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Human Rights Lawyering: Expanding the Role of BRAC Panel Lawyers in Legal Empowerment

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ABSTRACT

Lawyering (lawyer conduct) is now considered essential to the legal empowerment of the poor and marginalized. This study established a set of Human Rights Lawyering indicators for BRAC's Human Rights and Legal Services (HRLS) programme. It evaluated HRLS panel lawyers' performance according to these indicators by comparing the experiences of three client groups: 1) BRAC legal aid clients, 2) BRAC panel lawyers' non-BRAC clients, and 3) non-BRAC lawyers' non-BRAC clients. The study identified opportunities to improve panel lawyers' performance. For most indicators, BRAC panel lawyers performed comparably better between their BRAC and non-BRAC cases, and with non-BRAC lawyers. Panel lawyers largely did not appear to neglect or under-perform on their BRAC cases relative to private cases. Nevertheless, there is both need and opportunity for improvement. One cannot expect panel lawyers to practice human rights lawyering without training and monitoring regimes. This calls for the development of new training content and performance metrics. Moreover, as only a minority of panel lawyers reported attending a BRAC human rights training workshop, training programmes must be scaled up, possibly in partnership with stakeholders such as Bar Councils, Non Government Organizations and Government Organizations.

EXECUTIVE SUMMARY

This study examines the connection between lawyering and legal empowerment. Lawyering has been defined as “a process of decision-making, in collaboration with clients that uses legal concepts, methods and institutions to resolve disputes or manage opportunities” (Scherr and Farber 2003, p351). Lawyering refers to the nature of a lawyer’s relationship with his or her clients, and the scope of activities that he or she undertakes to defend their rights. To improve the functioning of the justice system and enhance disadvantaged populations’ access to justice, it is inadequate simply to litigate cases on their behalf. BRAC must rather ensure that its activities change its programme participants’ knowledge, skills, attitudes, and confidence levels. Secondly, it must build momentum for structural level changes, such as legal and policy reform, by sensitizing and engaging the support of key stakeholders, lawyers included.

The literature has characterized conventional forms of lawyering—pro bono¹ included—as “regnant lawyering”, meaning that the lawyer is the principal actor—one who gets things done for the client. This relationship tends to promote client dependency and arrogance on the part of lawyers, tends not to improve clients’ situation in the long-run, and fails to address structural injustices. Human rights lawyering has been advanced as an alternative to regnant lawyering. We have isolated three concepts that set it apart:

1. Empathy: the Bangladeshi legal system is hostile to women, and without a lawyer’s support, encounters with it can be thoroughly disempowering;
2. Holistic service: a client’s problems are usually the consequence of deep set social marginalization. The litigation process should intervene in the interrelated problems that the client faces, and must be sensitive to the individual and structural consequences of a given approach.
3. Client participation: Client participation is essential for developing a sense of agency and ownership, and the corresponding skills.

The study has three objectives:

- To establish a model of human rights lawyering relevant to BRAC HRLS
- To evaluate BRAC panel lawyers’ performance according to this model
- To identify opportunities to improve panel lawyers’ performance

The study compares the performance of BRAC panel lawyers in their BRAC cases and non-BRAC cases, and non-BRAC lawyers in non-BRAC cases. It assesses the human rights lawyering proficiency of BRAC lawyers in absolute and relative terms. Data were gathered through semi-structured questionnaires with the lawyer study groups, and both BRAC and non-BRAC clients of lawyers from the study groups. A set

¹ In law, the term pro bono refers to legal work that is performed voluntarily and free of charge. A lawyer may take on a legal case pro bono for a good cause. For example, if an individual has a viable case, but no money to retain a lawyer, a lawyer may agree to take on the case pro bono because he or she believes in the person’s cause. The phrase pro bono comes from the latin term: pro bono publico. This phrase means for the public good. When a lawyer works pro bono, he/she is said to be working for the public good (American Bar Association 2005).

of nine indicators were used under the headings: understanding of the principles of human rights lawyering, empathetic and ethical conduct, holistic service and client participation.

KEY FINDINGS

For most indicators, BRAC panel lawyers performed comparably between their BRAC and non-BRAC cases, and with non-BRAC lawyers. Panel lawyers largely did not appear to neglect or underperform on their BRAC cases relative to private cases. Nevertheless, there is both need and opportunity for improvement.

Understanding of the principles of human rights lawyering

All lawyer groups were unaware of the principles of human rights lawyering. Most understood the term to mean pro bono work, rather than the concept that their conduct should promote client empowerment. Most lawyers did not correctly understand what human rights law is. Moreover, they appeared to be motivated for pity for poor clients rather than a commitment to human rights. The vast majority framed their legal arguments accordingly.

Empathetic and ethical conduct

The lawyer exhibits gender sensitivity: Panel lawyers showed a lack of gender sensitivity to their non-BRAC clients, but not their BRAC clients. This finding suggests that panel lawyers act with gender sensitivity towards BRAC clients out of compliance with BRAC policies, and not because they value it. No lawyer groups were found to make substantial efforts to mitigate their clients' embarrassment. Significantly fewer BRAC clients felt embarrassed than other client groups. This finding suggests that BRAC's other programmatic elements help psychologically prepare clients for the litigation process.

The lawyer resists unethical financial incentives

The survey findings do not indicate that panel lawyers discriminate between BRAC and non-BRAC clients. In fact, BRAC HRLS staff lawyers' testimony suggests that panel lawyers may sometimes discriminate in favour of BRAC clients.

Ten percent of panel lawyers solicited BRAC clients for money. Significantly fewer *mohuri* (advocate's clerk) solicit BRAC clients for money, suggesting that BRAC staff monitoring is a disincentive. Strengthening monitoring systems may, therefore, be an effective intervention to reduce these practices further.

The lawyer provides support to the client in court: Significantly fewer BRAC clients were able to organize the witnesses for their cases, likely due to the fact that as legal aid recipients, they have fewer financial resources and less powerful social networks. This is a gap that panel lawyers and BRAC staff must aim to fill.

Holistic service

The lawyer is aware of and responsive to the client's non-legal case-related problems: When clients informed their lawyers about their non-legal case-related problems, significantly fewer BRAC clients received help. The reluctance of panel lawyers towards BRAC clients is likely to compound the marginalization that the latter already

experience, and clearly contravenes the principles of human rights lawyering. It is, therefore, a crucial target for change.

