documented abuse in the Norplant programme: doctors were reported to be refusing to remove the implant when women complained of side-effects. Our concerns around safe contraception, reproductive rights and sexual freedom have come to be clustered around the theme “shorir amaar shiddhanto amaar” (‘my body, my decision’).

In 1996, Naripokkho took up the issue of the accountability of health service providers to women on an experimental basis, in connection with monitoring the government’s commitment to the Programme of Action of the International Conference on Population and Development (ICPD). Health constitutes a key arena of women’s suffering, and represents the end results of discrimination, violence and inequality. Naripokkho sought to activate the Upazila Health Advisory Committee, set up by the government to monitor and improve health services at local level. This committee, composed of a cross-section of society, public representatives and government functionaries, proved to be effective in bringing about improvements, once activated.

Solidarity with Sex Workers

The rights of sex workers is another aspect of our politics of the body. Sex workers occupy an uneasy marginal status in Bangladeshi society. In a culture that is built on the repression of women’s sexuality, confinement to the home, and marriage as women’s ultimate destiny, sex workers appear to defy every precept of “normal” Bengali womanhood. Although treated in the popular press as victims, they often appear to enjoy a peculiar autonomy denied to other women: they mix freely with men, they speak their minds assertively on television, they live on their own earnings,

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* Norplant is a contraceptive implant, which has to be surgically placed and removed.
have children outside marriage and bring them up without male guardians, and even, occasionally, declare an active sexuality. Sex workers have appeared periodically in the media over the past decade because of attempts by the government or self-motivated groups of citizens to demolish brothels and evict their occupants.

The first threat of eviction that Naripokkho associated itself with was that of Tanbazaar in 1991. Although this threat was successfully resisted, six years later the Kandupatti brothel in old Dhaka was attacked and its residents were evicted by the hired musclemen of local vested interests. The most recent attempt took place in 1999, when the government evicted sex workers and their children from a complex of brothels, over a century old, located in the Tanbazaar and Nimtoli areas of Narayanganj. This action was met by an unprecedented mobilization of development NGOs and human rights organizations to defend the rights of sex workers. For the first time in the country’s history, a major public debate took place in the newspapers over the meaning of sex work and the status of sex workers. All the major dailies carried news and features on the topic for nearly a month after the eviction.

The mobilization was led by Naripokkho and led to the formation of Shonghoti, a broad-based human rights alliance protesting the government actions and demanding that sex workers be respected as citizens. Eighty-six organizations of various types joined Shonghoti. They provided active support in mobilizing protests against the unlawful eviction, as well as assistance for those rendered homeless. The formation of Shonghoti marks a new chapter in the struggle for women’s rights as human rights in Bangladesh. However, the successful alliance-building effort of 1999 had a 10-year history behind it, involving various attempts at brothel evictions and Naripokkho’s encounter and porichiti\(^9\) with sex workers.

The public response to sex work has conventionally taken two forms: moral condemnation of “loose” women, or moral benevolence

\(^9\) The Bangla word *porichiti* can mean both “acquaintance” and “identity”. Interestingly for Naripokkho, it was both an acquaintance and identification with sex workers.
towards “hapless” victims. In 1991, women from Tanbazaar had themselves attempted to claim their rights as citizens, as workers and as women, and condemned attempts to evict them as violations of these rights. Their voice at that time, however, was drowned by the dominant discourses of moral outrage and benevolence. In the ensuing ten years, however, their assertion of their citizenship has been heard several times; finally in 1999 it found a place both within the struggle for universal human rights and women’s emancipation, as well as in the public discourse on prostitution.

Recognition of the human rights of all, including women engaged in prostitution, brought the issue of work and what constitutes work to the centre of the public debate. This has been a thorny issue for many, including Shonghoti members. Even as we declared unequivocal support for upholding the rights of women in prostitution, we were arguing over some basic questions among ourselves. Can sex be considered work? If sex in prostitution is work, then is sex in marriage work as well? If sex in prostitution is not work, then what is it? Naripokkho’s strategy in trying to hold together this unprecedented mobilization of a diverse range of organizations was to deliberately avoid public discussion of these issues. It was felt that public debate on this complex issue carried the danger of prompting simplistic public stands and unnecessary polarization. Instead, we focused our campaigning on the human rights of sex workers, their status as citizens, the rights of citizenship and the obligations of the state.

Talking to sex workers, however, has left us in no doubt that for them sex is work, sometimes pleasurable, more often not. Moreover, it is work that offers higher returns for their labour than many other work opportunities available to poor women with no assets of their own.

V. AND FINALLY ... WORKING ON OURSELVES

Public claiming of rights, and accountability, are important aspects of the assertion of women’s citizenship in a culture where women are defined as dependents, politically, culturally and economically, and where they are expected to accept their position without protest. However, while a great deal of our energy as an organization has been devoted to body politics in the public domain,
we have also accepted from the outset that our own bodies were implicated in this politics in particular ways.

Our beginnings in the shared life experiences of women working in development NGOs focused our subsequent work in particular ways, and helped to bring a different dimension into the politics of gender in development, based on the concrete experiences of discrimination, inequality and resistance of women development workers themselves. This raises uncomfortable issues around the “culture” and body politics of development organizations, including issues of sexual harassment, recognition of women’s reproductive and caring responsibilities, and issues of physical security. Naripokkho has brought discussion of these issues, previously relegated to the realm of the personal – and hence the private – into the realm of the professional – hence public domain, raising them as matters that NGOs had to address within their own organizational structures: a process not always welcomed by the organizations in question.

We have also used our workshops to think through the politics of our own bodies. We try to provide participants with a variety of skills that will strengthen their self-confidence in the public domain, such as chairing sessions (a function normally monopolized by men), taking responsibility for devising cultural events and producing a daily “wallpaper” bulletin. Above all, we use workshops to give them a place to be themselves – the selves they have not been allowed to be. They write and draw whatever they wish on the wallpaper provided. The cultural sessions provide them with a space to sing, dance, recite poetry and generally express the imaginative side of themselves. The idea of “play” does not feature much in women’s lives in Bangladesh, and in many parts of the country they are not permitted to sing and dance. Allowing themselves to throw off their inhibitions is an exhilarating experience for many of the women, who have been brought up since childhood to take up as little space in the world as possible.

These workshops have produced over time a body of testimonies that provide us with the knowledge, anger and conviction to fight “for women”, as well as with the hope, energy and inspiration to do so in a way that remains true to our collective voice. Looking back on over two decades of activism, we find that our interactions with
each other, our willingness to stand out against mainstream ideas about women’s politics, our determination to counter cultural ascriptions of passivity to women – the bhadramahila\textsuperscript{10} paradigm that mainstream women’s organizations continue to operate within – have given us an energy that makes us appear bold and uninhibited to the wider public. This public perception was brought to our attention by journalists covering our movement against the 8th Amendment to the Constitution, which sought to make Islam the state religion. They commented on the speed with which we took our first procession down from Shahid Minar to the Press Club. What they did not know, however, was that this was not entirely intentional. Because of our inexperience with banners, we had not cut holes in them for the wind to pass through, so they caught the wind and the procession sailed through the streets of Dhaka at an amazing speed. The predominant image of Naripokkho members since then has been one of women “with saris worn high and no make-up”, moving with an agility out of keeping with the customary decorous walk expected of women.

Although we are perceived as a threat to the established paradigm of how women should behave, we have also invoked a reluctant admiration. Our energy, our apparent audacity, our “damn care bhaab” (‘couldn’t give a damn attitude’) have been described by many of our friends and colleagues outside the movement as possessing a certain appeal – “bhalo lagey kintu bhoyo lagey” (‘attractive but dangerous’). The causes we take up and the politics we bring to them have reinforced this public image. In particular, our decision to take up the cause of the “bazaar women”, a despised social group living on the margins of society but apparently exercising some degree of autonomy in their lives, appears as yet another example, to those who disapprove of us, of our willingness to flout convention and align ourselves with women who deserve pity or condemnation perhaps, but certainly not the solidarity one extends to one’s own kind.

\textsuperscript{10} The bhadramahila is the equivalent of the Victorian gentlewoman. Historically, the term refers to the women of the bhadrolok class (gentry), a Western-educated urban middle class whose emergence in mid-nineteenth-century Kolkata was characterized by a break with the feudal class.
Increasing Voice in the Health Sector in Rural Bangladesh: Is There a Role for Citizen Participation?

by

SIMEEN MAHMUD *

I. INTRODUCTION

Increasing people’s voice and influence in the health sector is generally believed to be an effective way of improving the performance of health systems, i.e. increasing access to services of the most vulnerable and disadvantaged groups, improving health outcomes generally and reducing health inequities. Participation of communities in decision making in the health sector, through ownership and implementation of local health services and interventions, is now a widely accepted means of ensuring such influence (Dasgupta et al. 2001, MoHFW 1997). Not only that, by creating public pressure and generating debate, community participation, actually facilitates the democratic process, reduces the gap between state and citizens and complements state responsibility for ensuring citizen’s right to health and other services. In that respect informed and more inclusive community participation is not only good for the health system but also good for promoting citizenship practice and in claiming the right to good health care.

There is evidence that participation in decision making leads to better health outcomes and reduces inequality in outcomes and access to services, both for individuals and for households and at the community level. For example, educated women and women earning incomes, who are more likely to participate in household

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resource allocation and other decisions, also enjoy better health outcomes and reduced gender based bias in health outcomes for themselves and their children.\(^1\) In resource poor countries famines are avoided and people’s entitlements are guaranteed when government action is galvanized by affected populations pressing their demands in various ways\(^2\) (Dreze and Sen 1989). Hence, the belief is strong that active community participation in health services and interventions at the local level could enhance people’s influence on health systems to be more responsive to the needs of the poor and more vulnerable groups.

However, experiments with community involvement in health (or CIH in the language of the World Health Organization) in developing countries have not yielded very conclusive results. As one researcher put it, “it is impossible to say either that the … experiment succeeded or failed” and that it “did not quite achieve what they set out to do” (Oakley 1999). While it has been relatively easy to make initial contact with community representatives, increase coverage and sometimes garner active local involvement in specific health activities, e.g. vaccination campaigns, actual mechanisms of community participation, have been problematic.

The experience with community participation has not been very encouraging because of lack of conceptual clarity regarding what is the community and who represents the community, the process of community participation, and the content of community engagement (a real transfer of authority and responsibility or merely sponsored collaboration) as well as weakness of effort for promoting the mechanisms of community involvement. One major lesson that emerges from experiments around the world is that community participation cannot be seen simply as a component of health sector reform, but must be seen more broadly as a complete approach to health development.

In this paper we will explore the Bangladesh experience with community involvement through citizen participation in the public health care delivery systems initiated under the health sector

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\(^1\) The experience of microcredit in Bangladesh.

\(^2\) Maharastra experience.

II. BACKGROUND

In the 1970s a more “people centered” development model, one that promoted people’s participation more directly, was suggested as a reaction to the prevailing dominant “top-down” development model, which while helping to improve the health conditions of some people failed to give the poor a role in the development process and to “develop the talents, skills and abilities of the mass of urban and rural poor” (Kahssay and Oakley 1999). The rationale of such a proposed model was that it was important to develop people’s ability to change the conditions of poverty and to give the excluded majority, primarily poor people bypassed by development programs, a chance to benefit from development initiatives. This rethinking filtered into the health sector and began to influence the concept of health development. In the Alma Ata declaration of 1978 a critical element for a more people centered health development was identified as the involvement of people not just in the support and functioning of local health systems but more importantly in the definition of health priorities and allocation of scarce resources.

Within the health development arena there are two distinct interpretations of the concept of participation, but these are neither clear-cut nor mutually exclusive (Kahssay and Oakley 1999). First, participation is seen as a means to ensure people’s collaboration in the health sector, often by contributing labor or other resources in return for some expected benefit. This interpretation implies externally designed interventions implemented in a participatory way by seeking the views of previously excluded and specifically targeted groups and taking those into account for the direction and execution of projects, for example through stakeholder analysis and participation. The danger in this case is that local people’s participation is limited because they are not directly involved in design, control or management. It requires methods and techniques that ease (reduce cost of) local people’s collaboration in development programs.

In the second interpretation, participation is seen as an end or goal in itself and equates participation with empowerment of people
in terms of acquisition of skills, abilities and knowledge that enable people to have a say in and manage delivery systems better. Pre-existing tradition of community involvement in development and actual practices of involvement can play a crucial role for community participation for better health outcomes (Baum and Kahssay 1999). Community participation is also seen as a political process that enables people to identify and undertake actions they believe are essential for their own health development. Participation can help to reverse exclusion of people from the benefits of development and provide a basis for direct involvement of people in development. However, the links with action are not clear. It requires requisite structural relationships and skills development to promote participation.

