

INFLUENCING NATIONAL POLICY CHANGE



5

COMMUNITY LEGAL SERVICES (CLS) PROGRAMME

GOOD PRACTICE REPORT

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Forward

The Community Legal Services Programme ends in July 2017. In the preceding five years, we have expanded access to legal services to an estimated 13.9 million Bangladeshis in an additional 16% of the country covering 1232 rural unions and urban wards. Most of our beneficiaries, over 74%, have been women and girls and survey research indicates significant increases in awareness of key legal rights and satisfaction with dispute resolution services in the communities in which we work. Our work has also improved use of legal aid assistance to the poor provided by the Government of Bangladesh. All this was possible through partnering with our NGO partners, drawing on their established expertise and building their capacities and skills to pursue high quality standards for legal service provision. Their remarkable improvements have yielded many examples of good practice that the team wishes to acknowledge and share with the broader community of stakeholders working on improving access to justice in Bangladesh and globally. This series of Good Practice reports is our attempt to do so.



Sincerely,

Jerome Sayre

Team Leader

CLS Programme

Preamble

Community Legal Services (CLS) is a five year programme funded by UKaid through the Department for International Development (DFID). CLS is implemented by a consortium consisting of Maxwell Stamp PLC, as principal contractor, with the British Council and the Centre for Effective Dispute Resolution (UK), as partners.

The programme aims to provide greater access to justice for poor, marginalised and socially excluded communities in Bangladesh, with a specific focus on women and girls. Its overall objectives are to improve the quality and coverage of CLS in Bangladesh, build sustainability into the CLS Programme interventions of potential grant partners, and encourage and create an enabling environment for legal services NGOs and community based organisations to coordinate their activities for improved delivery of CLS to target beneficiaries.

CLS provides grants to local and national NGO partners to deliver programme activities. NGO grantees include both specialised legal services organisations as well as development-focused organisations that are being funded to extend the reach and access of legal services for the poor.

During the course of the programme, the CLS team has recognised partners' strengths in providing different CLS modalities with a series of BEACONS awards for 'shining lights of good practice'. The awards process set a number of performance categories for good practice and research has been carried out to document each of these. This publication is one of 13 that demonstrate how good practice can be developed and results achieved that improve the quality of community legal service delivery.



Access to Justice and Community Legal Services in Bangladesh

Notwithstanding the constitutional guaranteeⁱ and various government and non-government initiativesⁱⁱ, poor and disadvantaged populations, including women, face many challenges in accessing justice. Deprivation of access to justice and lack of appropriate legal assistance negatively affect the exercise of basic human rights, including the right to life and livelihood of the people, in various waysⁱⁱⁱ.

The government legal aid programme^{iv} has, though, made significant improvements since its inception. However, poor people often cannot fully benefit from this initiative, due to many reasons. The absence of provision for incidental legal costs such as court fees, commission fees, adjournment cost, travel and daily allowance for witnesses if necessary, and other miscellaneous expenses like photocopying or releasing documents etc.; and lack of knowledge and awareness about the programme among the community people are the most prevalent challenges in accessing the government legal aid services. The CLS Perception Study of 2013 revealed that 97% of respondents (95.5% of men and 97.5% women) in the household survey are unaware of government legal aid offices and committees.

The CLS Perception Study of 2013 revealed that though poor people experience legal disputes that have a direct impact on their lives and livelihoods, justice seeking behavior is significantly absent among them. The absence of pro-poor and responsive justice delivery systems and lack of legal awareness about their rights and about the available justice system are the most prominent reasons that influence justice-seeking practices. As well as the lack of knowledge and awareness about the legal aid programme, the weakness of the legal framework and procedural complexities prevent poor and disadvantaged women and men from accessing justice.

Community Legal Services (CLS) Programme

In this context, the UK DFID funded Community Legal Service (CLS) Programme emerged in 2012 to provide greater access to justice to the poor, marginalised and socially excluded communities in Bangladesh by enhancing community legal service delivery by NGOs, with greater geographical coverage. To catalyse a sustained change in the actions and behaviour of the justice delivery institutions and of the justice seeking poor women and men, the CLS programme adopted a composite approach of legal assistance that included community awareness, capacity building and technical support to the local justice delivery institutions and advocacy to bring necessary changes in the relevant legal and policy framework. During the programme implementation period, several grantee NGOs, and in particular BELA, BLAST, and BNWLA, have successfully advocated to bring notable changes in the law and in policy.

CLS recognises the contribution these organisations have made, in their respective areas, that have substantially contributed to achieving CLS Programme objectives as well as easing the institutional obstacles for poor people in accessing justice.

This report illustrates the good practices developed by BELA, BLAST and BNWLA in influencing national policy changes in the respective areas.

Experience of Bangladesh Environmental Lawyers' Association (BELA) in influencing national law and policy changes

BELA is a well-known organisation in Bangladesh in legislative and judicial advocacy for the protection and promotion of environmental rights of the people. As a CLS grantee, BELA has successfully contributed in achieving legislative changes on a number of issues involving environmental protection and sustainable and safe livelihoods of poor people.

In many cases, the changes occurred as a result of its judicial activism, followed by public interest litigation, specifically where the Parliament introduced new laws or amended existing ones in compliance with the order of the Supreme Court of Bangladesh. In some cases, BELA, along with other CSOs, has been able to influence the government in introducing new legislation and/or considering particular provisions of the text of the legislation as a result of persistent advocacy with the policy actors.

What are the good practices? What are the main features of the good practices?

Judicial advocacy by BELA and Nijera Kori contributed substantially in the formulation of a policy on shrimp cultivation in 2014. Government adopted the policy to comply with a court order given in response to a writ petition submitted by BELA and Nijera Kori in 2010.