Client participation

When preparing a case, there is suspiciously little consultation with the client. Rather, panel lawyers seem to create what they think what will be a compelling case rather than attempting to understand the client's situation. Only 25% of BRAC clients reported that panel lawyers gave a true account of events in court. While this outperforms the other two client groups, it is still disconcertingly low.

Panel lawyers do not appear to be communicative about the legal process and the rationales for their decisions. It does not appear to be a high priority for panel lawyers whether clients understand what is happening in their cases, rather their role is simply to do as the lawyers tell them. Very few lawyers mentioned that it was important that clients and witnesses understand *arji*² and the significance of their statement in relation to it. When questioned, some were reported to become angry, defensive and dismissive.

The lawyer informs the client about developments in his or her case: BRAC clients' experiences were mostly comparable to other study groups, but still far short of satisfactory. Namely,

- 83% of BRAC clients were informed about development in their case;
- 22% of panel lawyers informed BRAC clients about the progress of their case after attending hearings;
- 37% of BRAC clients did not know the value of the dower won in their case; and
- 39% of BRAC clients understood *arji* because they read it themselves or their lawyer read it to them.

Panel lawyers should aim for 100% proficiency on these indicators. Significantly fewer BRAC clients did not know other party's strategy in their case. This is a positive finding, but should still be 0%.

Significantly fewer BRAC clients were informed about development in their cases or prepared for court by the lawyers themselves, but were assisted by BRAC HRLS staff lawyers and program organizers (PO). More study is required to verify whether this is the case, and evaluate how staff lawyers' and POs' performance in this role compares with panel lawyers.

The lawyer communicates effectively with the client: All BRAC clients met and spoke directly with the lawyer on the first meeting, a positive finding given the importance of the first meeting. But over time, the proportion of clients in all groups that spoke directly with the lawyer decreased to about 50%. Likewise, the proportion of clients that felt that their lawyer was patient with them decreased to 50-60%, as did the proportion that understand what their lawyer told them. There was a concurrent increase in absenteeism in the former two cases. While these findings are generally not significantly different from the other study groups, they clearly indicate that the rapport between lawyer and client discourages client participation.

² *Arji* is a complaint that is filled in court

The lawyer makes the client more aware of her rights: Eighty three percent of BRAC clients reported learning about human rights from their cases which is comparable to the findings of other study groups. Significantly more BRAC clients' stated that they shared this knowledge with their family and neighbours, possibly indicating the value of BRAC's Alternative Dispute Resolution (ADR) and other community mobilization interventions.

Clients only learned about the rights specific to their cases. It does not appear that they apprehend human rights as a discourse, but only in piecemeal chunks of knowledge. Moreover, as discussed above, lawyers largely failed to demonstrate a correct understanding of human rights themselves.

RECOMMENDATIONS

One cannot expect panel lawyers to practice human rights lawyering without training and monitoring regimes. This calls for the development of new training content and performance metrics. However, it is important to note that 34% of panel lawyers have attended a BRAC human rights training workshop. Training programmes must therefore be scaled up dramatically. There may be opportunities to do in partnership with other stakeholders in the justice system, such as Bar Councils, NGOs and government organizations.

INTRODUCTION

The Bangladeshi legal system is hostile to poor, rural Bangladeshi women's interests in many ways, including enormous delays and expenses, corruption, and patriarchy in both the content and practice of the law. Consequently, women face immense obstacles to the protection of their human rights and the security of their livelihoods. For this reason, BRAC's Human Rights and Legal Aid Services (HRLS) programme has undertaken a series of legal empowerment interventions. Legal empowerment is defined as "a process and a goal that involves the use of law to increase the control of disadvantaged populations over their lives" (Asian Development Bank 2001). In contrast to top-down efforts to improve service delivery in the legal system, this approach aims to develop the resources and skills for marginalized people to assert their rights.

BRAC's HRLS is the world's largest legal aid service. In 2009, HRLS legal aid clinics received 22,629 complaints of which 13,493 were resolved through HRLS-supervised (ADR). A total of 4,428 civil and criminal cases were filed by HRLS staff, of which 3,183 were decided within the year and 2,909 (91%) were decided in favour of BRAC's clients. HRLS' other interventions include:

- Providing human rights and legal education (HRLE)
- Training and supporting paralegal volunteers (*shebok/shebika*) that operate at the community level
- Engaging local community leaders through awareness-building workshops
- Organizing community watchdog committees on law implementation and human rights
- Advocating for policy and legal reform
- Pursuing public interest litigation

This study examines the connection between lawyering and legal empowerment. Lawyering has been defined as "A process of decision-making, in collaboration with clients that uses legal concepts, methods and institutions to resolve disputes or manage opportunities" (Scherr and Farber 2003, p 351). Lawyering refers to the nature of a lawyer's relationship with his or her clients, and the scope of activities that he or she undertakes to defend their rights (Bellow 1980, White 1988). To improve the functioning of the justice system and enhance disadvantaged populations' access to justice, it is inadequate simply to litigate cases on their behalf. For example, whether a panel lawyer wins a case is a small part of the picture. If he or she does not consult with the client or inform her about the legal process, the client is no more empowered or better-off in the long-run. BRAC must ensure that its activities change its programme participants' knowledge, skills, attitudes, and confidence levels. Secondly, it must build momentum for structural level changes – such as legal and policy reform – by sensitizing and engaging the support of key stakeholders, lawyers included.

This study examines the role that panel lawyers can and do play in legal empowerment. More specifically, it evaluates panel lawyers' lawyering according to a human rights lawyering framework.

STUDY OBJECTIVES

- To establish a model of human rights lawyering relevant to BRAC HRLS
- To evaluate BRAC panel lawyers' performance according to this model
- To identify opportunities to improve panel lawyers' performance

LITERATURE REVIEW: ESTABLISHING A MODEL OF HUMAN RIGHTS LAWYERING FOR BRAC HRLS

Regnant lawyering

Traditionally, lawyers are considered to be professionals whose task is to win cases without particular regard to the means. In the literature, this perspective is termed as regnant lawyering.

In the regnant model of lawyering, the lawyer is typically seen as the principal actor, that is, as the person who gets things done for the client (Lopez 1992). This relationship tends to promote client dependency and arrogance on the part of lawyers, and isolates clients (Cook 2006, Coto 1999).³ Regnant lawyering tends not to improve clients' situation in the long-run, and fails to address structural injustices.