For the most part, however, community participation continues to be defined as an additional ingredient in health care delivery and valued primarily for its instrumental role in making health services more responsive and appropriate. Community participation is variously seen as the means for more cost-effective utilization of limited resources, intensifying the impact of health sector investment, increasing the chance of success of health sector reforms, changing the health seeking behavior of poor people, building partnership between government and local communities, and so on (Kahssay and Oakley 1999). While these are no doubt very desirable and even essential objectives, the broader objective of participation as establishing the citizen right to have a voice and to influence health systems are only made in passing, if at all. In fact, the means for achieving community participation are still debated and it was only since the late 1980s that community participation emerged as an explicit strategy in health development.

III. SETTING THE CONTEXT FOR PARTICIPATION

Decentralization is crucial, if not essential, for operationalizing community involvement and citizen participation. Local government is commonly seen as a way of empowering communities through their participation in local level planning, resource mobilization, administrative and judicial powers, etc. In Bangladesh formal local representative institutions like the Union Parishad that devolve control over state resources are premised upon universal notions of
democracy, but in reality operate within the context of local power structures, prevailing political culture and firmly entrenched social practices (Bode 2002). Questions about how to tackle local power hierarchies, which may be more powerful at the local level than bureaucrats and professionals from the centre, thus become important. Decentralization of participation (participation by local people) may also actually weaken ability and capacity to challenge national policy (Loewenson 1999). Hence, decentralization is not always the answer to public participation when there are weaknesses in the participation mechanism.

Putting in place the mechanism for participation is the second structural condition for participation, often overlooked in very formal attempts at promoting participation as part of more financially sustainable reforms. There is little documentation of procedures for participation, especially legal and institutional, in planning and management (Loewenson 1999). Rules for arbitration and reaching agreement are needed because underlying norms that govern arbitration of claims may be biased or are not neutral. The existing hierarchical power relations also mean that these rules have to be learned, and highlights the need for capacity building in participatory methods both at the community level and at the provider level.

Thirdly, the rationale for participation is weak when there is a gap between the expectations of the community and those of the providers, creating a disincentive to participate. The aim of investing time and effort by the community should be to meet the expectations of the poor and to make health services more responsive to the needs of the poor rather than for meeting the external pressure of ensuring participation. Factors such as user fees, poor transport, negative and disrespectful attitude of health workers, and poor explanation or information on health problems increase the distance between community and the health system and create barriers to participation despite all good intentions. The intention of seeking participation may be questioned when there are mutually incompatible objectives, such as reducing expenditure and at the same time improving quality of and access to service; or claims about provider accountability at local level when they are not accountable to the centre.
Apart from the above structural conditions, there are also several features related to the process of participation itself that needs to be recognized. There is now wide agreement that the process of participation is not an inclusive one and only the empowered actually participate because they perceive they can contribute through participation. The experience of participation in turn reinforces personal empowerment, so that empowerment both precedes and is a consequence of participation (Higgins 1999). Those who do not participate feel they have no control, are not important and feel marginalized or excluded (Mahmud 2003, Higgins 1999). “Activists” who are not necessarily representative of the common people dominate the world of participation and ordinary citizens that health systems wish to serve are excluded. Hence, there is need to ensure that the process is inclusive and does not marginalize those who do not feel empowered.

There is also the “myth of the community”. Since participation, almost by definition, is a collective action there must be some sense of community identity, of shared concerns and interests that will eventually lead to collective action for claiming rights. A community where members feel isolated and unconnected is one that feels powerless to effect change in local health systems, and is unlikely to be willing to participate in claiming rights or become involved in decision-making and management of health systems. Thus, there has to be a sense of community identity and a growing belief that collectively they can influence and control events. In other words, community mobilization becomes a prerequisite for community participation.

IV. PARTICIPATION AND CITIZENSHIP

Although the literature on community participation in health makes the link between empowerment and participation, the further link with citizenship is not evident. The question that remains is “where do rights come in”? The decision to participate must be viewed in terms of citizenship rights and responsibilities rather than solely in terms of personal empowerment. Participation implies a sense of agency and in turn fosters that sense of agency and citizenship (Lister 1997). It is a process of acting as a citizen in
which the first step is “being a citizen”. From this perspective the notion of “being a citizen” implies being a member of society (inclusion) and being accorded the same legal and political rights as all other members (equality); while acting as a citizen implies the fulfillment of certain further rights or social rights (like education) that provide capabilities for realizing and enjoying the status of full citizenship.

The inability to participate derives precisely from a fragmented sense of citizenship, and to the extent that citizenship or acting as a citizen requires participation, citizenship itself is exclusionary. Indeed, “participation in community life requires at a minimum threshold a sense of full citizenship, of being accorded rights that define one’s equal status” (Higgins 1999). Those who do not participate do not feel full or equal citizens; they often feel forsaken by society, disrespected and unimportant. The problem is that equality as citizens can be secured only after social and economic rights have been acquired. When these rights are withheld or violated people are marginalized and feel unable to participate. Thus, equality of citizen status, as embodied in a shared identity and sense of belonging, and fulfilling one’s obligations by participating toward the common good, becomes both a prerequisite and an outcome of the participation process.

However, even among those who are “empowered” or feel that they are indeed “full” citizens, not everyone wishes to be an “active citizen.” This is because people are not willing to participate if they do not believe that it will make a difference, if they do not perceive any gains from participation, or if the mechanism and procedures for participation are unfamiliar or too costly, or if they feel they are not in control. Hence, it is important to enable citizens who wish to participate to develop their capacities as citizens in a virtuous cycle of citizenship participation (Lister 1997). A first step in mobilizing marginalized or excluded people for participation is to transform “the passive client into active citizen” (Shaw and Martin 2000).

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3 To be a citizen means to enjoy the rights of citizenship necessary for agency and social and political participation. To act as a citizen involves fulfilling the full potential of that status. Everyone will not necessarily choose to act as a citizen because it is a time consuming process (Lister 1997).
Thus, participation requires first that people be accorded a full and equal citizen status, i.e. "citizenship as a formally ascribed political status," and next that people be mobilized or activated to act collectively, i.e. "citizenship as a collectively asserted social practice" (Shaw and Martin 2000).

V. CITIZEN PARTICIPATION IN HEALTH SYSTEMS IN BANGLADESH

In recent years there has been a quite visible effort at incorporating participatory processes into development policy making. Primarily in response to external donor conditionality there has been a plethora of forms of public participation in policy and strategy formulation, ranging from stakeholder analysis and consultations to public dialogues with "civil society" and community workshops for exchange of ideas and opinions between local residents and service providers. Among these the most elaborate and discussed has been the formulation of the Health and Population Sector Program (Mahmud and Mahmud 2000) in the mid-1990s and more recently the preparation of the Poverty Reduction Strategy.

The health sector in Bangladesh is a combination of both private and public health care delivery, but the public policy approach to service delivery and attitude to users dominates both sectors. Apart from a number of targeted vertical services like the expanded program of immunization, health care delivery is of poor quality, access to services is inequitable, and providers are non-accountable. In 1998, partly to address these weaknesses and to set up a more pro-poor health care delivery system, the government, at the insistence of donors, decided to set up community clinics in every village/ward with the aim of providing accessible essential health services to the most deprived population groups (women, children and the very poor). The strategy for achieving this objective was to mobilize community participation to establish community owned and managed local level health facility. Community ownership would be ensured by building the clinic on land donated by the village and by having the community share costs of construction and operation of the clinic with government.
In each locality a community group (CG), composed of local government representatives, local service providers and local residents committed to social work and representing various professions and social classes including the landless and women, would be responsible for the operation of the clinic and delivery of health service to the residents of the community through a one stop service for reproductive and primary health care. The CG was, thus, a new space for community participation and deliberation in the provision of accessible and affordable health care. It was believed that the community’s need for accessible, reliable and responsive health care and a service that was answerable to them would be sufficient incentive for ensuring community participation in the operation of the state delivery system at the local level, something that was quite unique given the existing top-down policy making environment.

In addition to these efforts of government, there have been initiatives by non-governmental organizations (NGOs) to establish community clinics managed by local communities as a response to the low quality of public service at the local level. Although the number of these initiatives is extremely limited, they can serve as a comparison group when assessing the experience of community participation in health systems.

The main research question posed in this paper is “Does this model of participation in the health sector work well or function effectively to ensure peoples’ voice and influence on the local level health system?” The more specific questions are:

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4 The operation and functional performance of the CGs has been constrained by several factors (Mahmud 2002). Although the CGs were supposed to be formed through broad-based local consultation, in reality the selection of members of the CG was quite selective and usually biased towards better-off and professional classes, sometimes limiting acceptability within the community. CGs are frequently referred to as the “personal family hospital” of some influential local elite. Lack of official recognition from the Ministry of Health has also contributed to the absence of authority and credibility of the CGs. There is also usually absence of effective leadership and proper delineation of authority and responsibility within the CG, generally rendering the CG non-functional.
1. At what level of decision making and accountability is participation directed, with whose involvement and in what process?

2. Are the structural changes necessary for participation in place?

3. Do the CGs meet the prerequisites for participation?

4. Finally, what has been the outcome and impact, if any, of this experiment in participation?

First, the context within which participation in the local health system is expected to occur will be examined to see whether there are any indications of transformation with respect to decentralization, establishing participation mechanism and bridging the expectation gap. The degree of decentralization will be difficult to assess but some indication is provided by the role of local elected representatives and local employees of the relevant government department, in this case the Thana Health and Family Planning Officer (THFPO), in promoting community participation. To see whether the mechanism of participation has been put in place, existence of acknowledged procedures for participation, including rules for decision making and planning and dissemination of decisions will be assessed by looking at the extent to which objectives and responsibilities are clearly articulated and understood and by examining how these responsibilities are actually carried out. The need for rules of participation becomes even more crucial in situations of unequal local power structures. Finally, the degree of mismatch in expectations will be assessed by identifying what the community expects from participation and what the health care providers feel the community needs.

Next, an assessment will be made of whether the pre-conditions for the process of participation to be initiated and effective are in place. First, participation requires some degree of individual empowerment reflected in a sense of control over one’s life and individual agency. In Bangladesh, where poor people and illiterate people feel they are ignorant and that no one pays them any attention, the sense of control and feeling of being useful and able to contribute is strongly linked to access to material resources like land and education and to non-material resources like position and
authority within the community. Second, participation also requires a sense of community identity or the belief that the collective voice will be more likely to be heard and have greater influence than individual voices. This will be assessed from the reasons people give for joining the group and the benefits they expect from participation as well as what effects they hope to see as a result of their participation. Third, participation requires a sense of citizen responsibility and agency, as part of being a full citizen with all rights but also carrying the responsibility to act as a citizen. This will be indicated by whether joining the group was something that they wanted to do or felt they had to do, and whether the reason for joining the group was for collective good or individual benefit. Fourth, participation requires community mobilization since conditions have to be created that enable people in the community to participate to represent the community. Some indication of the level of community mobilization will be provided by the extent to which residents are aware of the CG and its activities, the process of selection of community representatives to form the group and the degree to which the CG recognizes common concern addressed by the group.

Finally, the results of the process of participation will be assessed by outcomes that indicate the extent to which participation in the local health system has become established and the extent to which the community claims ownership of the health care delivery system. These processes will be assessed by asking the following questions:

- Is the community clinic functioning as planned (opens regularly; provides responsive services; addresses the needs of the most vulnerable groups, women, children and the poor)?
- Is the CG effective in managing the community clinic (in terms of resolving the operational problems of the community clinic)?
- Has the CG emerged as a space for participation?
- To what extent is variation in the operation of the CG explained by whether it was established by the government or established by an NGO?
- Is there community ownership of the community clinic?
VI. EMPIRICAL FINDINGS FROM CASE STUDIES

To answer the research questions posed this paper uses data from 11 case studies of community groups managing community clinics (CCs) in rural areas. Seven of the CGs was set up under the sector-wide health program of government initiated in 1998; the remaining 4 were set up by NGOs. Two government CGs were selected from each thana (locality) where there was an NGO established CG. This was to ensure some degree of comparability of the socioeconomic context in which CGs operated. Each case study is based on interviews using semi structured and open-ended questions with members of the CG, users and non-users resident in the locality, and in some places union and thana level health personnel. In all 40 CGs were visited, out of which 11 were selected for indepth study and the criteria for selection was that the CG had been functional for at least one year or was currently so. Fieldwork and interviews were conducted during July to September 2002.