On 10 January 2010, BELA and Nijera Kori filed a writ petition (Writ Petition No. 57 of 2010) against commercial shrimp cultivation in saline water in the coastal areas. The petition also noted the failure to protect the agricultural lands, forests, water bodies, and biodiversity and food security of the people of Khulna, Bagerhat and Satkhira districts from the adverse effects of such shrimp cultivation. The issue had been raised by the people from these areas. In 2009 thousands of farmers demonstrated against commercial shrimp cultivation and many affected farmers sought BELA's legal assistance. Since Nijera Kori was also involved in the advocacy against shrimp cultivation, they joined BELA as co-petitioners of the writ application.

Delivering its verdict on this writ petition, the High Court in 2012 ordered the authorities concerned to formulate a policy to determine separate land for shrimp farming, to ensure salt water cannot flow to nearby areas. The court also ordered that no unscrupulous shrimp farmers can force anybody to have salt water on their private land, for shrimp farming. It also asked the government to ensure that environmental impact assessments are done before permission is granted to install commercial shrimp farms, and to take other measures to minimise the use of salt water in shrimp farming, so that the fertility of the nearby agricultural and forest lands is not damaged. The Supreme Court on 30 August 2016 upheld the 2012 High Court verdict that declared blocking salt water in the agricultural and forest lands for shrimp farming illegal.

Meanwhile, following the 2012 directions, the Ministry of Fisheries and Livestock framed the National Shrimp Policy - 2014. While BELA welcomed the formulation of the Shrimp Policy 2014, they continued their demands for a revision of the policy, as the policy provisions had retained the scope for commercial shrimp cultivation, ignoring the issues of small and marginal farmers.

Though the court initiative was started in 2010, long before the CLS Programme, during 2014 and through to late 2016, BELA undertook various follow-up activities to ensure that the affected community would benefit from the court directions. In 2015, BELA, jointly with Nijera Kori, organised a round table discussion to draw the attention of the policy makers to various loopholes in the policy document. From July to December 2016, they ran a signature campaign in 12 *Upazilas* of Satkhira, Khulna and Bagerhat districts, to document affected farmers, and

provide evidence which could be used in any subsequent commercial shrimp zoning case which would be against the will of the farmers and in violation of the court judgment.

It also organised 12 consultation meetings in different coastal districts with the farmers, to make them aware of the court judgments and the subsequent legal and policy developments that would contribute to decision-making by the farmers. It would also allow BELA and the aggrieved farmers to go back to the Court in case of any noncompliance with the court judgment. On 13 April 2016, BELA organised a public hearing about the court judgments, where relevant government officials were present.

What this example demonstrates is that Implementation of the court judgment is the main challenge. Active community participation in follow-up activities, such as community consultations and signature campaigns, is important in keeping pressure alive to ensure that this implementation happens which is a good practice.

Other examples of BELA's achievements from policy advocacy include the Enactment of Water Act 2013, River Protection Commission Act 2015, Ship Breaking Rules 2015 and Bangladesh Ship Recycling Act 2015

BELA, as a member of the Water Rights Platform (a CSO forum on water rights), advocated for a legal framework on sustained use and management of water which resulted in the enactment of the Water Act 2013. BELA undertook the legal analysis of the draft law and, along with other platform members, lobbied for necessary amendments in the draft of 2012. Due to these active advocacy efforts, the government dropped provisions on the privatisation of the water from the final draft, but many of the CSOs' recommendations remained unmet. Under the umbrella of the Water Rights Platform, BELA had been pressing the government for further changes in the law to ensure transparency and accountability, through the effective participation of communities and CSO organisations in the planning and implementation of issues on water resource management. Thus although some changes were achieved, there is still a need to continue with the advocacy to secure these further changes.

BELA, in alliance with other CSOs, can reasonably claim success for the progress in the adoption of a legal framework on the use of agricultural land. This was done in 2015, with the 'Agricultural Land Protection and Land Use Act 2015'. The Forum is continuing its advocacy to speed up the process for enactment of the law, by considering recommendations from CSOs.

As part of this work, BELA is using its expertise on legal and judicial activism to research how unregulated use of agricultural land for industry is damaging the protection of agricultural land, and as a result endangering agricultural production and food security. This research will be used to pursue the government for speedy enactment of the law, using court directions.

Long standing judicial activism by BELA resulted in (draft) Ship Breaking Rules 2015 and Bangladesh Ship Recycling Act 2015 - To bring ship breaking activities under a regulatory framework, to ensure that these activities are run in a safe and environmentally friendly way, the legal battle started in 2006 when BELA filed a PIL (3916/2206) in the High Court Division. On 6 July 2006, the court directed the government to adopt rules to bring this industry under a regulatory framework.

BELA considers this progress in drafting the rules as a primary achievement of their work. Although the rules are not fully adequate, nevertheless government inaction in this area has been broken through continuous court interventions. BELA is reviewing the draft texts to draw the attention of the government to the inconsistency of the draft rules and law with the court judgment and with the Basel Convention on the Control of Transboundary Movements of



Hazardous Wastes and their Disposal, which is a legally binding treaty for Bangladesh. It has prepared a briefing paper entitled 'Ship Breaking Rules: Putting the fox in charge of the chicken' which it has distributed across the relevant government ministries, alliance members, media as well as community stakeholders.

If the situation demands it, BELA will again seek the advice of the court about the weakness of the rules and the law as mentioned above. In the meantime BELA has made several interim petitions asking for court direction in relation to non-compliance with previous court judgment. Continuance of ship breaking activities in defiance of the court order led to a writ petition being filed in 2008(7260/2008). On 17 March 2009, the High Court ruled that the Government should set up a committee to ensure the impartial supervision of the ship breaking industry and to ensure necessary environmental clearances in the operation of the ship breaking yards.