Pro bono lawyering is generally understood as the principle means of empowering the poor and disadvantaged through law. It has been defined as

“legal assistance provided to clients who cannot afford ordinary market rates, or to clients whose case raises a wider issue of public interest... legal services provided to organizations working for disadvantaged groups or for the public good... free community legal education, law reform, and other activities. These services are performed for free or for a substantially reduced fee.” (Anderson and Renouf 2003).

Pro bono lawyering can still fall within the regnant model of lawyering if it is confined to basic client representation. Many scholars and activists have sought to extend the concept of pro bono lawyering to mean sustained commitment to a cause, in contrast to one-off service delivery (Hall 2005, Hibbits 1994).

A review of the legal literature reveals a wide array of definitions for cause lawyering, including “social justice lawyering,” “public interest lawyering,” “rebellious lawyering,” and so on. Although there are conceptual differences among these terms, the main distinction between these and traditional lawyering lies in the notion of having a broader vision for one's cases. Alternative lawyering models imply commit to both the individual service of clients the larger social effects of law and its impact on people.

HUMAN RIGHTS LAWYERING

Human rights lawyering developed from alternative lawyering discourse, and takes it further in three key respects, empathy, holistic service, and client participation.

³ See for a discussion of similar work by Anthony Alfieri, Stacy Brustin, Clark Cunningham, Gerald López, and Lucie White, see: Marsico, Richard D., “Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?,” 1 *CLINICAL L. REV.* 639 (1995), 649–50.

Empathy

A key component of human rights lawyering is treating clients with dignity and respect, listening and seeking to understand clients. There is now an emerging consensus that quality engagements with lawyers and legal processes can contribute to the physical, psychological, social and emotional healing and well-being of participants (King 2003, Genn 1999, Tyler 1996).

Empathetic lawyering is also linked to empowerment. Being treated with a lack of dignity and respect can be a profoundly disempowering experience for clients. Ellmann writes that “clients who do not experience respect... from their ally, the lawyer, may be all the more convinced that they lack the capacity to act for themselves” (Ellmann 1992). A critical aspect of empathy is to sincerely listen to the client. Peel writes that

“To speak without being listened to... erodes hope in the possibility of change. It is cruel to ask questions without really hearing the answers or to consult when pre-determined outcomes won't be affected anyway. Asking without listening is much, much worse than not asking at all.” (Peel 2003)

Empathetic communication also ensures that a lawyer's work properly serves his or her clients' interests. Needless to say, there are often large cultural, educational and social-economic gaps in understanding between a social justice lawyers and his or her clients. To cross the gap and build trust with their clients, lawyers must exhibit more than “intellectual curiosity and commitment,” but “some sympathetic identification with those from whom... experience may otherwise separate them” (Ellmann 1992, p1003, Bastress and Harbaugh 1990, Menkel-Meadow 1994).

Holistic service

Another important component of human rights lawyering is a “whole client” approach. To the extent that a legal client's vulnerability is a product of social disadvantage and subordination, a true solution will most likely require changes in the client's life outside the lawyer's office (Ellmann 1992). The litigation process should intervene in the interrelated problems that the client faces, and must be sensitive to the individual and structural consequences of a given approach. On this view, an essential aspect of human rights lawyering is identifying and helping clients and addressing their non-legal needs - what lawyering broadly aims to achieve (Renouf 2002, Neiman 1999, Hafetz 2003). Neiman argues that legal service practitioners tend to forget about other non-legal remedies that may help clients change their circumstances more effectively. In her view, “what would be best for all is if, once a client sits down to tell his or her story, advocates try to deal comprehensively with what is really going on” (Neiman 1999).

Client participation

Client participation is essential for developing a sense of agency and ownership, and the corresponding skills. Participation must not be restricted to the litigation process itself, but encompasses community engagement, building connections with civil society organizations, education, advocacy, and participation in public policy discourse (Diamond 2000, Genn 1999, Hafetz 2003, Lynch 2003). Hurwitz, for example, argues that “[m]aking rights real for people involve an engaged ‘critical consciousness’ that is developed through education, training and community organising, as well as strategic lawyering” (Hurwitz 2003, p516). Solomon stresses the need for a community-based process to set priorities; otherwise, “priorities are unlikely to be representative of or strengthen the community at large” (Solomon 2000, p483).

METHODS

The study compares the performance of BRAC panel lawyers in their BRAC cases, BRAC panel lawyers in their non-BRAC cases, and non-BRAC lawyers in non-BRAC cases. It assesses the human rights lawyering proficiency of BRAC lawyers in absolute and relative terms.

The study focused on dower and maintenance cases. These are HRLS' most common types of case, and therefore the richest data source. Dower is a gift of money or property made by a husband to his wife. As such, it gives the wife a measure of financial leverage over her husband, and helps dissuade improper behaviour. There are two types of dower in Bangladeshi law - prompt dower must be paid when the wife requests it, and the deferred dower is paid in the event of divorce or the husband's death. Upon divorce, a wife is empowered by Bangladeshi law to claim maintenance, or financial support, from her husband. The client study population was drawn from the selected lawyers' dower and maintenance cases. Because of the choice of cases for the study, all members of the client study population were women.

Semi-structured questionnaires were administered to lawyer and client study population. The lawyer study population comprised of BRAC panel lawyers and non-BRAC lawyers. The client study population was made up of BRAC legal services clients, BRAC PLs 'non-BRAC (i.e. private) clients, and non-BRAC lawyers' clients. Each lawyer and client group comprised of 30 people. The study also interviewed 17 staff lawyers from the same regional jurisdictions as the study's panel lawyers. Study areas were a function of which panel lawyers were selected for the study.

Eligible BRAC lawyers had conducted at least one dower and maintenance case with a BRAC client, and at least one with a non-BRAC client. The judgments for these cases must have fallen between October 2008 and July 2009. Solemnama (a legally sanctioned form of compromise) qualify as judgments for the purpose of the selection criteria.

Eligible non-BRAC lawyers also had conducted at least one dower and maintenance cases whose judgment(s) came in the same period. Equal numbers of non-BRAC lawyers were chosen from the same regions as panel lawyers. Non-BRAC lawyers were chosen to ensure as close as possible of an average experience level between the two groups.