Table I shows the profile of user and non-user respondents representing residents in the locality of the community clinics. Among the 241 respondents residing in the vicinity of the community clinics, 59 percent were women and 60 percent had used the clinic at some time. Respondents were adults (over age 15) and the majority (52%) had never been to school. Only one third actually knew that there was a committee to run the clinic and the level of knowledge varied considerably between different locations. The perception about the CG among residents was not very positive as only one fourth of those who knew about the CG and merely 9 percent of all respondents reported that CG members actually spoke to them and enquired about their health problems and needs.

On questions about health awareness (not shown) about half the respondents knew of oral saline as the treatment for diarrhoea; slightly more could mention names of vaccinations but not the timing of vaccinations; but only one third were aware about risky pregnancy and safe delivery. Thus, the overall level of health awareness was quite poor, particularly with respect to reproductive health.
The socioeconomic profile of members is described in Table II. The majority of members of both government and non-government clinic CGs, including women members, have secondary or higher level of schooling, which shows that they are much better educated than the adult population of the local communities among whom less than 40 percent had ever been to school (Table I). Overall 37 percent of CG members owned 3 acres or more of land and almost all of them had tin or brick homes, which puts them in the high income category. Especially CG members of government clinics were more likely (41%) to be a large landowner and to be a local elected representative. Eight of the members including one woman were elected union parishad (UP) members, i.e. the lowest level of local government. Elected representatives sat on all but one of the government CG. Professional occupations, such as school teachers and businessmen, and farmers in the government CGs, were the most common occupations of members. Women members who were not health care providers were housewives with considerable schooling (in some cases more than the men) but without any income earning activity.

Table III shows how CG members were inducted into the participation process, namely their source of information about the CG, how they were chosen for participation and their own willingness to participate. In the case of government clinics, members learnt about the CG from a variety of sources, but most frequently from the local UP member or chairman. Health care providers (HCP) at the community clinic were informed by the medical officer posted at the thana or subdivision, who was their overall supervisor. For the non-government clinics, both the local health worker and interested persons informed members.

All CG members in government clinics were nominated and selected at a meeting of local elite and village leaders held at the union parishad office under the chairmanship of the UP chairman, and in all of them, except one (DR), the local UP member was nominated the chairman of the CG. The land donor and the health assistant (HA) were selected as members ex-officio, while two women members in each CG were selected as stipulated by the

5 In DR the land donor was the chairman, but he himself did not know it.
guidelines of the Ministry of Health. In two cases where the clinic was not functional some members did not know they were on the CG and only discovered it at the time of our interview. More than a third wanted to be a member while half of them were encouraged by others to become a member. More than two thirds felt they had been selected because they were trusted and respected, while those who wanted to join felt confident about themselves. A few thought there would be some future personal gain from membership like a job. However, in one case women members complained that they had not been informed about their inclusion in the CG and that membership was thrust upon them.

In the non-government clinics also, members were nominated and selected at a meeting, except in one case where they were elected from among members of local self help groups. More than half wanted to become a member and most were encouraged by others. Again, almost all members felt they were trusted and respected, and one third had self confidence that they could do the work well.

Hence, a large proportion of CG members actually had an interest in participation, which may have emerged from a sense of citizen responsibility and agency. Many of those who wanted to join themselves said they thought it was a good cause and might bring some benefit to the community and poor people in terms of essential and accessible health care. People who encouraged others also used the same argument for membership. There was little opposition at the meetings to the names proposed and nominated to the CG membership.

Table IV reports on members’ knowledge about the objectives of the CG. Members’ knowledge about the objectives of the CG coincided well with the stated objectives, namely to operate and maintain the community clinic to ensure that poor people got health service, motivate people to use the clinic and raise health awareness. In the government CG, monitoring service provision and getting and distributing medicine were seen as important roles of the CG. These were not important objectives in the non-government CG, where fund mobilization was an important role. Women members were less likely to know the objectives of the CG. Thus, the general view of CG members about the role of the CG agreed
with the view of the health care providers and the Ministry who initiated this process.

Table V describes the actual activities of CG members to attain the above objectives. In the government CG the most common activity was to visit the clinic “to look after the clinic,” but the frequency of these visits was not clear. Motivation to use the clinic (only in those areas where the clinic was actually functional) was the next important activity followed by attending meeting and talking to users. Members felt that they were performing their duty simply by attending meetings and participating in the discussion about clinic maintenance and getting drugs. There was very little fund raising although clinic maintenance (cleaning, repair, tube-well) required funds that were to be contributed by the community. In one clinic (BB) where the family planning worker charged Taka 2 for pills or vaccination, people complained that she was charging them fees unduly and for herself whereas actually the money was used for paying the wages of a cleaning woman. This shows that the notion of community ownership of the clinic was not well established.

In the non-government CG, attending meeting and motivation were very important activities, while fund raising also featured prominently unlike the government CG. Fund raising was done through private donations but mainly through membership of the clinic using the family health card. Visiting the clinic was comparatively less important.

Table VI shows the perceptions of CG members about the effects of their activities and internal relationships between CG members. Most members believed that their activity was bringing benefit to the community. Personal and family benefit were also seen as an effect because their families were getting health service and also from the sense of satisfaction from their role in the CG. Personal and family benefits were seen as more common among CG members in the non-government clinics. Some members stated feeling pressure on their time from membership, and in the government clinic CG members faced the problem of peoples’ accusations at not keeping the clinic open.

Almost all members reported that they had very good relations with other members, saying that they all lived in the same
community and shared common concerns and problems and helped one another when needed. But there were very little reciprocal exchanges or interaction between CG members, suggesting that relationships were in fact quite hierarchical.

Table VII gives information on routine meetings of the CG, the main mechanism for participation. In the government CG, meetings supposed to be held every month are extremely irregular, and convened by word of mouth. Irregularity could be linked to the fact that at least two clinics were closed. Minutes are not written and attendance is poor. The chairman and health care provider are most vocal at meetings, while women are largely silent. The non-government CG meetings are held regularly and attendance is good. Minutes are written and meetings are usually convened by written notice. In other words, meetings are seen as relatively more important, and conducted in a more systematic manner.

**VII. DISCUSSION**

*At what level of decision making and accountability is participation directed, with whose involvement and in what process?*

In the case of the government community clinics, participation is directed at a level where almost no policy decisions are taken. The community clinic is the lowest tier of public service delivery with only very rudimentary health care provision. Decisions taken by the CG consisted primarily of routine clinic operation and maintenance, how to ensure drug supply and only occasionally fund raising. The more fundamental decision to establish the clinic was a government decision taken from outside and community participation was not sought to determine whether a clinic was the felt need or demand from the community. There was no participation in the decision about composition of the CG and actual selection of the members who were all, except the health workers who were government designated, nominated at a meeting convened at the UP office.

The process of selection of the CG was not entirely participatory, except to the extent that the local elected representative chaired the meeting for nomination of members. Nor was the process very transparent regarding selection criteria for membership. This is confirmed by the fact that only about one third of the respondents
from the locality had actually heard about the CG or its purpose. Since CG members were all well off farmers or professionals and had good connections with local power structure, they did not represent the marginalized and vulnerable groups in the community, reflected also in the fact that few local residents knew any of the CG members. Hence, the process of participation was neither very representative nor very transparent.

In the case of the non-government (NG) clinics, participation was directed at the local level also, but since clinics were providing relatively full service (including referral) there was scope for greater participation in policy decisions. The CG made routine decisions regarding clinic maintenance and operation, but also major policy decisions for fund raising for a pathological laboratory in one case and a new clinic building in another. Thus, the scope for participation in both policy decision and in the selection of the CG was better with the non-government clinics.

There was some genuine participation in the selection of CG since one fourth (8 members) of the CG members were elected to local community based organizations. However, the remaining members were all nominated in a meeting of local elite social workers and professionals. CG members were all highly educated and well off local elite, so again unlikely to represent marginal and vulnerable groups in the community, except for the clinic where members were elected members of CBOs. In the case of NG clinics too, CG members were not widely known in the community.

Are structural changes necessary for participation in place?

Decentralization has been a festering development problem in Bangladesh since long; government administrative bureaucracy is decentralized down to the thana level with elected representatives up to the lower union parishad, but there has been no genuine devolution of financial or policymaking authority. This is very clear from the way the decision on establishing government community clinics was handed down by the Ministry of Health (MoH) from the centre. Neither local health providers serving at the thana level nor the community had any say in that decision. In many instances local residents were not even consulted about the clinic site, and often the clinic was established on land donated by the UP member, who was instructed to mobilize the CG and choose the land donor.
It comes as no surprise that the majority of CG members first learnt about the clinic from the local UP member. The absence of authority of the CG, especially financial authority, is quite apparent from the types of decisions taken at meetings and their lack of activity apart from visiting the clinic and especially their inability to raise funds for clinic maintenance activities.

In the case of the NG clinics, there is considerable devolution of policy-making and financial authority from the NGO head office to the local CG. This is partly the result of greater flexibility in the NGO decision making process, which is usually less bureaucratic than government systems. CG members are much more active in mobilizing residents to become clinic card holders, motivating people to use the clinic and in fund raising for the clinic. This is also reflected in the discussion of the meetings and in the regularity and attendance at meetings.

The classic gap between community expectations and health providers' perception of what the community needs is quite evident in the case of the government clinics. The apparent lack of community demand for a clinic of this type is clear from the fact that for almost all illnesses people sought more qualified health care elsewhere, the only services provided by the clinic being contraceptive delivery and immunization and some treatment for diarrhoea and fever. Many local residents reported that they had expected the clinic would provide qualified health personnel who could make prescriptions; now it is just for women (family planning, antenatal care) and children (vaccination).

In contrast, the NG clinics emerged from the demand of the community and the CG members for a local health facility. The NG clinics all provided a wide range of services including prescription for medication and referral, and in some cases low cost drugs. In

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6 In Ruppur the community's immediate need was the treatment of arsenic patients and prevention of arsenic contamination. In Madaripur the community felt the need for a local hospital providing low cost health care because of the long distance to the nearest public health centre. In Chokoria people were mobilized by ICDDR,B through local self help groups for health awareness and decided to set up their own hospital with all facilities with the technical assistance of the ICDDR,B. In Pabna a free Friday clinic was operating but the demand was felt for a full service low cost health facility.
that respect they met the community’s expectation more closely than the government clinics. There was an appropriate response from the providers to meet the need/demand of the community so gap between actual expectation of the community and providers’ perception of those expectations was small.

To what extent have mechanisms and rules for participation been laid down?

The starting point for establishing a mechanism of participation is to clearly spell out the objectives of the CG and ensure that members are fully aware of them and of their roles in achieving these objectives. Members are quite aware about the stated objectives of the CG (motivation, raising awareness, operating the clinic and monitoring service provision). In the government clinics members’ knowledge reflects the objectives of the MoH who passed on its decision to establish community clinics to the local UP member for implementation. So members are largely aware of their roles as members of the CG, both in the government and in the NG clinics. However, a few members of government clinics, particularly women, reported no knowledge of the CG objectives.

In the government clinics, the actual role of members is restricted to visiting the clinic and motivating people to use the clinic when open. Clinic visits could be used for monitoring service provision but this is not stated explicitly. Attending CG meetings or fund raising was not seen as roles or activities of members. The formal participation mechanism of the CG meeting was not well established; meetings were irregular and not well attended, minutes were written in two CG meetings out of seven. Within the meetings some members were more vocal (health worker, UP member) while women remained silent.

In the NG clinics attending meetings and motivation, including talking to people and asking about their problems, were seen as the most important roles of members. Raising funds was also a fairly important role. Meetings were a well established means for participation. Meetings were held regularly and were well attended and minutes were written. Meeting notices were generally sent by letter. But some members (those ‘who know more’) were usually more vocal in meetings than others. Thus, the CG meeting is the only explicit mechanism for participation but the rules for
deliberation in the new participatory space are not well established. Relatively speaking, the meetings are far more effective and functional in the NG clinics compared to the government clinics.

Do CGs meet pre-requisite for participation, such as personal empowerment, citizen agency and shared community identity?

The description of CG members by occupation, land ownership and type of home suggests that CG members in both government and non-government clinics had quite secure livelihoods and incomes. Most CG members were in powerful and stable enough positions within the community to feel able to contribute by participating in the CG. Almost all CG members either wanted to become members themselves or were encouraged by others, suggesting some degree of personal empowerment behind the choice to become a CG member. Especially in the NG clinics, a common response to the question “what is your own benefit from participation?” was a sense of satisfaction and work that earns respect. It is not clear, however, whether women members also felt empowered given that CG membership meant participation in the male dominated public sphere. Silent members at CG meetings were generally women.