In 2016 the High Court issued a contempt rule asking 14 Government officials and the President of the Bangladesh Ship Breakers Association (BSBA) to explain why they have not implemented the Court's judgment dating from March 2009. The Court now demands arguments from the respondents as to why they should not be held responsible for contempt of the court's rulings and for deliberately and persistently ignoring the safety of the workers and safety and integrity of the environment.

What are the success factors?

BELA's recognition and reputation as a leading organisation on environmental rights, their persistent efforts and close monitoring of the court judgments, media work, networking and community reach are the driving factors for success in legal and policy reform through court advocacy. For instance, in the ship breaking issue, the first PIL was filed in 2006 and since then several petitions have been made to draw the attention of the court to the non-compliance with court orders. In the shrimp case, in the issue of water rights and the protection of agricultural land, alliance building and networking contributed positively to the successes, as it

is more effective to advocate through alliances where each respective member can contribute according to their expertise.

Working with the community was important in the shrimp issue, using consultations and the signature campaign, to raise awareness and increase social pressures to ensure the implementation of court judgments and the legal and policy reform that resulted from these judgments.

Sometimes national and international networking also plays a triggering role, as, for instance, in the ship building issue, where strong international networking with EU organisations has become useful.

As a useful strategy, BELA keeps the government in the loop of their advocacy issues by inviting them to the consultations, and/or by sharing advocacy briefing papers with them. They also engage technical people, for instance in the issue of shifting the tannery industry to a new location, BELA organised a consultation meeting where government representatives, technical people from BUET, residents from Hajaribag and Savar, other national organisations working on environmental issues and the media participated.

What are the challenges and constraints encountered?

The Government's stubborn attitude and reluctance to comply with court orders is the primary challenge. For example, despite protest and a court order, a shrimp zone is being built in coastal areas. Lack of scope for public consultation, delays in passing the law, the influence of vested interest groups are other challenges experienced by BELA. To mention a few instances, although the River Protection Commission Act resulted from High Court direction following by a writ petition of BELA, no public consultation took place in the drafting process of the law, and neither BELA nor any other organisation working on the river issue have been consulted. Obstruction from industrialists is the big challenge to the enactment of the agricultural land protection law.

Access to required information has also appeared as a fundamental practical constraint in preparing for court advocacy. Fear of personal safety and security has also appeared as another big challenge for BELA, as in the first quarter of 2014, the organisation was confronted with and seriously affected by the extremely intimidating action of abduction of the husband of its Chief Executive. Funding support has been identified as another emerging challenge.

The learning from the process of developing this practice and from its implementation – the way forward

Implementation of court judgments is the most challenging task. Hence, community interventions in the form of community consultations and public hearings, and media work are useful strategies to ensure implementation of court judgments.

Difficulties in accessing necessary supporting documentation can be addressed by using the RTI¹ law, and BELA has already started applying for different documents, using the RTI mechanism.

Since in most cases advocacy on environmental issues goes against the interests of socio-politically influential people, working in alliance is a better option, as it reduces the risks of personal safety and security.

¹Right to Information Act

Bangladesh Legal Aid and Services Trust (BLAST)'s landmark achievements in legal and policy reform on access to justice issues

Supreme Court Judgment (2016) on the use of section 54 and 167 of Criminal Procedure Code (CrPC), interim order of the High Court division on the prohibition of the 'Two Finger Test' petition and amendment in the legal aid services Act 2000 to establish special legal aid committees in *Chowki* Courts and implementation of pilot project in partnership with NLASO are the successful recent examples of BLAST's legal advocacy.

On 26 May 2016, the Supreme Court of Bangladesh upheld the 15 point guidelines issued by the High Court Division in 2003 to prevent torture or ill-treatment of individuals arrested without warrant on suspicion of committing an offence or taken into police remand for interrogation, under sections 54 and 167 of the CrPC respectively. By giving the 15 point guidelines a binding effect as case law, through this judgment the Supreme Court concluded a 18 years long issue of safeguarding against abuse of powers and arbitrary actions by police and magistrates. The Appellate Division of the Supreme Court of Bangladesh issued 10 point guidelines to the law enforcement agencies and 9 point guidelines to the Magistrates, Judges and Tribunals having power to take cognizance of an offence.

This historical judgment came upon the writ petition (writ petition No. 3806 of 1998) filed by BLAST, Ain o Salish Kendra, Shommilito Shamajik Andolon and several individuals challenging the abuse of police powers to arrest without warrant under Section 54 of the Code of Criminal Procedure (CrPC) and the abuse of powers regarding taking the accused into remand (police custody) under Section 167 of the CrPC.

Interim order of the High Court Division on the Prohibition of the 'Two Finger Test' in medical examination of the rape victims: After primary hearing of the writ petition filed by BLAST on Prohibition of the 'Two Finger Test' (BLAST and Others vs. Bangladesh and Others, W.P. No. 10663/2013), on 10 October 2013, the High Court Division issued a rule asking the respondents why the so called 'Two Finger Test' undertaken upon women and girls who have been allegedly raped should not be declared to be without lawful authority and of no legal effect and why their failure to prohibit the 'Two Finger Test', resulting in discriminatory and arbitrary treatment and violations of their fundamental rights, should not be declared without lawful authority. The Court also issued an interim order upon the Secretary, Ministry of Health and Family Welfare to set up a Committee in order to develop a comprehensive guideline for police, physicians and judges of Nari o Shishu Nirjaton Doman Tribunals [Prevention of Violence against Women and Children Tribunals] on the examination and treatment of women and girls subjected to rape and sexual violence.