LIMITATIONS

- The study focuses on dower and maintenance cases. Criminal cases pose a different set of challenges for lawyers, such as dealing with public prosecutors and police, and proving a case beyond reasonable doubt.
- The study relies mostly on the recollections of BRAC clients, who sometimes had difficulty remembering their dealings with their lawyers. This is understandable given that the average lengths of each client groups' trials were between 1.9 and 4 years (Table 10.1, Annex 1).

- Given the social prestige of the legal profession and the class/gender/economic disparities between lawyers and clients, it was difficult for clients to be critical of their lawyers. This limitation was most apparent when interviewing BRAC clients.
- The composition of the client study population was not a controlled variable. BRAC clients receive legal aid because they lack the finances to procure a lawyers' services. It is highly likely that there are differences in income between BRAC clients and non-BRAC clients, as well as correlates such as socioeconomic status and educational attainment. In certain circumstances, clients' survey responses may not solely be a function of lawyers' behaviour, but also differences in clients' situation and perception.

HUMAN RIGHTS LAWYERING INDICATORS

There are no existing indicators for human rights lawyering. We have, therefore, developed our own indicators based on interviews with academics and human rights practitioners, and drawing from the literatures.

Understanding of human rights lawyering

1. The lawyer understands the principles of human rights lawyering
 - a) The lawyer uses human rights instruments in legal arguments

Empathetic and ethical conduct

2. The lawyer exhibits gender sensitivity
 - a) The lawyer makes efforts to mitigate clients' embarrassment
3. The lawyer resists unethical financial incentives
 - a) The lawyer does not discriminate between rich and poor clients
 - b) The lawyer does not solicit the client for extra money
4. The lawyer provides support to the client in court
 - a) The lawyer prepares clients and witnesses for court
 - b) The lawyer ensures that clients can prepare documents and organize witnesses
 - c) The lawyer defends the client against browbeating in court

Holistic service

5. The lawyer is aware of and responsive to the client's case-related non-legal problems

Client participation

6. The lawyer informs the client about developments in his/her case
 - a) The client understands *arji* (pleading)
 - b) The client is aware of the other party's strategy
 - c) The lawyer explains the outcome of hearings to the client
 - d) The lawyer explains the judgment to the client

- e) If the case is delayed, the lawyer explains the causes
- 7. The lawyer communicates effectively with the client
 - a) The lawyer speaks directly with the client rather than others present at meetings
 - b) The lawyer is patient with clients
 - c) The client understands the lawyers
- 8. The lawyer makes the client more aware of his or her rights
- 9. The lawyer promotes client ownership of the litigation process

FINDINGS

BIOGRAPHICAL PROFILE OF THE STUDY POPULATION

Lawyers

Educational qualifications

The study controls for the regional distribution and average experience level of BRAC panel lawyers and non-BRAC lawyers. PLs had an average of 14.5 years of working experience, and non-BRAC lawyers had an average of 15.6 years. The differences between the group in the type and level of educational attainment are shown in Table 1.

Table 1. Educational qualifications and experience levels (%)

| | BRAC panel lawyers (n=30) | Non-BRAC lawyers (n=30) | Statistical significance |
|---------------------------|------------------------------|----------------------------|--------------------------|
| Educational qualification | | | |
| Bachelor of Laws (LLB) | 40 | 90 | Yes |
| Master of Laws (LLM) | 43 | 3 | Yes |
| Bachelor of Arts (BA) | 17 | 7 | No |
| Educational Institution | | | |
| Public University | 40 | 77 | Yes |
| College | 43 | 23 | Yes |
| Both | 17 | 0 | Yes |

Extra-legal activities

About 77% of panel lawyers and 70% of non-BRAC lawyers reported that they were involved in non-work-related activities of human rights in their community. Most lawyers in both groups mentioned that they played an important role in informal community mediation.

A small number of lawyers from both groups reported that they represented poor women on their own initiative, or that they provided free education or legal advice. Comparable proportions of both the study groups were involved in civil society organizations 23% of panel lawyers and 30% of non-BRAC lawyers were involved in political organizations, and 77% of panel lawyers and 70% of non-BRAC lawyers were involved with social or charitable organizations (including BRAC).

Training in human rights lawyering

About 83% of the BRAC panel lawyers participated in a workshop on human rights. Of them, 34% participated in BRAC workshops, 24% in Bar Council workshops, 10% in workshops organized by other NGOs or the government and the remaining 32% in private sectors.

Fifty seven percent of non-BRAC lawyers participated in a workshop on human rights. Of them, 18% participated in events organized by the Bar Council, and 12%

participated in events organized by the NGOs, Women Lawyer's Shamiti (Mohila Ainjibi Shamiti), Bachte Shekha or the Bangladesh Legal Aid and Services Trust (BLAST). The rest participated in events organized by other NGOs and the government.

Clients

One notable difference between the three study groups was the proportion of divorcees, which comprised 17% of BRAC clients, 63% of BRAC panel lawyers' non-BRAC clients, and 38% of non-BRAC lawyers' clients. The differences among all the three groups are statistically significant.

The cause of these discrepancies demands further research. It is worth noting that divorced women can claim prompt and deferred dower, but undivorced women can claim the former. Cases involving divorcees therefore tend to be more lucrative, which may partially explain why a higher percentage of private clients are divorcees.

INDICATOR 1. THE LAWYER UNDERSTANDS THE PRINCIPLES OF HUMAN RIGHTS LAWYERING

It is unlikely that many lawyers would be familiar with the concept of human rights lawyering as it is discussed in the literature. But they nevertheless have implicit or explicit working definitions of lawyering that underwrite their work. The study tested these views by asking lawyers to define human rights lawyering, and the obligations it places on lawyers.

Most lawyers understood human rights lawyering to mean pro bono work. Those lawyers (BRAC and non-BRAC) with experience in legal aid extended the concept beyond the process of litigation, listing the following duties:

- Helping the client to understand the case and its consequences,
- Counseling the client and her parents,
- Engaging the support of local elites, and
- After the case, referring the client to an institution that will help her find employment and other support.

Few non-BRAC lawyers with no background in legal aid perceived their obligations as such. When asked what a lawyer's duties to his/her client included, most lawyers referred to the process of litigation: for example, conducting the case properly, giving the client proper instruction, and giving the client enough time.