Willingness to participate in the CG was quite common (37-55%) although not universal, and stronger in the NG clinics. Those willing to participate in the CG wanted to do so because they were confident that they could work to achieve the objectives of the CG. Others who were encouraged to participate thought they were chosen because they were respected and trusted, and considered eligible for the work. Only very few wanted to participate because they thought it would be to their own advantage. In the NG clinics attending meetings was seen as an important element of participation, which was not seen for the government clinics. Thus, although community representation may be questioned since CG members were generally unknown to local residents, most CG members enjoyed a sense of citizen responsibility and agency and believed they could contribute significantly by participation. The sense of agency appeared stronger among the CG members of the NG clinics.

The interviews do not provide enough information to determine the extent of community identity shared by residents and CG
members. More context specific indicators and adequate information are needed to assess both community identity and empowerment.

*What outcomes or effects can be attributed to the CG?*

CG members of government clinics perceive the community as the major beneficiary because of availability of health care close to home, provided the clinic is open and functional. Only a few members perceive any benefit for their families or themselves personally. In other words, CG members do not see themselves as users of the clinic, suggesting that CG members do not identify strongly with the vulnerable and marginal groups for whom the clinic was established. Thus, the sense of community identity between CG members and local clinic users is weak. Within the CG members have generally amiable but non-reciprocal relationships in the sense that CG members have no other relationship among themselves (such as labour sharing, exchange of gifts, etc) except CG membership.

In contrast, CG members of NG clinics perceive benefits equally at the community and at the personal and family levels. Thus, they and their family members are users of the clinics together with other vulnerable and marginal groups. Many state a sense of satisfaction and earning respect from the community as a personal benefit. Hence, their identification with the community is strong. CG members in the NG clinics enjoy good relationships among themselves, and relationships are more likely to be reciprocal compared to relationships among the government CG members.

**VIII. CONCLUSIONS**

The experience with participation in the health sector in Bangladesh offers some interesting insights into the participation process. The analysis indicates that citizen participation in the newly opened public spaces at the community/village level have failed to take root and points to a number of constraints that were probably not obvious from the reading of existing literature.

The lack of devolution acts as a barrier to participation because people are not interested in participating if decision-making authority on crucial issues (location of the clinic, fund mobilization, services to be provided) is not vested upon the community group
managing the clinic. Lack of devolution also becomes the obstacle in bridging the gap between community expectations and provider preferences, as is evident from the difference in types of services available in the government and the NG clinics.

For the same reason, the process of selecting the community group is not transparent or participatory and the question of representation or “who speaks for whom” looms large. This non-transparency dampens the potential for community ownership, however weak, because the community group is not well known in the community. The lack of information about the community group also undermines the potential for the emergence of a community identity.

The meetings of the community group open up an invited space for participation. However, the absence of clearly established rules for deliberation, negotiation, decision-making and inclusion leads to a capture of these spaces by the more powerful members of the community.

The dilemma of whether personal empowerment must precede participation is evident, but given the social context of rural Bangladesh the participation of ordinary citizens (those still disempowered) who do not wish to engage or participate may be difficult to ensure. But over time as the rules for participation become evolved and mature and ordinary citizens acquire the capabilities for participation, the process may become more inclusive.

The benefits of participation for the community are not immediately evident for the government clinics, but in the case of the non-government clinics benefits are articulated both at the personal level (by members of the community group) and at the community level because of increased access to health services for the entire community, not just for the poor and women. Hence, citizenship participation is relatively more effective in the case of non-government sector. The better performance of NG efforts may be linked to a relatively stronger sense of community identity among CG members and greater acceptability among the community, which was related to the fact that they offered other social and economic development programs to the community.
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<th>Ownership</th>
<th>Perception about CG (% respondents)</th>
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### TABLE II

**SUMMARY PROFILE OF CG MEMBERS**

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<td>9 13 1 2 2 1 1 - 6 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All</td>
<td>34 15</td>
<td>47 34</td>
<td>9 13 1 2 2 1 1 - 6 1</td>
<td></td>
<td>41%</td>
<td>10 10 9 12 8 45 8 1</td>
<td></td>
</tr>
<tr>
<td>GCC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Non-government community clinics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH-RP</td>
<td>6  2</td>
<td>30 13</td>
<td>2 3 1 - 2 1 6 - -</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SH</td>
<td>4  2</td>
<td>62 35</td>
<td>12 9 2 - - 4 - 2 6 - 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MD</td>
<td>8  2</td>
<td>51 49</td>
<td>12 11 2 1 3 4 - 2 10</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH-PB</td>
<td>9  -</td>
<td>45 - 5</td>
<td>- - 8 1 - - 9 - -</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All</td>
<td>27  6</td>
<td>46 42</td>
<td>12 10 33% 4 15 7 - 5 31 - 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: 1=health care provider; 2=no interview available; 3=rural doctor; 4=student.*
### TABLE III

**SELECTION PROCEDURE OF CG MEMBERS (NUMBER OF MEMBERS)**

<table>
<thead>
<tr>
<th>Selection process</th>
<th>Government community clinics</th>
<th>Non-government community clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GK</td>
<td>BB</td>
</tr>
<tr>
<td>Number of members</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>How did you learn about CG?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local health worker</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Land donor/Interested person</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>U.P. member/Chairman</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>THFPO</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>How were you selected?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nominated in meeting</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>As health worker</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Elected^1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Does not know</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Willingness to participate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wanted to be member</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Encouraged by others</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Opposed by others</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Reason for selection in CG</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self confidence</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Able/right</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Member of Other CBO^3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Own gain</td>
<td>-</td>
<td>3</td>
</tr>
</tbody>
</table>

**Note:** 1=by members of self help group; 2=interview with HA not available; 3= opposed by the chairman of the CG who is the U.P. member; 4=two women members who were not members of the self-help groups.
TABLE IV
MEMBERS' KNOWLEDGE ABOUT OBJECTIVES OF CG (NUMBER OF MEMBERS)

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Government community clinics</th>
<th>Non-government community clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GK</td>
<td>BB</td>
</tr>
<tr>
<td>Motivate people to use CC</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Operate/maintain CC</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Fund mobilization</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Get and distribute medicines</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Monitor service provision</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>Do not know</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>ACTUAL ACTIVITIES OF CG MEMBERS (OTHER THAN HEALTH WORKERS)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government community clinics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-government community clinics</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Visit CC</strong></td>
<td><strong>Visit CC</strong></td>
<td></td>
</tr>
<tr>
<td>5             4             6             2             3             1             5</td>
<td>26             1             4             2             1             1</td>
<td></td>
</tr>
<tr>
<td><strong>Raise funds</strong></td>
<td><strong>Raise funds</strong></td>
<td></td>
</tr>
<tr>
<td>1             1             -             -             -             -             -</td>
<td>2             3             1             2             7             13</td>
<td></td>
</tr>
<tr>
<td><strong>Attend meetings</strong></td>
<td><strong>Attend meetings</strong></td>
<td></td>
</tr>
<tr>
<td>2             5             -             -             -             -             -</td>
<td>7             3             7             5             8             23</td>
<td></td>
</tr>
<tr>
<td><strong>Motivate people to use CC</strong></td>
<td><strong>Motivate people to use CC</strong></td>
<td></td>
</tr>
<tr>
<td>2             3             3             4             -             -             2</td>
<td>14             5             6             3             9             23</td>
<td></td>
</tr>
<tr>
<td><strong>Talk to users</strong></td>
<td><strong>Talk to users</strong></td>
<td></td>
</tr>
<tr>
<td>3             -             -             2             1             -             2</td>
<td>8             1             -             2             -             3</td>
<td></td>
</tr>
<tr>
<td><strong>Talk to HCP</strong></td>
<td><strong>Talk to HCP</strong></td>
<td></td>
</tr>
<tr>
<td>-             -             -             1             -             -             -</td>
<td>1             -             -             1             -             1</td>
<td></td>
</tr>
<tr>
<td><strong>No activity</strong></td>
<td><strong>No activity</strong></td>
<td></td>
</tr>
<tr>
<td>-             -             -             4             6             -             -</td>
<td>10            -             -             -             -             0</td>
<td></td>
</tr>
</tbody>
</table>
# TABLE VI
**PERCEPTION ABOUT BENEFITS AND EFFECTS OF CG ACTIVITY**

<table>
<thead>
<tr>
<th></th>
<th>Government community clinics</th>
<th>Non-government community clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GK</td>
<td>BB</td>
</tr>
<tr>
<td>Benefits of CG membership</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Own benefit</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Family benefit</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Community Benefit</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Problems faced as member</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inability to Keep CC open</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Time</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Face People’s accusations</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Relation between CG members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Good</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Reciprocity³</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

**Note:** 1 = if CC is open and drugs are available; 2 = training; 3 = when there is some reciprocal relationship between members other than the CG membership.
### TABLE VII

#### ROUTINE MEETINGS OF CG

<table>
<thead>
<tr>
<th></th>
<th>Government community clinics</th>
<th>Non-government community clinics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GK</td>
<td>BB</td>
</tr>
<tr>
<td><strong>Current status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>open</td>
<td>open</td>
</tr>
<tr>
<td><strong>Number of meetings held</strong></td>
<td>12</td>
<td>4/5</td>
</tr>
<tr>
<td><strong>Regularity</strong></td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td><strong>Minutes written</strong></td>
<td>ni</td>
<td>no</td>
</tr>
<tr>
<td><strong>Attendance</strong></td>
<td>poor</td>
<td>poor</td>
</tr>
<tr>
<td><strong>Not informed #</strong></td>
<td>Chair-person</td>
<td>Chair-person</td>
</tr>
<tr>
<td><strong>Who is vocal?</strong></td>
<td>Chair-person</td>
<td>Chair-person</td>
</tr>
<tr>
<td><strong>Who is silent?</strong></td>
<td>Wom</td>
<td>-</td>
</tr>
<tr>
<td><strong>How meetings called</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Discuss drug supply</strong></td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Discuss maintenance</strong></td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Discuss how to keep CC open</strong></td>
<td>Yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Fund raising</strong></td>
<td>no</td>
<td>no</td>
</tr>
</tbody>
</table>

**Note:**
1. Government CCs are open for two days in the week only, rest of the time devoted to home visits.
2. HA=Health assistant, UPM=Union Parishad member, LD=Land donor, ST=School teacher, HW=Health worker;
3. Roof leaks, tubewell broken.
REFERENCES


Too Poor for Rights?
Access to Justice for Poor Women in Bangladesh

by
LENA HASLE*

I. INTRODUCTION

One of the unique claims of the human rights framework, and in particular international human rights law, is its insistence that: “All human rights are universal, indivisible and interdependent and interrelated (UN doc. A/CONF.157/23, 1993)” - applicable to all, without discrimination based on race, colour, sex, language, religion, social origin, etc. Despite widespread international acceptance of human rights norms, as signified by the large number of states that have ratified the main international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights - their application remains elusive for many, and in particular for those living in poverty. Indeed, as stated by the previous High Commissioner for Human Rights, Mary Robinson, poverty is itself “a denial of a whole range of rights pertaining to the human being, based on each individual’s dignity and worth” (UN Doc. E/CN.4/2000/SR.41, 2000).

Crucially, from a human rights perspective, poverty is not only associated with denial of rights – but also the denial of the right to rights, as promoted and protected through an effective legal system. Legal systems around the world discriminate against people who

* First Secretary, Political Governance, Norwegian Embassy, Lusaka.

1 An estimated 2.7 billion people were living on less than $2 a day in 2000 - more than half of the population in the developing world (World Bank 2004).
cannot afford legal representation, are illiterate and lack the power to influence legislative processes (Anderson 2003a).

Strategies for improving poor people’s access to justice attempt to decrease the gap between the concept of universal human rights, and poor people’s enjoyment of these rights through experience (Odinkalu 2003). Typically, these strategies are aimed at making the legal system more responsive to poor people’s needs by addressing hurdles that hinder their access to court. This is a complex task and requires significant political commitment to be effective (Faundez 2001). In recognition of this, increasing attention is also given to the non-formal justice system, including the extent to which traditional mechanisms for dispute resolution can play a role in promoting greater respect for human rights and increase access to justice.

This paper will focus on the experience of a specific group of rural poor in Bangladesh, who, with the assistance of Nagorik Uddyog2 (a human rights NGO), have sought justice through the non-formal justice system. The question to be explored is whether the justice provided by informal systems is enforceable, and whether the agreed settlements exhibit “substantive justice” as measured against Bangladeshi law and international human rights standards.