While the case is pending for hearing before the High Court, in compliance with the High Court's order, the Ministry of Health has formed a Committee to prepare the Guidelines. With advice from the Court, BLAST has facilitated consultations in reviewing the draft guidelines which are expected to be submitted by the government at the next hearing.

To raise awareness and sensitise the relevant stakeholders on this issue, BLAST and other respondents of the writ petition organised different sharing events. On 19 October 2016, BLAST organised a discussion meeting on violence against women and children and medico-legal examination in Dhaka, where around 50 people, including police officials, lawyers, judges, human rights activists, government officials and media personnel attended. The discussion meeting proposed several recommendations, such as the need for training for public prosecutors on medico-legal examination, the need for an application to the court asking for



the circulation of an official order from the Registrar General's office to the lower judiciary stating the roles of the lower judiciary in the draft guidelines on medical examination of the rape victims.

BLAST successfully advocated introducing provisions for the establishment of *Chowki Court* legal aid committees in the Legal Aid Services Act 2000 and activation of the Bhanga *Chowki Court* legal aid committees. *Chowki Adalat*, previously known also as *Munsef Court*, is the lowest tier of the formal judicial system of Bangladesh. At present there are 35 *Chowki Adalat* established under the provisions of the Civil Court Act and Cr PC, functioning in different geographically remote areas to dispense justice for the rural people. One such *Chowki Adalat* operates in Bhanga *Upazila* of Faridpur district with its geographic jurisdiction over the three adjacent *thanas*: Bhanga, Nagarkanda, Sadarpur. Saltha *Upazila* has recently been brought under the jurisdiction of Bhanga *Chowki Court*.

What are the good practices? What are the main features of the good practices in the establishment of *Chowki Court* legal aid committees?

BLAST observed that despite being legally aware of the availability of the government legal aid programme, people from the Bhanga, Nagarkanda, Sadarpur Thana of Faridpur, are not willing to come to the District Court to access government legal aid, as it is expensive and time consuming. Geographic remoteness, and lack of convenient communication systems make it expensive to the poverty stricken litigants of these areas to come to the District Court. Whilst the *Chowki Court* served the poor people of these three *thanas* to settle their petty disputes locally, they could not benefit from the government legal aid programme, primarily because of institutional limitations in the programme, which operates mainly at the district level.

Provision exists for Union and *Upazila* level legal aid committees, but their main responsibility is to raise community awareness about the availability of the government legal aid programme.

They also act as referral channels from the Union/*Upazila* to the district legal aid committee, carrying out the primary scrutiny of applications and referring appropriate cases to the district committee, with recommendations. Eventually the poor litigants have to travel to the district if they wish to receive legal aid. However, poor people from the remote Bhanga, Nagarkanda and Sadarpur areas did not find it viable to travel to the district to sort out support from the government legal aid fund and then travel back to the *Chowki* Court to file their cases. The appointment of panel lawyer/s from the district level was also found cumbersome, for both the panel lawyer and the litigant, as traveling from the district to a remote *Chowki* Court was also not viable for the lawyer.

Considering this reality, participants at an advocacy issue raising meeting organised by BLAST on 31 July 2013 at the Bhanga *Upazila* of Faridpur district, recommended the establishment of a *Chowki* Court Legal Aid Committee, to facilitate legal assistance and access to justice for the poor litigants of the *Chowki* Court areas. BLAST organises these advocacy issue raising meetings in its different working areas, to identify the needs of local people in accessing justice.

In response to this recommendation, BLAST initiated advocacy with the NLASO as the topmost policy making body of the government legal aid services programme. On 24 October 2013, explaining its rationale, BLAST submitted an application to the Director of National Legal Aid Services Organisation (NLASO) asking for necessary changes in the Legal Aid Services Act to establish special legal aid committees for the *Chowki* Courts of Bangladesh. Before making this formal application, there were several informal meetings and discussions with NLASO on this legal reform issue.

Following BLAST's advocacy, on 18 November 2013 the Government brought in an amendment to the Government Legal Aid Services Act 2000 (section 12(A) of the Government Legal Aid Services (Amendment) Law 2013, (62 no law of 2013) authorising the NLASO to establish special legal aid committees for the *Chowki* Courts and the labour courts, by issuing a gazette notification.

This amendment allowed the NLSAO to establish the *Chowki* Court special legal aid committees. However, it was taking time to adopt regulations on the formation of *Chowki* Court legal aid committees by way of gazette notification. As an immediate step of benefiting from the amendment of the legal aid services act, NLASO in partnership with BLAST, decided to establish and activate a *Chowki* Court special legal aid committee in Bhanga, as a pilot project.

On 31 March 2014, BLAST organised an advocacy programme in Faridpur, to stimulate district level stakeholders on the follow up actions on the amendment of the government legal services act 2000 on the establishment of the *Chowki* Court legal aid committee. The meeting attracted a large number of participants, including students, teachers, journalists, NGO officials, government officials, and lawyers from the District Bar and *Chowki* Court Bar Associations.

NLASO and BLAST signed a Memorandum of Understanding (MoU) on 23 April 2014, for the pilot project. Following the MoU, a concept note/guideline was developed that outlined the composition of the legal aid committee, with its possible duties and responsibilities, and the roles of NALSO and BLAST in implementing the pilot project. The concept note proposed a legal aid unit or subcommittee, a lawyers' panel, a fund to pay lawyers' fees and one full-time legal aid officer. On 21 May 2014, NALSO and BLAST agreed on the proposed guideline. In this partnership, BLAST has provided expert support and acted as an active associate. It provided a paralegal to act as an interim legal aid officer, and provided other logistic and technical support in implementing this pilot project.