Most BRAC and non-BRAC lawyers agreed that poor people should receive legal aid. Most thought so out of sympathy for the poor than from a human rights point. Those lawyers that based their opinions on human rights did not show significantly better performance on the study's other indicators. Lawyers that graduated from public universities tended to better understand the principles of human rights.

The lawyer uses human rights instruments in legal arguments

A lawyer may be able to provide a cogent definition of human rights lawyering, but it is more important to establish how such an understanding manifests itself in practice.

Whether and how lawyers use frame legal arguments is an indicator of their awareness and commitment to human rights law.

Fifty percent of PLs and 47% of non-BRAC lawyers believed that they had referred to human rights instruments, but further investigation reveals that most do not properly understand what human rights law is. Almost no lawyers from the study population reported using any convention related to human rights and their interpretation. A small number mentioned that they referred to provisions of Convention on eliminating Discrimination against Women (CEDAW). All of these lawyers were involved with legal aid organizations.

No BRAC clients or panel lawyers' non BRAC clients, and only 10% of non BRAC lawyers clients recalled that their lawyers referred to human rights. In most cases, lawyers discussed their clients' virtues and her husband's iniquities.

INDICATOR 2. THE LAWYER EXHIBITS GENDER SENSITIVITY

Gender sensitivity is an essential component of ethical lawyering. It is particularly relevant given that the majority of HRLS' legal aid clients are women. All the clients in the study were women, allowing a rich source of data for this topic.

Clients were asked whether their lawyer treated them with gender sensitivity. Seventy seven percent of BRAC clients, 87% of PLNBCs and 87% NBLCs agreed that they did. Clients that answered yes gave the following examples of gender sensitive conduct: the lawyer listened to her properly, addressed her with dignity, was cooperative with other female clients, offered her a seat, gave her moral support, or addressed her case ahead of male clients. One NBLC, for example, reported that "He [the lawyer] used to talk with me first, even if male clients were there. One day he told the male clients that as I am a woman, I should go home before evening. So, I was given the chance to see him first."

When asked if they conducted themselves with gender sensitivity, most lawyers responded that they are giving women respect by virtue of representing women's rights cases. There was no noticeable difference in opinion between panel lawyers and non-BRAC lawyers.

Anecdotal evidence suggests that panel lawyers exuded lack of gender sensitivity towards their non-BRAC clients, as did non-BRAC lawyers. For example, some clients reported that they asked "if you are not at fault, why does your husband beat you?" or stated that because a woman lives in her husband's house, she should return there. Panel lawyers did not reportedly show such behaviour towards with BRAC clients. While this finding is encouraging, it suggests that panel lawyers act with gender sensitivity out of compliance with BRAC's policies, and not out of sincere conviction.

The lawyer makes efforts to mitigate client's embarrassment

Speaking up about problems in one's domestic affairs can be embarrassing for Bangladeshi women, especially considering that clients are usually attended by friends and family when they meet with lawyers.

Twenty percent of BRAC clients, 40% of PLNBCs and 40% of NBLCs reported that they felt embarrassed when they met with their lawyers (The difference is statistically significant.) One possible explanation for this finding may be that BRAC clients have

already explained their cases to BRAC POs and staff lawyers, and have received some preparation for meeting with the panel lawyer.

Of those that felt embarrassed, 33% of BRAC clients, 36% of PLNBCs and 50% of NBLCs told their lawyers so. If a client mentioned that she felt embarrassed, lawyers usually did not make any substantial efforts to make them comfortable. Instead, they assured the client not to feel embarrassed.

INDICATOR 3. THE LAWYER RESISTS UNETHICAL FINANCIAL INCENTIVES

The lawyer does not discriminate between rich and poor clients: BRAC provides some compensation to panel lawyers, but this falls well below market rates. Panel lawyers take BRAC cases out of a personal commitment to social justice, a component of human rights lawyering. It is important to evaluate how strong this commitment is. One way of doing so is to examine if lawyers treat rich and poor clients differently.

BRAC clients were asked whether their lawyers discriminated between BRAC clients and non-BRAC clients. Non-BRAC clients were asked if their lawyers discriminated between richer and poorer clients. Thirteen of BRAC clients, 7% of PLNBCs and 17% of NBLCs agreed that their lawyers did so.

Thirty five percent of staff lawyers stated that panel lawyers act differently towards BRAC clients and non-BRAC clients, but did not systematically favour one group. The respondents stated that panel lawyers were sometimes better behaved with BRAC clients due to the supervision of staff lawyers, but that BRAC clients sometimes had to wait longer than others to see their lawyers.

The lawyer does not solicit the client for extra money

When an expensive and potentially remunerative case hangs in the balance, lawyers are in a strong position to leverage extra money from their clients. Examining how frequently lawyers do so sheds light on the strength of their ethical convictions.

Panel lawyers are not allowed to ask money from clients, but 10% of BRAC clients reported that panel lawyers did so to prepare necessary documents and placate the court clerk. Although non-BRAC clients already pay their lawyers, lawyers still request for extra money for the same reasons. *Mohuri* also requested money from 27% of BRAC clients, 53% of PLNBCs and 43% of NBLCs. The difference between BRAC clients and PLNBCs is statistically significant. This may be attributable to the monitoring role played by SLs, POs and other BRAC staff. Twenty three percent of BRAC clients, 40% of PLNBCs and 40% of NBLCs believe that they would receive better service from their lawyer by paying extra.

INDICATOR 4. THE LAWYER PROVIDES SUPPORT TO THE CLIENT IN COURT

Especially for BRAC clients, the legal process is unfamiliar, intimidating and often hostile. For example, clients find it difficult to go to the court unassisted. Human rights lawyering requires that lawyers ensure their clients are not excluded from court proceedings, and that they gain understanding of the legal process. Moreover, properly supporting clients and witnesses helps ensure that their testimony adds to the strength of the case.

The lawyer prepares the client and witnesses for court

Ninety three percent of BRAC clients, all PLNBCs and NBLCs stated that they and their witnesses had been prepared to testify in court. Of these BRAC clients, 72% were prepared by staff lawyers rather than panel lawyers.

To prepare clients for court, most lawyers claimed that it is adequate to call clients and witnesses one or two days before the hearing. Very few lawyers mentioned that clients and witnesses should understand *arji* and the significance of their statement in relation to it.