II. ACCESS TO JUSTICE FOR THE POOR – A FRAMEWORK FOR ANALYSIS

Definitions of Access to Justice

Access to justice requires more than being able to present a grievance in front of a court, or as in this case, before a mediation panel. Importantly, provided your claim is recognized as legitimate, access includes an effective remedy whereby your right is translated into reality (Anderson 2003b:2). Thus, access to justice is associated with the ability to bring a grievance before court, including the right to a fair hearing and an effective remedy. The right to access courts, while not specifically mentioned in international human rights law, has become increasingly explicit over time, through case-based standard setting (McBride 1998). The

2 “The Citizens Initiative.”
issue of access has also been taken up in domestic jurisdictions, with a specific focus on promoting fundamental rights of the poor. In this regard, much attention has been given to South Africa, which has ensured the justiciability of economic and social rights in its constitution, and India, which has become famous for judicial activism and the broad interpretation of the right to life, as protected in Article 21 of the Indian constitution (Sunstein 2001; Cranston 1997; Hodson 2003).

UNDP has defined access to justice as the “ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievance in accordance with human rights principles and standards” (Sudarshan 2003). While this definition gives little recognition to the role of informal or traditional justice, it is worth noting that it employs an expanded “material”, rather than formal understanding of justice, characterized as “related to a model of construction of a legal system in which such ideas/values as human and economic rights, recognized at an international law level, are to be implemented by the law, regardless of whether they are formally recognized by the national legal system of the country being assisted” (Zamboni 2001).

Addressing the broader agenda of promoting access to human rights, International Council on Human Rights Policy (ICHRP) has provided a definition that inter alia includes the ability to report domestic violence to the police with the expectation that action will be taken; protection from corruption, crime and violence; as well as access to basic services like education, health, water and sanitation. They also recognize that “both state and non-state mechanisms can and should be used to improve access to rights,” and that “informal mechanisms and remedies favored by the excluded deserve closer examination by human rights practitioners, since, despite their deficiencies, they offer cheap, accessible and legitimate services to the communities that use them” (ICHRP 2004).

Interestingly, both these definitions give importance to the quality of justice, indicating that there are minimum standards to be met not only in the process of accessing justice, but also with regard to the content of justice. While the focus of this paper is on
the enforcement of rights through effective implementation of informal justice mechanisms, the question of what exactly is being implemented, and the nature of the justice provided, will also inevitably have to be addressed.

**Barriers to Justice for the Poor**

To understand why informal mechanisms are seen to be popular among the poor, including in Bangladesh, it is worth summarizing some of the main barriers that poor people face when trying to access the formal justice system. These can be divided into two broad categories: Barriers that are external to the individual, relating to “those authorities, institutions and entities that (can) guarantee enjoyment of the right or protect against interference with its enjoyment” (Odinkalu 2003); and barriers that relate to the characteristics and circumstances of the individual (Golub 2003a).

Considering the judicial system in particular, some of the common barriers that have been identified are (Anderson 2003a, World Bank 2001):

- The existence of anti-poor laws, including laws that discriminate against people on the basis of income or wealth.
- Negative attitudes to the poor among people working with law enforcement (including lawyers, judges and police).
- Excessive bureaucracy and inefficiency in the judicial system, contributing to non-transparency and delay in the legal process.
- Corruption among law enforcing personnel, contributing to increasing transaction costs and greater uncertainty about the outcome.
- Lack of judicial independence and abuse of political authority vis-à-vis law enforcing agencies, undermining the surety of a fair hearing.

A well functioning legal system is not enough however, as individual constraints may still prevent poor people from being able to use “the legal levers.” Bringing a case to court typically represents significant opportunity costs - associated with loss of income, as well as various transaction costs for payment of transport, food, etc. which poor people can ill afford. The
predominant factor in determining whether people are able to use
the available legal remedies has therefore been identified as access
to financial resources. Poor people are also constrained by lack of
“institutional skills”, defined as the “ability to understand and use
the system,” which, among other things, will be affected by their
level of literacy and ability to access information (Anderson 2003a).

Outline of the Paper

Having established a framework for analysis, Section III will
provide a brief introduction to the justice situation in Bangladesh,
and the context within which informal justice operates. Following a
presentation of the methodology in Section IV, Section V presents
the research findings, giving an overview of what kind of disputes
are brought to NU, how these are resolved and implemented. The
relevance of the findings is discussed in Section VI, which analyzes
the research findings with respect to enforcement and evidence of
substantive justice. A tentative conclusion is provided in Section
VII.

III. ACCESS TO JUSTICE IN BANGLADESH

To set the stage, and to explain why the informal, rather than
formal justice system, arguably represents the mainstream form of
dispute resolution in Bangladesh (Siddiqi 2004a), a short summary
of the Bangladeshi context is in order.

First of all, it is worth pointing out that Bangladesh, despite
having moved into the middle-income bracket in UNDP’s Human
Development Index, remains poor, with 82 percent of a population
of more than 130 million living below the poverty line (UNDP 2004).
Its poor governance situation is recognized to be a strong
impediment to ongoing poverty reduction efforts, and is subject to
intense political and public debate.3

The lack of faith in the formal justice system in Bangladesh is
immense. As an illustration, a survey conducted by Transparency
International–Bangladesh found that 96 percent of the households
interviewed agreed with the assertion that it was almost impossible
to get help from the police without money or influence. Eighty nine

3 See e.g. Bangladesh Interim Poverty Reduction Strategy, accessed 23.08.04 at
percent expressed a similar disillusionment with respect to the judiciary (with the notable exception of the Supreme Court), and 63 percent of the households involved in court cases reported that they had to bribe court officials (Transparency International – Bangladesh 1997). Similarly, and reflecting this, a survey conducted by the World Bank found that “the breakdown of law enforcement – especially corruption in the police and long delays in the courts is the top concern of both rank-and-file citizens and entrepreneurs... And even though access to such social services as health care and education is often inequitable, that pattern of discrimination against the poorest is even more perceptible when the most vulnerable Bangladeshis seek the help of the police or the protection of courts [my italics]” (World Bank 2002).

Another factor which has received particular attention from human rights groups -including Amnesty International - is the issue of impunity (Amnesty International 2003). Reports of torture and police brutality are rarely investigated by the government, and contribute to an overall impression that law enforcement agencies have carte blanche as far as use of violence is concerned, which also extends to non-state actors associated with members of the political establishment. It has been suggested that impunity deters ordinary people – as well as people involved in high profile cases - from seeking formal justice out of fear of reprisal (Hossain 2004).4

Governance failures, as described above, are aggravated by anti-poor laws and administrative practices, such as: 5

- Laws that give police wide discretionary powers to arrest and detain people without a warrant.6
- A system of monetary bail that discriminates against poor people.

4 Possible high-profile examples include the detention of Reuter's stringer Enamul Huq Chowdhury and senior opposition politician Saber Hossain Chowdhury respectively, both of whom were reported to have been tortured by police. In neither case has there been an effective investigation into the allegations, and neither of the two has taken steps to press charges against the government.
5 Information is taken from UNDP 2002 ch.1.
• Laws and judicial procedures (including rules of evidence) that are prejudicial towards women victims of violence, including rape.
• Laws relating to the dispossession of immovable property, public nuisance, and vagrants that are not implemented in-line with their original intent, and that are used to discriminate against and harm the poor.

Improving Justice in Bangladesh

There is international pressure on the Bangladesh government to improve its justice system, as well as the overall governance situation in the country. International funding is given to more than 180 interventions under the broad heading of governance, including a 60 million dollar project for building judicial and legal capacity (LCG Bangladesh 2004).

Apart from these, however, Bangladesh also boasts a rich variety of NGO interventions aimed at promoting human rights, including poor people’s access to justice. The areas of intervention can be divided into three broad categories:

• Public Interest Litigation – using courts to establish fundamental rights that are relevant for selected groups or the population as a whole;
• Legal services, including legal education and legal aid so as to facilitate better access to and more effective use of the court system;
• Alternative Dispute Resolution (ADR), including mediation.

Within the area of ADR, there is considerable difference in how organizations work, and in particular the extent to which they interact and cooperate with traditional mechanisms for settling disputes.

Traditional Justice - the Shalish

The shalish is an informal, community-based process of dispute resolution that has been in place for centuries. It is typically a public event, led by a panel of influential local figures. In adjudicating a particular case, these might play the role of mediators, arbitrators or judges (Siddiqi 2003, Golub 2003b)
According to a survey by UNDP, 60-70 percent of local disputes are resolved by the shalish (UNDP 2002: 92).

The shalish is usually an all-male affair, and is not known for its commitment to social justice or the rule of law. On the contrary, the shalish has been actively used as a means of social control, including upholding gender and social hierarchies. Historically, the shalishdars\(^7\) were generally closely connected with the local (landed) elite. Following the independence of Bangladesh in 1971, traditional power structures were disrupted, and new actors have emerged. Elected members of local government have come to play a key role in the shalish process, along with wealthy and politically well-connected members of the community. Despite having no legal authority, the shalish is considered to play “an extremely important role in ensuring acquiescence to prevailing moral codes of conduct on which rural society is based,” and serves to uphold and consolidate the prevailing structure of power (Hashemi and Hayat 1998). As such, while the actors have changed, the shalish remains undemocratic and has little knowledge or interest in promoting the rule of law. It has also retained a conservative and discriminatory approach to women. According to recent studies, money and muscle are key assets that influence the outcomes of present day shalish rulings, undermining its integrity and respect among common people (Siddiqi 2004a).

Despite its weaknesses, shalish remains the preferred mode of conflict resolution in rural Bangladesh, and it is “an enduring and fundamental feature of rural society, one that has neither been displaced nor endangered by the introduction of a formal justice system” (Siddiqi 2003).

### Implementation of Informal Justice: The Point of Departure

Common for most ADR interventions, and the point of departure for analyzing the findings presented above, is that they are extra-legal, and do not command any formal support from law enforcing agencies for their implementation. As such, and considering the stages of accessing justice (Box 1), while recognizing that informal, local interventions would seem well placed to initiate a process of “naming, blaming and claiming”, their ability to safeguard the

\(^7\) Those responsible for conducting the shalish.
outcome of this process, i.e. the implementation of justice, is less clear. From the perspective of human rights, however, effective implementation is crucial, as pointed out by Donnelly:

“We must distinguish between possession of a right, the respect it receives and the ease of frequency of enforcement.... It is the ability to claim the right if necessary – the special force this gives to the demand and the special social practices it brings into play – that makes having rights so valuable and that distinguishes having a rights [sic] from simply enjoying the benefit of being the (right-less) beneficiary of someone else’s obligation” (Donnelly in Odinkalu 2003).

<table>
<thead>
<tr>
<th>BOX 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>STAGES OF ACCESSING JUSTICE*</td>
</tr>
<tr>
<td>Naming</td>
</tr>
<tr>
<td>Blaming</td>
</tr>
<tr>
<td>Claiming</td>
</tr>
<tr>
<td>Winning</td>
</tr>
<tr>
<td>Enforcing</td>
</tr>
</tbody>
</table>

Despite numerous studies and evaluations of NGO interventions working with the informal justice system in Bangladesh, the question of enforcement is rarely given much attention beyond cursory evidence based on client satisfaction. The need for more information on the impact of these interventions is widely recognized (ADB 2001, Golub 2003b, Hossain 2002).

IV. METHODOLOGY

The research was conducted in three stages. In the first stage, relevant secondary literature on access to justice, including case studies from Bangladesh and other developing countries, was reviewed. The second stage of the research focused exclusively on Nagorik Uddyog (NU) operations in Kalihati, which is approximately 75 km north of Dhaka. The field work took place in July/August 2004. The author would like to express her gratitude to Nagorik Uddyog for their willingness to share information and assistance in organizing interviews with their clients.
practitioners working in the area of human rights and access to justice in Bangladesh were interviewed.