On 21 May 2014, BLAST organised a meeting with DLAC Faridpur to share the MoU on setting up a legal aid committee in Bhanga *Chowki* Court. BLAST organised a launch programme in Bhanga *Upazila*, Faridpur on 18 November 2014, to activate the (Special Committee) *Chowki* Court Legal Aid Committee, the first such committee attached to a *Chowki* Court in Bangladesh.

BLAST's Faridpur Unit organised an advocacy meeting on 17 August 2015, on the formation of a *Chowki* Court Legal Aid Sub-Committee at the *Chowki* Court at Bhanga, Faridpur. A total of 69 participants (59 men; 10 women) including judges, lawyers, local leaders, and journalists attended the meeting.

Consequently, on 15 September 2015, the DLAC president of Faridpur district issued a letter of approval to form an interim legal aid committee for Bhanga *Chowki* Court. On 30 Sept 2015, the interim special legal aid committee held its first meeting and a 15 member committee has been formed with Senior assistant judge of the Bhanga *Chowki* Court as the chair and the Adv. Shipra Gowshami, Coordinator of BLAST Faridpur Unit, as the member secretary. Meanwhile the process of approval for a panel of lawyers was also completed with constant advocacy efforts by BLAST.

On 15 February 2016, the Ministry of Law, Justice and Parliament Affairs (MLOJPA) adopted a regulation and on 26 Feb published a Gazette titled '*Chowki* Court (Committee, Responsibilities and Functions) Regulations, 2016' for establishing the *Chowki* Court - Legal Aid Committee, in every *Chowki* Court in Bangladesh. After those regulations, on 31 October 2016 Bhanga *Chowki* Court legal aid committee has been reformed accordingly.

On 5 Sept 2016, the special legal aid committee organised an awareness event on legal aid services, where more than 500 students participated. DLAC officer, and lawyers of the *Chowki* Court legal aid committee spoke at the event.

The difference that the achievements are making to and with other stakeholders

The Supreme Court judgment on the use of sections 54 and 167 of Cr PC is expected to play a critical role in preventing or curtailing the abuse of powers and arbitrary actions by police and magistrates, which constitute violations of citizens' fundamental rights to life and liberty, to equal protection under the law, to be treated in accordance with the law and to be free from cruel, inhuman and degrading treatment and punishment, as guaranteed in the Constitution of Bangladesh.

Senior Advocate Dr. Kamal Hossain said "This is a landmark judgment. This judgment will help to end the legacy of 19th century practices which we continue to suffer today, including arbitrary arrests, ill-treatment and torture during interrogation, and contribute to building a legal culture which is compatible with our constitution and appropriate for the 21st century."

Dr. Shahdeen Malik, Former Advisor to BLAST, commented, "This case started in 1998 when a young student, Rubel, was brutally tortured to death by the police. We hope this judgment will help to reduce such incidents and help us to move forward to build a civilized society."

Lawyer Sara Hossain, also Honorary Executive Director of BLAST said, "The Supreme Court has issued a timely and urgently needed reminder to the law enforcing agencies that every citizen, and every individual within Bangladesh, has a fundamental right to protection against arbitrary arrest and torture. We believe this judgment will be a crucial tool for us in preventing and punishing torture and ill-treatment in custody, and bringing to account those responsible for such violations of human rights."

Though the petition on the prohibition of 'Two Finger Test' is not finally settled yet, the Health Ministry is working satisfactorily in compliance with the interim order. By way of this interim judgment, a mass awareness against this awful practice has been created. It is expected that the positive response from the government will result in ending the unscientific and traumatic 'Two Finger Test' as a means of proving the occurrence of rape that at this moment victimises women and girls who have to undergo this process to get justice.

Amendments to the government legal aid services to introduce *Chowki* Court legal aid committees and to activate special legal aid committee *Chowki* Court in Bhanga, through the NLASO-BLAST partnership, is a unique example of legal reform responding to grassroots demand. It also sets a milestone of a successful GO-NGO partnership to facilitate community legal services for the benefit of poor women and men in remote areas.

From April 2015 to August 2016, a total of 103 suits have been processed through the Bhanga *Chowki* special legal aid committee, and these have benefitted 66 women and 35 men, through access to the government legal aid fund. In November 2016, the Bhanga *Chowki* Court Legal Aid Committee provided legal advice to four women and six men, and processed eight applications from four men and four women for legal aid. Interviews with some applicants reflected relief that they can now they get legal advice, counselling and lawyers' support without having to travel to distant Faridpur town.

Influenced by the experience with BLAST, the government is now working to activate *Chowki* Court Legal Aid Committees with the support of other similar projects; for instance, the government has approached the USAID funded Justice for All project to activate *Chowki* Court Legal Aid Committees in some areas.

The difference that these achievements are making to the work of the organisation

BLAST, an established and well-reputed legal aid organisation is also well known for its legislative and judicial advocacy. Its recent achievements, as highlighted in this report, will contribute to its reputation with the judiciary and legislative, and to the justice seeking community people. These significant achievements will also enhance expectations for a continuation of its advocacy efforts.

BLAST will remain in the legal history of the government legal aid programme of Bangladesh because of its unique role in activating *Chowki* Court Legal Aid Committees. This shows a true participatory and demand driven policy reform process where BLAST effectively played a facilitating/representative role to bring the people's concerns to the policy makers.

This success has enhanced the trust of the government in BLAST, which has already been reflected when NLASO requested BLAST's cooperation in establishing the *Chowki* Court Legal Aid committee in other areas. Following a request from government, BLAST has recently assisted in establishing three *Chowki* Courts in Chittagong: Patia, Satkania and Bashkhali. This success story will also have impact on BLAST's acceptance and trustworthiness at the community level, as BLAST was instrumental in channeling the demands from the community to the policy makers.