If clients questioned their lawyers' instructions, some lawyers became angry and dismissive. For example, one client recounted that "the lawyer got angry when I asked him 'why should I say that I got married in the court? I actually got married at my house.' He told me 'you need not know the reason.' "

There is some indication that panel lawyers put more effort in preparing their non-BRAC clients than their BRAC clients. For the former, they are known to prepare test-trials for their clients and provide coaching. It was reported that panel lawyers did not do so for their BRAC clients.

The lawyer ensures that the client can prepare documents and organize witnesses

Ninety seven percent of BRAC clients, all PLNBCs and 97% of NBLCs were able to collect all the required documents for their case. Organizing witnesses—procuring their support and arranging for them to come to court—proved to be a substantial obstacle. Only 77% of BRAC clients were able to organize all their witnesses, while it was 97% for PLNBCs and 97% for NBLCs (The difference is statistically significant). A possible explanation is the fact that BCs tend to be poorer than non-BRAC clients, and do not have the financial means or social networks to procure witnesses.

Clients did not report that they received help from their lawyers. Very few lawyers discussed with their clients whom they should use as a witness and why. Most often, lawyers simply told clients to bring those who were familiar with their stories. There is some evidences suggesting that non-BRAC lawyers tended to pay more attention to the selection of witnesses, and linking their testimony with *arji*.

The lawyer defends the client against browbeating in court

Thirteen percent of BRAC clients, 30% percent of PLNBCs and 30% of NBLCs reported that they were deliberately embarrassed by the other party's lawyer in the court. The reason for this discrepancy may be that one party decrees are more common for BRAC clients. All groups of lawyers almost always intervened in these occasions.

INDICATOR 5. THE LAWYER IS AWARE OF AND RESPONSIVE TO THE CLIENT'S CASE-RELATED NON-LEGAL PROBLEMS

A client's problems are rarely limited to his/her case, but connect with deep-set structures of violence and marginalization. As discussed above, the principle of holistic service entails a commitment that goes beyond the legal process. It is, therefore, important to test the lawyers' awareness of their clients' problems, and the actions they take to address them.

All lawyer groups showed similar levels of awareness about their client's case-related non-legal problems, including transportation, finances, managing witnesses, and finding getting a seat in the court. Conspicuously absent, however, was any mention of social pressure from the community, which clients emphasized most. Clients also mentioned hunger: Some were afraid to leave the court for fear of missing their hearing, or did not have enough money to buy food. Clients also mentioned the lack of access to toilet at the court, and the difficulty of waiting for long periods of time with children. In one client's words, "With my kid in my lap, I waited for hours and hours until my hearing came. I couldn't leave for fear that if I was called at that moment, my hearing would be rescheduled to tomorrow. I couldn't even go to the toilet because I would have had to pay."

Fifty seven percent of BRAC clients, 67% of PLNBCs and 63% of NBLCs informed their lawyers about their case-related non-legal problems. Of them, 43% of BRAC clients versus 80% of PLNBCs and 84% of NBLCs received help from the lawyers. This dramatic difference suggests that BRAC lawyers are substantially less responsive to their BRAC clients' needs.

INDICATOR 6. THE LAWYER INFORMS THE CLIENT ABOUT DEVELOPMENTS IN HIS/HER CASE

A key principle of human rights lawyering is client participation. It implies that clients should not be the passive recipients of legal services, but must be incorporated into the litigation process. This is impossible if the client is not well informed about the progress of his/her case.

The clients were asked whether their lawyers kept them informed about developments in their cases. Ninety three percent of BRAC clients, 90% of PLNBCs, and 93% of NBLCs informed that their lawyers did so. Table 6.1 shows which actors informed clients about developments in their cases.

Table 6.1. The actors that informed clients about developments in their cases (%)

| | BCs (n=28) | PLNBCs (n=27) | NBLCs (n=27) |
|---|---------------|------------------|-----------------|
| Panel lawyer or his clerk | 21 (6) | - | - |
| BRAC staff lawyer or programme Organizer (PO) | 50 (14) | - | - |
| Panel lawyer and BRAC staff lawyer or (PO) | 29 (8) | - | - |
| Lawyer | - | 44(12) | 41 (11) |
| Mohuri | - | 7 (2) | 22 (6) |
| Both lawyer and Mohuri | - | 30 (8) | 15 (4) |
| Other male relations | - | 19 (5) | 22 (6) |
| Total | 100 (28) | 100 (27) | 100 (27) |

BRAC clients were informed by their lawyers in 50% of the cases, PLNBCs 74% and NBLCs 56%. (The differences between PLNBCs and the other two groups are statistically significant). The discrepancy between the experiences of BRAC clients and PLNBCs may stem from the availability services of staff lawyers and POs.

The client understands *arji*: *Arji* structures the legal argument put forward by the client. It determines what evidence will be required, the questions the client will encounter in court, and what the possible outcomes of a case will be. Clients should, therefore, be closely consulted in the formulation of *arji*, and should understand it

intimately. Sixty percent of BRAC clients, 68% of PLNBCs and 66% of NBLCs reported that they understood *arji*. Upon further investigation, clients revealed that they had come to understand *arji* in a surprisingly different number of ways (Table 6.2).

Table 6.2. Means by which the client understood *arji* (%)

| Means | BRAC clients (n=18) | PLNBCs (n=20) | NBLCs (n=20) | Statistical Significance |
|-------------------------------|------------------------|------------------|-----------------|-----------------------------|
| It was based on her testimony | 61 (11) | 70 (14) | 30 (6) | BCs vs PLNBCs |
| From female relatives | 0 | 15 (3) | 0 | No |
| From Mohuri or male relatives | 0 | 0 | 10 (2) | No |
| Read it herself | 33 (6) | 5 (1) | 20 (4) | BCs vs PLNBCs |
| The lawyer read it to her | 6 (1) | 10 (2) | 40 (8) | BCs vs NBLCs |
| Total | 100 | 100 | 100 | |

The majority of panel lawyers' BRAC and non-BRAC clients claimed to understand *arji* based on the questionable assumption that it reflected their testimony. Ideally, clients would read it themselves or have the lawyer read it to them. This was the case for 39% of BRAC clients, 14% of PLNBCs and 60% of NBLCs. NBLCs' responses are significantly different from BRAC clients and PLNBCs. Panel lawyers are, therefore, underperforming relative to non-BRAC lawyers in both their BRAC and non-BRAC cases.