**Introduction to Nagorik Uddyog**

Nagorik Uddyog was set up in 1995. One of NU’s key objectives is to enhance women’s access to justice, as a part of a larger goal to establish social and gender justice in Bangladesh. Within this overarching objective, emphasis is placed on promoting the rule of law, as well as greater respect for human rights. Starting with voter education, the NU program has gradually expanded to include various forms of legal and human rights training, women leadership development, and training on how to promote the rule of law and human rights through mediation. It also offers legal aid in cases where mediation fails. NU operates in four Upazilas: Kalihati, Badarganj, Swarupkhati and Banaripara, targeting their intervention at the Union level (the only tier of local government where there is an elected body).\(^\text{10}\)

**The NU shalish**

In its mediation program, NU has adopted a strategy whereby it seeks out members of the traditional shalish that are open to a more democratic and just form of dispute resolution. These individuals are identified through participatory local level workshops, and subsequently invited to become members of a local NU shalish committee, along with other individuals representing a cross-section of the community. One third of the members are women, and a particular effort is made to include women Union Council members.\(^\text{11}\) As a matter of strategy, NU seeks to transform rather than replace the existing power structure through a method of cooptation, and in particular by bringing together “influential” and ordinary (“non-influential”) members of the community in training and mediation, thereby fostering new allegiances (Siddiqi 2003:16).

Once established, NU aims to provide the committee members with necessary tools for promoting greater justice in the shalish

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\(^{10}\) Bangladesh has a four tier local government structure. There are 64 Districts, 489 Upazilas, 4,460 Unions and approximately 83,000 Villages.

\(^{11}\) Three of the twelve seats on the Union Council are reserved for women.
process. Emphasis is given to education and training, combining human rights education with information about the law, including civil and criminal laws, as well as religious and customary laws. Committee members are also introduced to local lawyers who stand ready to assist them on a case-by-case basis. Role-plays and other forms of participatory exercises are used to enhance the members’ sensitivity to prevailing attitudes and norms that discriminate against women, and to develop legal and moral arguments for how these can be counteracted through the shalish. Members of the shalish committee are not, however, on NU’s payroll, and are free to take part in the traditional shalish in their own capacity.

One of NU’s main activities is to organize shalish hearings, which are convened on the basis of an application from an aggrieved member of the community, which is filed with one of NU’s Community Organizers (CO). COs are volunteers from the respective communities where NU operates, who have received human rights and legal training from NU. When NU has accepted an application, the CO undertakes a fact-finding exercise to verify the applicant’s claims and to collect other relevant information. Provided the application is considered valid, a formal notice inviting the respondent to a NU-shalish is sent. As a general rule, NU would not convene a shalish in criminal cases. These are sought adjudicated by formal courts, with assistance from NU as relevant.¹²

Assuming the respondent is willing to meet in a NU-shalish, a mediation session is convened. While NU facilitates the mediation by organizing the venue, NU staff play a passive role in the discussion, which is led by members of the NU-shalish committee, representatives from NU’s women leadership program and representatives from each of the parties (which may include non-NU shalishdars and other influential people). According to NU policy, a resolution should be reached through mediation and not arbitration. As discussed with project staff, this is understood to imply a willingness to compromise on both sides, and while law is a relevant factor in the negotiation, it is not the only - or even the

¹² From discussion with project staff, it is not clear how a decision about whether a case is criminal or not is made in the case of domestic violence. This will be discussed in greater detail in Sections V and VI.
dominant consideration. This will be discussed in greater detail later.

Provided an agreement is reached, this is recorded in the minutes of the hearing, which is signed by both parties. If the opposing party is unwilling to reach a settlement, or the applicant considers the settlement unreasonable, NU stands ready to provide legal aid to the applicant so as to facilitate a formal court hearing. This is also an option in cases where the respondent does not abide by the decisions made.

Following the mediation, NU undertakes to visit the applicant on a monthly basis for three months, so as to monitor the implementation of the shalish decision.

Selection of Interview Cases

NU started its work in Kalihati in 2000. To capture a significant volume of cases that had been completed, complaints filed in 2002 were selected as a basis for research. Using the summary records kept in NU’s main office in Dhaka, and with the assistance of a translator, a written summary of all applications filed in Kalihati in 2002 was prepared (113 cases in total). Of these, complete records of 40 cases were prepared, with additional information from files kept at Kalihati. These were selected on the basis of having clearly articulated settlements, and having been fully resolved (on paper).

Due to severe floods, the selection of clients to be interviewed had to be made on the basis of accessibility by road/boat, rather than through a process of random selection. Interviews were scheduled with applicants only, as they would be in the best position to say whether settlements are adhered to. Frequently, however, the discussion also included relatives and bystanders in the village. In total, twelve applicants were interviewed, of which only two were men.

In two cases, interviews were conducted with the parents of applicants, as the applicants themselves were not present. In-depth discussions were also held with project staff. Finally, the research

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13 Many thanks to Ms. Srabon Mannan, a newly graduated BA Computer Science, who assisted me with translations.
undertaken included the observation of a NU-shalish, followed by a
detailed review of this particular case with the Community
Organizer and the applicant respectively.

V. RESEARCH FINDINGS

Demand for Informal Justice in Kalihati

Table I gives an overview of the number of applications filed in
Kalihati since the inception of the program in December 2000.
Based on the recorded summaries from 2002 and as illustrated in
Table II the review found that nearly all cases brought before NU-
shalish result in an agreed settlement, and that in some instances
the receipt of the NU-notice alone is sufficient to end a conflict. A
very limited number of the cases reviewed have made any contact
with the formal justice system.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>6</td>
</tr>
<tr>
<td>2001</td>
<td>71</td>
</tr>
<tr>
<td>2002</td>
<td>113</td>
</tr>
<tr>
<td>2003</td>
<td>146</td>
</tr>
</tbody>
</table>

| Number of cases where NU facilitated a shalish and where a settlement was agreed | 100 |
| Number of cases settled without a shalish, on the basis of receipt of a written notice from NU | 8 |
| Number of cases where no settlement was reached and where at least one of the parties decided to file a court case *) NU-shalish specifically recommended court in one case only | 4* |
| Number of cases where the applicant was asked to re-submit the case due to inadequate or incorrect information | 1 |
Table III gives an overview of the issues that are brought for mediation. Nearly 90 percent of all applications relate to marital disputes, and the majority of cases are filed by women.

**TABLE III**

<table>
<thead>
<tr>
<th>Nature of Conflict Sought Settled</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic matters (female applicant)</td>
<td>84</td>
</tr>
<tr>
<td>Domestic matters (male applicant)</td>
<td>15</td>
</tr>
<tr>
<td>Land or asset related</td>
<td>8</td>
</tr>
<tr>
<td>Other/miscellaneous</td>
<td>6</td>
</tr>
</tbody>
</table>

As illustrated in Fig.1, the most common grievances among women are domestic violence, followed by insufficient maintenance. The records indicate that at least 64 percent of the women applicants live with their parents at the time of filing a complaint. The extent to which the woman’s parents play an important role in deciding to approach NU is not known. It should be noted, however, that NU does not require the approval of her guardians for pursuing a case, which, as will be argued later, is significant from a human rights perspective.\(^{14}\)

**Settlement and Enforceability of NU-shalish Rulings**

Turning to the nature of settlements and their enforcement, the research focused on written records on follow-up and implementation in 40 cases, which represent 35 percent of the 2002 caseload. Additional information was sampled through interviews with twelve applicants, as well as other community members who were familiar with the NU shalish.

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\(^{14}\) Women in Bangladesh typically depend on the support of a male guardian for accessing any formal or informal institutions: as explained by Schuler et al (1998): “Women often have... no socially sanctioned identity outside the family... As they grow up, women come to see dependence and deprivation relative to male family members as natural...” (Schuler et al 1988: 148).
Marital disputes represent 87 percent of the grievances brought to the NU shalish, and nearly 75 percent of these are filed by women. In the six cases (i.e. 13%) that were not related to marital disputes, three were filed as a result of conflict between family members, two involved disputes over land and one concerned a long-standing quarrel between neighbors. As seen in Table IV, women’s primary complaint is domestic violence (68%). Cases filed by men all relate to their wives’ unwillingness to stay with them in the marital home. This category includes cases where it is stated that the woman has left home to escape abuse.

In four cases, polygamy, i.e. disputes relating to the husband taking a 2nd wife or abandoning one of his wives, was given as the primary source of marital conflict. Polygamy was also mentioned as a factor contributing to violence in an additional four cases.

TABLE IV

<table>
<thead>
<tr>
<th>Nature of Grievance</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violence</td>
<td>19</td>
</tr>
<tr>
<td>Polygamy</td>
<td>4</td>
</tr>
<tr>
<td>Abandonment</td>
<td>3</td>
</tr>
<tr>
<td>Lack of maintenance</td>
<td>2</td>
</tr>
</tbody>
</table>
NU records indicate that out of 40 cases, the NU-shalish was successful in mediating an agreement in 84 percent of the cases i.e. the agreements reached in 31 cases were adhered to for at least three months after the NU shalish. Three cases were resolved without a shalish, upon receipt of a written notice from NU.

Looking at the outcome of NU-shalish mediations in cases relating to domestic conflict only, Fig 2 shows that more than half (55%) of the mediations resulted in the husband and wife deciding to resume their relationship. The summary records indicate that agreement typically is reached on the condition that the reason for the grievance is addressed, and that both parties commit to change their behavior as necessary.\(^{15}\)

\[\text{Fig 2: Outcomes - resolution of domestic conflicts}\]

\(^{15}\) As argued by Abel (1982), mechanisms for informal justice typically seeks to reduce, or neutralize conflict by apportioning blame on both applicants, thereby rendering the conflict “intraindividual” – an expression of the problems within each party”, rather than emphasizing the conflict as being between individuals, or linked to structural reasons (Abel 1982: 283-289).
In cases where the parties agree to divorce, the NU-shalish will generally play an active role in mediating a settlement, to be paid by the husband within a given date. While bearing in mind that the number of men filing complaints against their wives is low, it is worth noting that cases filed by men are more likely to result in divorce than those filed by women.

Findings from the case records were supplemented through interviews. The clients interviewed represent a variety of grievances and outcomes, as seen in the Annex. All but one interview confirmed that the NU-shalish ruling had been (more or less) adhered to, and that it had proven durable. All clients interviewed also felt that this reflects the general picture, including in cases where couples resume their relationship following a complaint of domestic violence.

**Failed Cases**

Not all cases are settled amicably, however. Of the forty cases reviewed in detail, records indicate that at least six could not be resolved by the NU shalish. All these cases relate to marital disputes. Five were filed by women who sought relief from domestic violence. The sixth case was filed by a husband whose wife had left him on the basis that he was not able to provide her parents with a loan of Tk 20,000. From the case notes, it is not clear whether she left him of her own will or due to pressure from her parents.

Three cases ended up in court. All of these applicants had experienced abuse and periodic abandonment from their husbands. Two of them approached the NU shalish with the intent of salvaging their marriage. In one of these cases, the NU shalish failed to reach an agreement and the applicant decided to file a case in court – without assistance from NU. The court later instructed the Chairman of the Union Council to solve the dispute, following which a divorce settlement of Tk 23,000 was agreed. In the second case, the husband made it clear that he was seeking a divorce, and offered a settlement in the NU shalish. This was refused by the wife. Subsequently, upon learning that her husband had taken a second

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16 Exchange rate: USD 1 = Tk 59 (September 2004).
wife, she filed a case in court. The notes indicate that the case is still pending.

The third applicant who approached the court sought a divorce, and decided to file a case after her husband failed to pay the agreed settlement. This prompted her husband to pay, and for the case to be withdrawn.

In the remaining two “failed cases”, one related to a plaintiff who was said to be violent, as well as addicted to alcohol and drugs. The applicant had left him on several occasions, including divorcing him, only to subsequently marry him again. Both the abuse and his vices have continued. In the interview, the applicant made it clear that she felt her husband was unafraid of both the NU shalish and the court.

In the final case, the applicant had filed two complaints about domestic violence to the NU shalish, to little effect. Following a third complaint, it was agreed that the couple should get a divorce. The implementation of the divorce was put on hold after the discovery that the applicant was pregnant. Following a visit by the CO after the birth of the child, the records indicate that the couple are living together “in relative peace.”

VI. EFFECTIVENESS OF ENFORCEMENT OF NU-SHALISH

Considering the findings presented above, as well as information from the project staff and people living in the community where NU operates, it would seem appropriate to draw a preliminary conclusion that agreements facilitated by the NU-shalish are generally upheld, despite the absence of a formal enforcement mechanism. Drawing on these findings, as well as other research on informal justice systems in Bangladesh and elsewhere, five main factors influencing the enforcement of NU-shalish decisions have been identified:

- NU is perceived as a powerful organization
- The threat of court
- Respect for “due process”\(^\text{18}\)

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17 Polygamy is not illegal in Bangladesh, but requires written permission from an Arbitration Council, which typically asks for the 1st wife’s consent (Kamal 1988: 2).
18 “Due process”, also known as procedural justice, is understood as “A flexible term for compliance with the fundamental rules of fairness in legal proceedings, such
Social pressure

The relevance of each of these factors will be considered below.