How the good practices will sustain?

As case law, the Supreme Court judgments have a binding force. However, since the implementation of court orders is a major challenge, BLAST does follow these up with activities such as organising sharing meetings and dialogues with the relevant stakeholders of the court judgments, with continual monitoring of the observance of the court judgments and with

media advocacy to keep up the pressure to ensure implementation of the court judgments. By the time of this report, it has, for instance, organised several dialogues with the police, magistrates and lawyers to sensitise them about the 15 point high court directions on the use of section 54 and 167 of the Cr.PC.

With regard to *Chowki* Court Legal Aid Committees, as a legal reform initiative the change in law has already taken place, and regulations have been adopted which have an inherent sustainable effect, for instance, in the establishment of *Chowki* Courts in other areas.

Constraints and Challenges Encountered

Lengthy court procedures, lack of proactive steps from the relevant government agencies to convey the court judgments through official orders across all the concerned implementing agencies, delays in communicating judgments from the court to the relevant government ministries are the key common challenges affecting the implementation of the judgments. For example, the final judgment on the case of sections 54 and 167 of Cr.PC came 18 years of after the filing of the petition.

In establishing the *Chowki* Court Legal Aid Committees, and the implementation of the pilot initiative in Bhanga *Chowki* Court, the key challenges have been the lack of separate funding, the supply of templates/ formats from the NLASO, and lack of awareness and coordination with the ULAC and UzLAC. At this moment, there is no separate funding for the special committee, and the lawyers' fees are collected from the fund allocated to the DLAC. As a result, the lawyers have to go to the District office to collect their fees, which demotivates the panel lawyers to take up cases from government legal aid. Additionally, due to the lack of their own funding, the special committee cannot organise awareness activities which are very essential to reach out to all of the areas under the *Chowki* Court. There has also been, opposition from the *Chowki* Bar Association to the formation of legal aid committees, as they fear that these will squeeze their client base. Court bureaucracy, non-responsiveness of the court staff, difficulties in collecting supporting documents, non-responsiveness of the police administration in implementing court orders also pose challenges in fully benefitting poor litigants and enabling them to get justice through *Chowki* Court Legal Aid Committees.

In many cases, civil matters are associated with criminal offences, but since the Bhanga *Chowki* Court deals only with civil and family matters, litigants applying for legal aid in the *Chowki* Court Legal Aid Committee have to travel to the District in relation to any criminal offences associated with his/her civil disputes. The inability of poor applicants to pay ad-valorem fees on land related disputes also prevents the poor litigants from fully benefitting from the *Chowki* Court Legal Aid Committee.

Lack of monitoring by NLASO, lack of ownership by the court officials as part of court functions are also stated as a challenge to the institutionalisation of the legal aid programme, as court officials still think of the legal aid activities as BLAST's work, not theirs.

What were the success factors?

While BLAST's reputation as a pioneer in legislative and judicial advocacy is a strong success factor, well-grounded research, continual efforts and close monitoring, networking, mobilising a highly experienced legal and human rights expert pool are the most influential success factors for BLAST's achievements. In the 'Two Finger Test' case, BLAST included other leading human rights, women's and development organisations (Ain O Salish Kendra, Bangladesh Mahila Parishad, BRAC, Manusher Jonno Foundation, and Naripokkho) and two medical experts, Dr. Ruchira Tabassum Naved and Dr. Mobarak Hossain Khan. The inclusion of medical experts was

important, as the case involved issues of medical science and this strategy helped to explain the medical aspects of the case to the court. In this case, BLAST also expanded its alliance beyond human rights and women's rights organisations, as they have a strong community reach and can run awareness sessions on the issue.

With the *Chowki* Court Legal Aid Committees, BLAST's reputation in policy advocacy and legal aid made it easy to convince key stakeholders in relation to its recommendations for the amendment of the law, and to initiate the pilot programme. BLAST had played an active role in enacting the Government Legal Services Act 2000 and have been contributing to the implementation of the government legal aid programme in different ways. BLAST's active participation in the government legal aid programme made it easier to influence the government on the need for the establishment of the *Chowki* Court special legal aid committees, to enable legal support for the poor people from the remote areas.

The government's own realisation about the lacuna in the Legal Aid Services Act in overlooking the issues of *Chowki* Court and other special courts like labour courts, their willingness and sincerity, recognising the need to address the identified legal gaps, the prompt initiative of BLAST, and above all the pro-poor and practical nature of the demand, made quick action possible.

The learning from the process of developing these practices and from their implementation/way forward

To achieve effective functioning of the *Chowki* Court Legal Aid Committees, there is a need for separate funding. This would reduce the procedural complexities of collecting fees from the District level and would also allow for other activities, recognising their associated costs such as awareness work and coordination with the Unions and *Upazilas*.

Though initially the BLAST commitment was for one year, it has extended the agreement for another year. A BLAST source noted that the NALSO has taken the initiative to provide human resource support to the *Chowki* Court Legal Aid Committees; however, due to bureaucratic processes, it might take long time to secure that support. To ensure the effective functioning of the Bhangra *Chowki* Court Legal Aid Committee, at least two human resources are required to run the functions of the special committee.

There is also a need for a massive campaign in the *Chowki* Court areas, and coordination meeting with panel lawyers and with the legal aid applicants, as provided for the DLAC. Increased monitoring from NALSO would help to create a sense of ownership and responsiveness by the court staff in relation to cases supported by government legal aid. Panel lawyers have suggested maintaining a separate register for legal aid cases, to ensure quick monitoring and pursuance of official orders from Inspector General of Police (IGP) for responsiveness of Police Station (PS) on legal aid cases.