The client is aware of the other party's strategy: The client's knowledge of the other party's strategy indicates how well she is informed about the progress of her case, and provides the opportunity to present counter-evidence. As the defendant is her husband, it is likely to be of great personal significance.

Seventy percent of BRAC clients reported that the other party did not have a lawyer, as did 53% of PLNBCs and 53% of NBLCs. Ten percent of BRAC clients, 34% of PLNBCs and 24% of NBLCs did not know the other party's strategy. The difference between BRAC clients and PLNBCs is statistically significant. It was not feasible to verify whether the other parties did in fact have a strategy. Therefore, it is probable that these statistics underestimate the number of clients that did not know the other party's strategy.

Twenty percent of BRAC clients, 13% of PLNBCs and 23% of NBLCs reported that they knew the other party's strategy. Of these groups, Table 6.3 summarizes the types of actors that provided this information.

Table 6.3. Actors that informed clients of the other parties' strategies (%)

| Actor | BRAC clients (n=6) | PLNBCs (n=4) | NBLCs (n=7) |
|-----------------------------------|-----------------------|-----------------|----------------|
| Panel lawyer | 20 (1) | - | - |
| Staff lawyer/PO | 20 (1) | - | - |
| Panel lawyer and Staff lawyer /PO | 40 (2) | - | - |
| Other male relation | 20 (1) | - | - |
| Lawyer | - | 75 (3) | 71 (5) |
| Mohuri | - | 0 | 14 (1) |
| Both lawyer and <i>Mohuri</i> | - | 25 (1) | 14 (1) |
| Other male relations | - | 0 | 0 |
| Total | 100 | 100 | 99 |

Of those that knew the other party's strategy, 100% of PLNBCs, 84% of NBLCs, and only 80% of BRAC clients were informed by their lawyers or BRAC staff. One BRAC client was informed by an unspecified male relation. This finding is worrying but difficult to generalize given the minute sample size.

The lawyer explains the outcome of hearings to the client: Clients were asked what their lawyers told them after their hearings. Table 6.4 summarizes their recollections.

Table 6.4. Information provided by lawyers after clients' hearings (%)

| Statement | BRAC clients (n=28) | PLNBCs (n=30) | NBLCs (n=30) | Statistical significance |
|------------------------------------|------------------------|------------------|-----------------|-----------------------------|
| Did not share anything | 25 (7) | 33 (10) | 47 (14) | |
| Told client to continue waiting | 29 (8) | 0 | 0 | |
| Discussed progress of the case | 21 (6) | 40 (12) | 40 (12) | No |
| Provided reassurance to the client | 14 (4) | 0 | 0 | |
| Client can't remember | 11 (3) | 27 (8) | 13 (4) | |
| Total | 100% | 100 | 100 | |

Twenty one percent of BRAC clients were told about the progress of their case, versus 40% for both PLNBCs and NBLCs. While this difference falls just short of statistical significance, it appears that panel lawyers are underperforming in their BRAC cases. But all groups are well short of discussing the progress of all hearings, as should be the case.

The lawyer explains the judgment to the client: Judgments in dower and maintenance require the guilty party to provide financial compensation. Clients were asked if they knew the sum of money prescribed by these judgments. Table 6.5 presents their responses.

Table 6.5. Percentage of clients that did not know the value of the judgments

| | BRAC clients (n=30) | PLNBCs (n=30) | NBLCs (n=30) | Statistical Significance |
|--------------------------|------------------------|------------------|-----------------|--------------------------|
| Total amount | 37 | 30 | 23 | |
| Dower specifically | 50 | 57 | 47 | No |
| Maintenance specifically | 63 | 63 | 50 | |

Surprisingly small proportions of all client groups were aware of the value of their cases' judgments. There were no statistically significant differences between client groups.

If the case is delayed, the lawyer explains why: Sixty percent of BRAC clients, 73% of PLNBCs and 53% of NBLCs believed that their cases had been delayed. The difference between PLNBCs and NBLCs is statistically significant. Of these groups, 78% of BRAC clients, 65% of PLNBCs and 65% of NBLCs stated that they received an explanation from their lawyers.

Staff lawyers pointed out that non-BRAC lawyers had a financial interest in prolonging a case. Because panel lawyers are paid a flat rate regardless of a case's duration, staff lawyers believe that panel lawyers are less likely to permit or create delays.

INDICATOR 7. THE LAWYER COMMUNICATES EFFECTIVELY WITH THE CLIENT

This indicator is significant for similar reasons as in indicator six (see p20). Respectful, informative communication between lawyer and client is a prerequisite for client participation, as it helps empowering and promoting critical consciousness.

A particularly shocking finding was that 25% of BRAC clients, 7% of PLNBCs and no NBLCs reported that in court, their lawyers gave true account of what happened. It seems that lawyers prefer to present sanitized cases that are more legally and morally compelling. These findings are statistically significant between BRAC clients and the two other groups.

The lawyer speaks directly with the client rather than others present at meetings

Clients rarely meet with their lawyers alone, but are rather accompanied by family members and peers. Consequently, there is a risk that lawyers will ignore the client, preferring to deal with male members of her family. For example, measuring whether the lawyer speaks directly with the client is, therefore, an important starting point for evaluating the quality of communication.

The following three figures (7.1 to 7.3) record clients' recollection of whether they spoke directly with their lawyers at meetings or did not attend the meeting, or attended it but did not speak directly with the lawyer. Data were collected for the first three meetings and last meeting to track changes over time. It is most important that the lawyer speaks directly with the client at the first meeting, as the lawyer and client should establish a plan of action.