**Perceptions about NU**

Discussing why people would adhere to a NU-decision, one villager noted that people have respect for the NU shalish because it issues a formal (i.e. written) notice, giving the impression that it is powerful. One applicant interviewed commented on the written notice NU provides the defendants. While it makes some people scared and encourages them to settle before NU manages to arrange a shalish, others say: “So girls are giving notice now, what can they do!”

One applicant interviewed had been subjected to abuse from both her husband and her parents-in-law. She approached the NU shalish (assisted by her sister) after an attempt to resolve matters through the traditional shalish had been unsuccessful. She claims her in-laws are scared of NU, which has resulted in her being allowed to live in peace with her husband.

Some people emphasized the organization’s links to the urban elite in Dhaka. The importance of an NGO being able to bring with it “the authority of the urban power structure” has been identified as important in other studies (Siddiqi 2004a: 14). From the discussion, it also emerged that some people think NU is linked to the formal court system, i.e. that they operate as an extension of the courts.

**The Threat of Court**

Providing the opportunity to “appeal” a case from the NU-shalish to the court is an explicit part of NU’s strategy to foster respect for the NU-shalish, as well as for the rule of law. Giving importance to the availability of legal assistance, one villager noted that it makes a big difference for poor people whether they file a case alone or have the backing of NU. In particular, the risk of corruption is considered much smaller when NU is involved, and it is felt that judges are more likely to pay attention to the case. Faith in NU’s ability to

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*as notice of allegations and the hearing date, the opportunity to appear and be heard, and the right to an impartial decision-maker.* [www.aapa.org/manual/judicial/glossary.html](http://www.aapa.org/manual/judicial/glossary.html)
provide effective legal support would seem justified by the fact that they have so far only lost one of the 27 cases they have been involved in.

Evidence from the failed cases referred to above, as well as the interviews, would seem to confirm the findings of a similar, more in-depth study of shalish interventions, which found that “the threat of taking cases to court frequently works to persuade otherwise unwilling disputants to accept shalish rulings” (Siddiqi 2004a: 19).

It is important to note, however, that the threat of court should not be assumed to reflect a fear of “the rule of law.” Information from the 40 case records reviewed in detail revealed that the average daily income of applicants was only US$1.30, and was US$1.40 for respondents. This places both parties well within the bracket of “poor” considering an upper poverty line of US$ 2 per day, and only slightly above the category “extremely poor” (i.e. below US$1 per day). Only two people had completed secondary school and more than 75 percent had received no schooling at all.

Referring back to the importance of income and “institutional skills” in accessing legal remedies, the findings above would imply that NU’s target group start from a point of significant disadvantage in both respects. The situation is further aggravated by the poor governance situation described earlier, and makes it an imperative to avoid contact with the formal justice system as far as possible – for the sake of not becoming poorer than they already are. The willingness to submit to mediation, as an alternative to court, must in other words be understood in the context of the clients’ poverty. (It should be noted that the threat of court, as applied here, creates an asymmetry between the applicant and respondent. Without NU backing, the parties would both be equally disadvantaged in using the “legal levers.” NU’s ability to assist the applicant radically changes the equation.)

This is also recognized by people involved in developing NU’s program, who, in emphasizing that mediation is only likely to work when both parties are poor, admit that they effectively “take advantage of poor people’s ignorance about the police and the role

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19 Calculations are based on information from the case records.
and functions of the court, and fear of getting involved with either of these institutions” (Hassan 2004).

**Respect for “Due Process”**

The threat of court is not the only factor facilitating the enforcement of NU-shalish decisions. Several clients interviewed emphasized that unlike courts or the traditional shalish, seeking resolution through the NU shalish was quick, and did not require any money. The discussions also revealed other features of the NU shalish which resemble “due process” procedures associated with formal justice. These were seen to add transparency and thereby, it is argued, considerable legitimacy to the final decisions once made. These include:

- The procedure for filing a case is easy. Applicants can file on their own behalf, without the intervention of middlemen or the backing of a guardian. This has significant implications for women in particular.
- The mediation panel, hand-picked and trained by NU, have been selected for their integrity and stated commitment to promote greater respect for the rule of law and human rights.
- Each application made is recorded on paper and kept by NU for future reference.
- During the mediation, both parties are encouraged to present their case. In addition, NU might contribute to establish the facts, drawing on its own investigation. 20
- Decisions made during mediation are recorded on a separate paper that is signed by both parties.
- NU monitors and records the post-mediation situation of each applicant for three months.
- There is an implicit “right of appeal”, either by returning to NU for further mediation or by seeking a legal remedy.

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20 A study of popular justice in Uganda found that women considered the ability to testify and be subject to a cross-examination as a guaranteeing the “right to participate in public discourse on matters directly affecting their lives”, making the option to settle disputes in the magistrate’s office – despite access barriers associated with it being a formal institution - more attractive than using a local (formally empowered) mechanism (Khadiagala 2001: 72).
The Role of Social Pressure

There is little evidence that social pressure plays an important role in ensuring adherence to NU-shalish rulings, and applicants were generally critical in their assessment of the *samaj*, which is seen to show little interest or concern for their well being. The interviews did not explore this question in detail, but findings from a recent study of the context in which NGO shalish interventions operate offer some useful insights.

Firstly, the study found evidence of an increasing fragmentation of the *samaj*. This is attributed to increasing globalization, including institutionalization of market relations and access to technology and media; as well as increased politicization of everyday life and the criminalisation of politics (Siddiqi 2004a: 31-32). A less coherent *samaj* would probably undermine its overall ability to push for concerted action and to act as a local force (i.e. a predictable, consistent force as an oppose to an arbitrary, brute force). Evidence of this is also found in the case studies presented above, where at least five cases were sought resolved through the traditional shalish prior to approaching NU, without success.

Secondly, the study revealed considerable local resistance to “liberal” justice - that is, justice that is out of sync with, for example, prevailing gender norms, and which pushes what might be perceived as a feminist or western agenda - that NGOs are seen to represent. This was evident in the experience of women shalishdars, who complained about harassment from their male counterparts and the constant risk of being labelled as “bad and immoral”, for speaking out (Siddiqi 2004a:21). Similarly, NGO representatives expressed frustration about their inability to prevent illegal or unjust practices, such as marrying rape victims to their rapist, child marriage and dowry; as well as having to deal with pressure from people around not to “rock the boat” in these cases (Siddiqi 2004a:3-5). It was also found that: “enforcing the rulings of an alternative [NGO] shalish exposed shalishdars to accusations of bias, political pressure, threats of retaliation from

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21 *Samaj* is the the bangla word for “society”, but also has a wider meaning defined as “people who build for a future together”, implying that living in the same geographic area does not necessarily mean that you belong to the same samaj (Kemp 2004: 8-9).
Hasle: Too Poor for Rights?

politicians, warning letters from local outlaws, as well as a general unwillingness to accept the verdicts" (Siddiqi 2004a: 27).

While NU seems to operate in a less hostile environment than the one described above, it is vulnerable to alienation. Taking into account this vulnerability, combined with the compromising spirit associated with mediation, it is argued that social pressure is likely to play a larger - and more important role in determining the outcome of a mediation (i.e. in identifying an acceptable solution), than in the actual enforcement process. Evidence of this will be presented below.

VII. QUALITY OF SETTLEMENT VS ENFORCEABILITY OF NU-SHALISH

NU’s intervention is specifically designed to improve women’s access to justice, within which establishing the rule of law is seen as an explicit goal. This implies that the implementation of NU-shalish decisions ought to contribute to either of these larger objectives.22 While NU does not control the outcome of the mediation, one would also expect that the process of making a client aware of his/her legal and human rights – combined with an effective “threat of court” – would give clients the confidence to demand settlements that bear a clear relation to what the law provides. This hypothesis will be analyzed below, looking specifically at agreed settlements in relation to divorce.

Divorce Settlements

As per Muslim Family Law in Bangladesh, all marriages must be registered.23 The marriage contract, which is based on Islamic law, stipulates the terms on which the marriage is entered into. One feature of this contract is that the husband

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22 It should be noted that NU does not generally take a strict legalistic point of view in the mediation, and considers the ability to facilitate an effective (enforceable) compromise as more important. As stated in the Annual Report (2003): “NU’s record for defending cases is raising awareness of the sometimes stricter penalties within the formal legal system for breaking the law and abusing human rights, which is leading to more cases being resolved within the [NU-] Shalish” (Nagorik Uddyog 2003).

is bound to maintain his wife as long as the wife remains faithful, and “obeys his reasonable orders”. Another essential part of a Muslim marriage is that the husband - typically at the time of registering the marriage - commits to pay a dower, also known as the denmohor or mehr, to his wife. According to the law, this amount is payable on demand at any time during the marriage, and the woman’s claim remains valid if the marriage is dissolved. A woman is, in other words, entitled to receive the full amount of her denmohor upon dissolution of the marriage, provided it has not already been claimed (Kamal 1988). In NU cases, the amount of the denmohor that was promised at the time of marriage is usually recorded. As is seen from Fig. 3, the amounts range from Tk 20,000 to Tk 100,000 (US$ 340 – 1,695). Agreed settlements, however, range between Tk 4,000 and Tk 35,000 (US$ 68-594).

Comparing the actual settlements that are agreed through NU-shalish mediations to the husband’s contractual obligation, it is
clear that the quality of the settlements provided fall significantly short of an applicants’ legal rights in all the cases considered.\textsuperscript{24}

The sense of women being short-changed by the NU-shalish is further enhanced when adding available information on the dowry that has been paid to the husband by the bride’s family.\textsuperscript{25} As seen in Fig. 3 (cases 15-27), there appears to be a very close relationship between the agreed divorce settlements and the amount paid as dowry. The settlements that have been agreed would, in other words, be best described as a “pay back” – without regard for obligations created by the marriage contract, and with no clear element of compensation for any indignity or injustice that a woman might have suffered within the marriage.\textsuperscript{26}

Looking beyond the fairness of the settlements, it is important to realize that divorce in most instances will not be instigated by women. Besides the social stigma of divorce, it is a question of subsistence: “One can expect that the wife’s economic dependence on the husband and the fear of subsequent poverty and her weaker position in the marriage and economic markets are powerful deterrents for her from leaving the husband, however unhappy the marriage. She compromises more than her husband to keep the marriage intact. Therefore, the decision of divorce is likely to be initiated more often by the husband than by the wife” (Alam et al 2000). Women’s preference for reconciliation has also been confirmed in other studies (e.g. Matin 2001).

It should be noted that as per the Muslim Family Law (in Bangladesh), women, unlike men, do not have a unilateral right of divorce although they can seek judicial separation on specified grounds as well as get divorce on the basis of mutual agreement.\textsuperscript{27} The combination of women’s economic vulnerability and

\textsuperscript{24} Several studies have pointed to the difference between informal and “real” justice; and the danger that informal justice might compromise the individual’s legal rights (see e.g. Abel 1982, Cranston 1997, Hossain 2002 and ICHRIP 2004).

\textsuperscript{25} Demanding and paying dowry is not a part of Muslim family law, and is illegal in Bangladesh (Dowry Prohibition Act 1980). It is nevertheless a widespread practice and a major source of conflict between husband and wife (UNDP 2002 ch.7).

\textsuperscript{26} “Alimony” is understood to provide for some means of livelihood, which would seem negligible in this instance.

\textsuperscript{27} A Muslim marriage can also be dissolved by agreement between husband and wife (Kamal 1988: 5).
discriminatory divorce laws give rise to serious questions about how one should interpret Fig 2, which shows that more than a quarter of domestic disputes result in divorce – and where this is more likely to be the result in cases where men have filed the application.

While not arguing against the dissolution of marriage per se, it is important to bear in mind that these cases do not necessarily reflect the realization of the right to divorce as a measurement of women’s empowerment. Consequently, the enforcement of divorce in and of itself cannot be assumed to have contributed to realizing women’s rights – and might in some cases be a punishment for challenging male authority.

The Economics of Gender Justice

Looking at the high number of domestic disputes that result in divorce, as well as the low settlements agreed, it is hard to argue that NU’s mediation has contributed to substantive justice.