Court Advocacy of Bangladesh National Women's Lawyers Association (BNWLA) made the long awaited demand for state recognition of the women victims of liberation war as the freedom fighters a reality

As observed in many other wars, during the liberation war of Bangladesh in 1971, the Pakistan army, along with its local (the then East Bangla, now Bangladesh) collaborators victimised women as a weapon of war. Approximately 3,00,000 women were the victims of genocide



committed by the Pakistan army.

Though immediately after the independence of Bangladesh, the first Prime Minister Sheikh Mujibur Rahman honored them by awarding the title '*Birangona*' (meaning brave woman, often translated as 'war heroine') and started reintegration programmes, the patriarchal society did not choose to recognise the sufferings and sacrifices made by these women. Instead, they were detested by their families and by society at large.

With the assassination of the leader of the state in 1975, the reintegration programme was closed down. Although the title '*Birangona*' was given to honour the dishonoured women and help them to regain acceptance in society, it had the opposite effect. The titling of '*Birangona*' and reintegration incentives quickly backfired: the term was soon seen as a mark of shame for the women, who were victimised during the war by the Pakistani army and their collaborators. In a patriarchal society, where women's sexuality is equated with the dignity of women and their families, women are considered to lose all respect as a consequence of sexual offences committed on them. The '*Birangonas*' who endured physical and psychological scars in freeing Bangladesh became the victims of the discriminatory social norms and experienced social stigma. This phenomenon forced women to be unwilling to be identified as '*Birangona*'. Instead, they preferred hiding their histories for fear of further exclusion and abandonment. Being excluded by their own community and loved ones, many of them left home for unknown destinations. Many of them migrated to other countries, including to neighboring India.

Although these women were seen as victims, they are even now often portrayed in the media as 'oppressed', 'disgraced' and 'dishonoured'. Some people even distorted the word '*Birangona*' and pronounced it as '*Birangona*', meaning prostitute in Bangla. Other derogatory terms used to tarnish their

image have included '*lanchhita*' (carrying connotations ranging from being disgraced, harassed, insulted, and persecuted to stained, tarnished, spotted and soiled), '*biddhosto*' (ruined or destroyed) and '*bibhranto*' (confused or bewildered). Their suffering, both during and after the war, largely remained unrecorded and unrecognised. They were neither given state honour, nor social respect. Even after so many years of independence, where many war heroines died, many are living a degraded life.

What the good practices are? What are the main features of the good practice?

Though there had in the past been demands for the recognition of '*Birangonas*' as freedom fighters, to ensure that they could live a dignified life with respect and with economic solvency, until the recent move to formally provide this recognition, nothing had been achieved

This recognition resulted from a court advocacy by Bangladesh National Women Lawyers' Association (BNWLA), a leading women's rights organisation in Bangladesh, along with the ex students' association of Saleha Ishaq Girls School of Sirajganj. These two organisations jointly moved a writ in the High Court Division, requesting the enactment of a law to recognise the '*Birangonas*' or 'War Heroines' of Bangladesh as 'Freedom Fighters'.

The writ was filed on 27 January 2014 (writ petition no 445 of 2014). The petitioners asked the High Court Division to direct the government to: 1) prepare a coordinated list of the '*Birangonas*' and publish the same through gazette notification ; 2) provide legal recognition of the '*Birangonas*' as the freedom fighters enabling them to enjoy the same facilities, benefits and privileges as the other recognised freedom fighters.

On 5 February 2014, after the preliminary hearing of the petition, the High Court division bench of Justice Salma Masud Chowdhury and Justice Md. Habibur Gani issued a ruling asking the respondents to explain why they should not be directed to take an initiative to recognise the '*Birangonas*' as freedom fighters, by preparing a comprehensive list of '*Birangonas*' through publication of Gazette notification and to provide state recognition and honour to the '*Birangonas*' giving all the facilities, benefits and privileges as adopted by the government for the freedom fighters.

In response to the ruling of the High Court division, the government formed a committee to draft a policy for scrutinising the list of the '*Birangonas*', and submitted this draft to the Court. The Government included in that selection committee a representative of the petitioners. On 5 June 2014, the government submitted a draft policy on the state recognition of the '*Birangonas*' as freedom fighters. On 13 October 2016, the National Council of Freedom Fighters took the decision to recognise the war heroines as freedom fighters.

The relevant Ministry then formed a committee for each *Upazila*, to identify '*Birangonas*' in the area, verify their identities and make a list of them.

The difference that this good practice is making to and with other stakeholders

While the petition was awaiting its final hearing, the primary objectives of the initiative had been achieved. On 2 August 2015, the government submitted a list of war heroines to the High Court Division. On 29 Sept 2015, the Ministry of Liberation War Affairs published a list of 41 '*Birangonas*' from seven districts, identifying them as freedom fighters. These steps eased the path for the '*Birangonas*' to gain state honour and other associated facilities and benefits. Up to 1 September 2016, 146 '*Birangonas*' have been listed through gazette notification. The Ministry is working on a list of some 500 such women, to give them similar status.

Once recognised, every '*Birangona*' will now receive a monthly allowance of BDT 8,000/- and

special quotas for government jobs and additional benefits for their children and grandchildren. Many war heroines expressed their satisfaction with the progress. One such statement is mentioned below:

"I have been waiting for the last 40 years. My wishes are fulfilled today. I am very happy as '*Birangonas*' have been given equal rights as those of freedom fighters,"

Surya Begum, one of the 41 '*Birangonas*', told BBC Bangla Service.