In order to analyze these findings further, one has to consider the fact that NU shalish is a demand driven service. It cannot be supplied unless people willingly file their complaints, and submit to mediation. As seen from similar interventions, this poses an important dilemma: “The challenge ... is a difficult one: to promote gender equity and still maintain credibility among men. Pushing for equity too fast could undermine that credibility in organizing shalish sessions and jeopardize the association’s long-term efforts to gradually transform community attitudes. Not pushing hard enough undermines the very goal of equitable dispute resolution” (Golub and McClymont 2000). It should also be recognized that the NU shalish – like traditional shalish – does not operate in a formal justice framework based on universal human rights. Simply proscribing remedies according to international norms would therefore not only be impossible, but may also fail to afford women any satisfaction. Understanding “satisfaction”, therefore requires a shift of focus, giving emphasis to local context and the importance of incremental improvements (Hossain 2004, ICHRP 2004).

Having abandoned the notion of universal justice, we turn to the question of whether NU meets a contextually adjusted demand for a just satisfaction. In other words, what are the expectations of the NU applicants, and are these expectations met? Answers to these
questions are sought below, with specific reference to the issue of violence against women.

A recent survey on “Gender Relations and Rights Violation at the Household and Community Level in Rural Bangladesh” offers interesting insights into current norms relating to gender violence, including domestic violence (BLAST 2004). The survey found that 13 percent of husbands admitted to physically abusing their wives, while 16 percent of wives reported that they are beaten frequently or intermittently. More than a third of the female respondents felt that beating a wife for not observing purdah, or alternatively for talking back to her husband, was not wrong. Eighty seven percent of the women and 82 percent of the men believed the saying that “a woman’s path to heaven lies at the feet of her husband.”

Looking into attitudes relating to rape, around 40 percent of the general population felt that an unmarried woman who is raped should marry her rapist. Less than 10 percent of the respondents felt the need to realize a financial compensation from the perpetrator. If the woman is married, an average of 19 percent of all respondents felt that she should divorce her husband and marry the rapist, and around 20 percent felt that the realization of financial compensation was in order.

The findings above reveal that domestic violence under certain circumstances is tolerated as acceptable, including by women themselves. Furthermore, as seen in the attitudes to rape, a significant proportion of the respondents, regardless of sex and education, would seem to weigh the loss of a girl’s “honor” – to be restored through marriage – as a weightier consideration than ensuring criminal punishment for the rapist. As argued by Hassan (2004), a similar sentiment can be discerned with regard to domestic violence, where the injustice done to a woman when subjected to violence by her husband weighs less heavily than the

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28 The survey is based on interviews with 1,000 heads of households (6% female), 2,000 women aged 12 years and above (57% above the age of 30) and 600 educated women and men (51% male).

29 It should be noted that purdah in this context, as revealed in the survey, is not understood as the extreme conservative notion of confining women inside the home, but rather as wearing a burkha (i.e. a piece of clothing that covers everything but your hands and feet) and moving about while maintaining modesty.
stigma associated with divorce, and the societal pressure (i.e. pressure from the *samaj*) to preserve the institution of marriage.

The position of the law appears to be significantly stronger than prevailing social norms, seen from a rights perspective. Domestic violence has recently been recognized as a specific offence.\(^{30}\) Previous to this, domestic violence was covered by the provisions of the Penal Code,\(^{31}\) or, in the case of dowry-related violence, under the provisions of the Dowry Prohibition Act (1980). Rape is a criminal offence, but there is no provision of marital rape unless the wife is under 13 years of age (Matin 2001: 27-28). While there is scope for improving the laws, the main obstacle to legal remedies for women is considered to be the lack of implementation of existing laws (UNDP 2002). A survey commissioned by UNDP, which included an analysis of the role of the police and the judiciary, attributes the failure of law enforcement to “pervasive sociocultural attitudes reinforced by religion, which to a large extent legitimize incidents of aggression against women” rendering “the Acts enacted for the protection of women and children against dowry-related violence and repression … largely ineffectual” (UNDP 2002: 105)

**A Remedy that Works: Reconciliation, not Punishment**

Considering the combined effect of discriminatory norms, laws and legal institutions, it is argued that what NU clients seek could be thought of as “a remedy that is not unattractive given the limited range of alternatives” (Abel 1982). Accepting that the NU-shalish operates in the market of “second best” solutions also allows for a more nuanced understanding of what women who approach NU hope to achieve. For example, drawing on the findings above and as argued by Siddiqi (2004b): a woman seeking relief from domestic violence is not necessarily insisting on “zero violence”, and might be satisfied if the violence is brought down to “acceptable levels.” The effective enforcement of a NU-shalish decision would thus be measured against this objective, which is less stringent than a legal, or human rights position.

Similarly, while NU might give effective assistance to overcome weaknesses in the judicial system, it cannot protect a client from

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\(^{31}\) Applicable in cases of murder, grievous hurt or assault in the family.
the possible social repercussions of going against a norm that favors reconciliation rather than punishment. As noted by one NU applicant who chose not to pursue a maintenance claim in court: “being involved in a court case affects your social status (manshonman), and would bring dishonour to my family”\(^{32}\)

In this regard, it might also be relevant to consider a survey of women’s responses to marital violence in three slum neighborhoods in Dhaka. The survey found that “most women tended to follow a strategy of non-confrontation. Opting for overt conflict was considered a high risk endeavor and was often an imposed response” (Matin 2001: 26).

Before commenting further on what NU can achieve, given these constraints, it should be noted women in Bangladesh are not alone in facing an uphill struggle against violence. As pointed out in a recent report by Amnesty International: “Even when the law prohibits violence against women, social institutions, cultural norms and political structures in every country sustain and maintain it, making the law a dead letter. Impunity remains the norm because of inadequate implementation, monitoring, documentation and evaluation of the law. Acts of violence against women therefore go unchecked and unpunished (AI 2004: 85).”

**Legitimizing a Grievance: Unpunished, but not Unchecked**

While the NU-shalish, like the formal justice system, offers limited satisfaction in terms of punishment and compensation, it does provide legitimacy to women’s grievances, including domestic violence. Not being bound by law also enables NU to address almost any grievance – regardless of whether it would merit a court case or not. As such, it can assist women in raising a red flag at an early stage of a conflict, signalling that the incidence of violence has not passed unnoticed, and with the threat of further action if not stopped. While not negating the importance of effective enforcement as discussed above, it is important to recognize that for many NU clients, every stage of accessing justice, including the “naming and blaming” represent an important incremental realization of rights, and particularly in the imperfect world in which the NU shalish operates.

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32 Manshonman: “loss of self respect and respect in the eyes of others.”
VIII. CONCLUSIONS

This paper set out to assess the extent to which mechanisms of informal justice, like the NU-shalish, are effective in realizing access to justice for the poor. Based on an understanding of access to justice as consisting of different stages, the research sought to establish whether NU-shalish decisions are being adhered to, given the absence of an enforcement mechanism. It further sought to assess whether the quality of justice provided conforms to Bangladeshi law or universal human rights standards.

Based on the research findings, it is concluded that NU-shalish decisions are by and large enforced despite the absence of a formal enforcement mechanism. One major factor contributing to this is perceived to be the threat of court, which is strengthened by the fact that respondents are poor and that the judicial system is seen to exhibit an anti-poor bias.

Legal awareness and the threat of court are not seen to have a similar positive impact on the quality of settlements agreed in the NU shalish. This is explained by the fact that NU is a demand driven intervention. It depends on applicants who are willing to come forward with their grievance, as well as respondents who are willing to submit to mediation. Thus, while NU in theory stands ready to deliver outcomes that would exhibit “absolute” or legal justice, the effect of pushing for such outcomes – in the absence of an effective demand - would be at the cost of losing its competitive edge vis-à-vis the traditional shalish in particular.

A number of factors that affect the effective demand for informal justice have been identified. Firstly, it is recognized that the “market” for justice in Bangladesh is highly imperfect, and that constraints and biases associated with formal courts are likely to have a negative effect on the overall demand for legal or material justice. Secondly, evidence suggests that there are strong social norms that discourage women from taking a grievance to the formal justice system, despite availability of assistance in overcoming financial and institutional barriers to access. More generally, it has also been argued that discriminatory norms put women who challenge the institution of marriage at risk of social exclusion and poverty.
Based on NU’s growing popularity, it is suggested that the organization on balance delivers the kind of justice that people want, or at least are willing to settle for. The effectiveness and relevance of NU’s intervention from a human rights perspective therefore hinges on the quality of NU shalish decisions, and the satisfaction this affords its applicants.

The findings suggest that the quality of NU-shalish settlements do not exhibit strong evidence of substantive justice. The system does, however, allow poor women to enter into the sphere within which justice is accessed – “to name, blame and claim”– in a situation where she is otherwise excluded from it. Critically, this is achieved because NU:

- Offers a service that is free and locally based
- Allows for, and encourages women to come forward in their own, as right-bearing individuals
- Provides a venue for stating a grievance
- Supports the applicant’s testimony by providing evidence from its own investigations, thereby adding to the legitimacy of a grievance
- Involves other women in the mediation process
- Offers some follow-up and protection of the applicant upon completion of the mediation.

Added to this, it is also argued that the NU-shalish and similar interventions may over time exert significant influence over the traditional shalish, and in particular create pressure for greater attention to due process, as well as greater involvement of women – as either applicants or mediators.

The full impact of the NU-shalish will have to be evaluated over time, drawing on a much larger pool of evidence and research than has been presented here. Meanwhile, this paper has reached the conclusion that the NU-shalish provides rural women with incrementally better access to justice than they otherwise would

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33 A study of women’s access to informal justice in Uganda found that the all-male nature of the Local Councils played a major factor in preventing women from realizing their customary property rights (because women were barred from the venues where men network –i.e. barred from drinking beer in local bars) (Khadigala 2001).
have had. Crucially, from a human rights perspective, the Nushalish provides a venue for the recognition of women as individual right bearers.

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Annex

CASE STUDY SUMMARIES

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Summary of case</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>The applicant filed a complaint on the basis that her husband had taken a 2nd wife without consulting her. She demanded the right to live separately from the 2nd wife and to receive proper maintenance. Following the NU shalish, her husband has taken her back and they are now living together. The fate of the 2nd wife is not known.</td>
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<tr>
<td>2</td>
<td>The applicant is a father, filing on behalf of his daughter who has been abused by her husband. The case was first brought to the traditional shalish, but the husband failed to show up for the hearing. An application was then made with NU. Following two sittings in the NU-shalish, a divorce settlement of Tk 18,500 was agreed. As per the NU records, the agreed settlement was Tk 17,000, which is the amount the girl's family in the end received.</td>
</tr>
<tr>
<td>3</td>
<td>The applicant is a single mother who was beaten by her son. She said she filed the complaint to teach her son a lesson, and that she has not had any trouble since.</td>
</tr>
<tr>
<td>4</td>
<td>The applicant moved to her parent’s house to escape from her violent husband. She wanted a divorce. A divorce settlement of Tk 9,500 in her favor was agreed. She has re-married.</td>
</tr>
<tr>
<td>5</td>
<td>The applicant got married when she was 14 years of age. The marriage was arranged against the boy's wishes (he was also very young). The husband ran away on the night of the wedding. Her in-laws mistreated her. After living with them for five months, she went back to her parents. A divorce settlement of Tk 20,000 in the applicant's favor was agreed. She is living with her parents and does not plan to re-marry soon.</td>
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</table>

34 Both of these demands are in line with her entitlements under the Muslim Family Laws Ordinance, 1961 (see Kamal 1988 for further information relating to Muslim Family Law in Bangladesh).

35 As seen from the records, there are several instances where a husband abandons one wife for the benefit of the applicant wife. There does not seem to be a consistency with regard to ensuring the welfare of the “losing” wife.
6. The applicant was married at the age of 12-13 years, against her will. She was abused by the husband and her in-laws. The girl had wanted to live peacefully with her husband, but as this was not possible she accepted a divorce. The divorce settlement was Tk 11,500 in her favour. She is living with her parents and wants to get married again.

7. The applicant was abandoned by her husband without being provided maintenance. The case was first brought to a traditional shalish, where the in-laws said that they did not want her in the family. No agreement was reached. An NU-shalish was subsequently held and the couple agreed to live together. She is still living with her husband (and in-laws), and they appear to be doing well.

8. The applicant filed a complaint with NU against her violent husband. Her aim was to put an end to the violence, but not the marriage. The mediation was effective, and they are living together harmoniously.

9. The applicant initiated the sale of a family property without seeking the family’s approval. When he tried to cancel the sale, the buyer refused. The NU-shalish mediated the terms on which the sale should be cancelled.

10. The applicant filed a complaint on the basis that her husband had abandoned her, and took a 2nd wife without consulting her. The case was first heard in a traditional shalish. No solution was reached. In the NU-shalish, it was decided that the husband should take his 1st wife back, and look after both his wives in accordance with the law. He is now providing maintenance and separate housing for both his wives.