Source:

<http://www.asianews.network/content/bangladesh-gives-41-women-freedom-fighter-status-2023>)

The Government's position is reflected in the following statement of the Minister in charge of the Ministry of Liberation War Affairs:

"It is not supposed to be unknown anymore as to who was violated in which *Upazila*. But these (information) will be collected confidentially. Many won't want to disclose these now after getting old." He described the collection of information of '*Birangonas*' as a 'historical responsibility'.

Source:

<http://bdnews24.com/bangladesh/2014/10/13/bangladesh-redefines-freedom-fighters-recognises-biranganas-as-ffs>

The difference that this good practice is making to the work of the organisation

In the past, individual war heroines had approached BNWLA for economic support, but the organisation was unable to provide this. However, as a women's rights organisation, they maintained a positive attitude towards the war heroines and were aware of the issues about recognition. What was required was appropriate documentation and this was provided by Mitali Hossain, the President of the ex-students' association of Saleha Ishaq Girls' School. BNWLA, with their long experience of court advocacy, was able to use this documentation to influence a policy decision through the courts.

Mitali Hossain is the daughter of freedom fighter parents and as a social activist had been supporting the war heroines in her individual capacity. In 2010 a few ex-students of Saleha Ishaq Girls' School formed an ex-students' association, and Mitali Hossain became the president of the association. Within this role, she influenced other association members and started to assist the war heroines through the association.

Both organisations consider the success of this initiative as a great organisational achievement, and one which inspires them to engage in similar actions in the future.

What are the success factors?

Strong social commitments of the petitioner organisations, long experience and recognition of BNWLA in undertaking court advocacy to promote women's rights, and well supported documentation are considered to be the main success factors.

The progressive mindset of the sitting judges and the readiness of the government to act on the petition were the other two vital enabling factors in securing both the court judgment and speedy action from the executive and the parliament, in implementing the court order.



Constraints and Challenges Encountered

Once the students association and BNWLA had agreed to join together to file the writ petition there were no challenges to be faced. Before approaching BNWLA, however, the ex-students' association faced numerous challenges. Lack of information and technical knowledge about legal advocacy was the primary challenge for them, as had no prior experience of such advocacy. As a result, they initially pursued the wrong forum and wrong people for assistance.

Many people attempted to discourage Mitali Hossain, saying that this issue had become obsolete, as many war heroines had died and many others were growing older. The conservative mindset of the people and the lack of a positive response from government officials were the primary constraints when Mitali Hossain, on behalf of their students association, approached government officials. There was limited interest, primarily in providing the war heroines with on-off livelihood assistance, rather than pursuing the issue of state recognition. Lack of financial support was also a challenge when they approached lawyers for filing a case, as the lawyers demanded very high fees. And even some freedom fighters directly opposed this issue of recognition, with the argument that this is a matter of shame and it should be kept hidden, whilst some who could fear public disrepute supported the issue.

How the good practices will sustain?

Though the petition has not been finally settled, the primary objectives of the legal battle have been achieved, as the government has enacted a law recognising war heroines as freedom fighters. The initiative of preparing the list of war heroines has also been started. This will benefit not only the surviving war heroines enabling them to receive honour and facilities as freedom fighters, but will also encourage their future generations to take pride in these women as freedom fighters.

This recognition will also have the potential force to change the social norms that still stigmatise women and girls and their families for being subject to sexual crimes committed on them.

The learning from the process of developing this practice and from its implementation / way forward

Both BNWLA and the ex-students' association are constantly monitoring the progress of this action so that they can intervene as appropriate and ensure that the government undertakes the proper implementation of the court's directions. They are encouraging the war heroines to be enlisted as freedom fighters. Close monitoring is needed to ensure that the process of enlisting the war heroines is not stopped at any point and that the enlisted war heroines start getting the benefits and privileges of the freedom fighters.

Given that women and girls and their families in our society still are stigmatised for being subjected to sexual crimes, this progressive judgment and government initiative could be used in changing discriminatory social norms and attitudes. Women's rights organisation, media and human rights organisation should use this in their awareness campaigns.

The history of war heroines and the recent state recognition as freedom fighters should be included in a text book, to help our future generations to know the sufferings and sacrifices made by the war heroines and to be proud of them and show them equal respect with other freedom fighters.

ⁱThe Constitution of Bangladesh contains the provisions of equal access to justice in its several articles; art 27- Equal protection of law, art 28(1) – Principle of non discrimination, art 28(2) – equal rights of men and women in all spheres of the state and of public life. The same chapter of the constitution contains provisions as to ensuring, freedom from arbitrary arrest and detention, presumption of innocence, right to a fair and public hearing by a competent and impartial tribunal established by law.

ⁱⁱGovernment Legal Aid Programme, UNDP run justice sector reform project, programme on village court activating programme, USAID funded Justice for All, NGO run Legal Aid Programme.

ⁱⁱⁱUNDP has defined access to justice as the ability of people from the 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, Lena Hasle, Too poor for rights? Access to justice for poor women in Bangladesh: A case study

^{iv}In order to ensure access to justice to the poor and indigent people, the Government of Bangladesh enacted the Legal Aid Services Act 2000 (LASA). Thereafter National Legal Aid Services Organization (NLASO) was established to implement the government legal aid program across the country. NLASO provides legal aid to the poor litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and also for various socio-economic conditions. The general direction and administration of the affairs and functions of NLASO is vested in the National Board of Management which consists of 19 members and is chaired by Hon'ble Minister, Ministry of Law, Justice and Parliamentary Affairs. There are 64 District Legal Aid Committee (DLAC) through which NLASO implements the government legal aid programme at the district level. DLAC maintains a legal aid fund allocated by the government which is spent for poor litigants upon their applications. There are *Upazila* and Union level committees also working to spread the legal aid programme at the grassroots level. For details: <http://www.nlaso.gov.bd/>

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