Figure 7.1. % of BRAC clients that spoke directly with their lawyer (n=30)

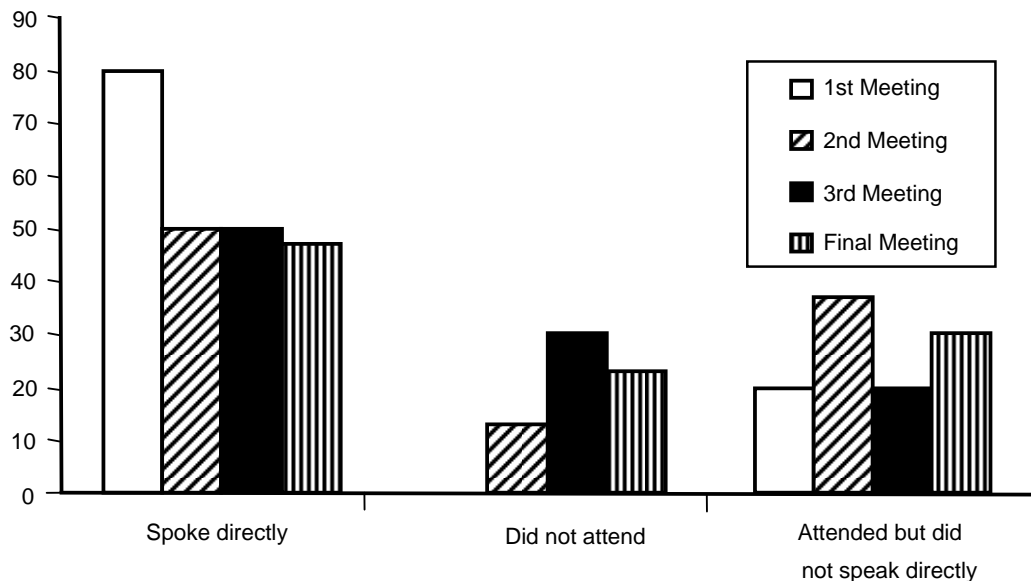


Figure 7.2. % of PLNBCs that spoke directly with their lawyer (n=30)

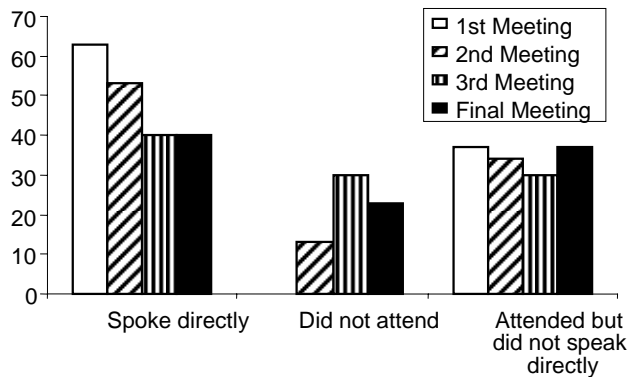
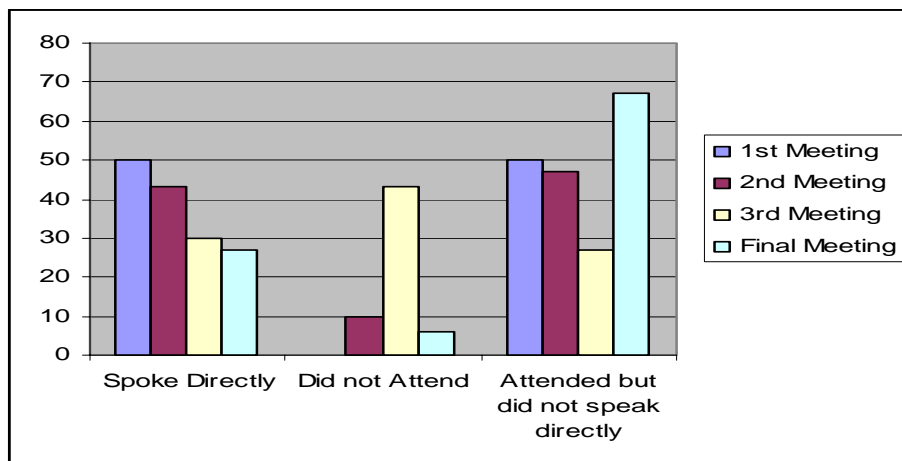


Figure 7.3. % of NBLCs that spoke directly with their lawyer (n=30)



All clients attended the first meeting with their lawyers. The distribution of the three outcomes (spoke directly, attended but did not speak directly, did not attend,) are not significantly different between study groups with two exceptions. A significantly high number of BRAC clients spoke directly with lawyers at the first meeting, and a positive finding given its importance. Secondly, a significantly high number of NBLCs attended the last meeting but did not speak.

Over time, the proportion of clients in all groups that spoke directly with the lawyer decreased to 30-45%. For BRAC clients and PLNBCs this trend appears to be the result of an increase in absenteeism; the proportions of clients that attended meetings but did not speak directly with lawyers remained relatively constant. NBLC data do not indicate any clear trend.

It is unclear whether lawyers speak increasingly less with clients out of choice or due to increased absenteeism. Yet the increase in clients that attended but did not speak, or did not attend, can be attributed to common underlying factors. One is undoubtedly poor communication by lawyers. Yet, this is probably not the only factor. Firstly, as the case takes shape there is less need for client input. Secondly, clients may become increasingly apathetic as their cases drag on. But given that there are clear decreases as early as the third meeting, this appears to be a weak explanation.

There may be other factors yet, but these should be seen as communication challenges to which PLs must rise. In other words, poor communication permits other factors to exert more of an influence.

The lawyer is patient with clients: Clients and lawyers most often do not have equal social standing due to gender, educational and class differences. It is, therefore, important that the lawyer demonstrate patience to the client in order to establish a respectful and productive rapport.

Clients were asked whether their lawyers were patient with them at meetings. Data were collected for the first three and last meetings to track changes over time. Table 7.1 presents clients' responses.

Table 7.1. Clients' assessment of whether their lawyers were patient with them (%)

| | | Yes | No | Cannot recall/ was not present |
|---------------|--------------|----------|--------|-----------------------------------|
| 1st Meeting | BRAC clients | 100 (30) | 0 | 0 |
| | PLNBCs | 97 (29) | 3 (1) | 0 |
| | NBLCs | 97 (29) | 3 (1) | 0 |
| 2nd Meeting | BRAC clients | 77 (23) | 13 (4) | 10 (3) |
| | PLNBCs | 83 (25) | 3 (1) | 13 (4) |
| | NBLCs | 90 (27) | 10 (3) | 0 |
| 3rd Meeting | BRAC clients | 60 (18) | 7 (2) | 33 (10) |
| | PLNBCs | 53 (16) | 10 (3) | 37 (11) |
| | NBLCs | 53 (16) | 3 (1) | 43 (13) |
| Final Meeting | BRAC clients | 50 (15) | 3 (1) | 47 (14) |
| | PLNBCs | 63 (19) | 0 | 37 (11) |
| | NBLCs | 50 (15) | 3 (1) | 47 (14) |

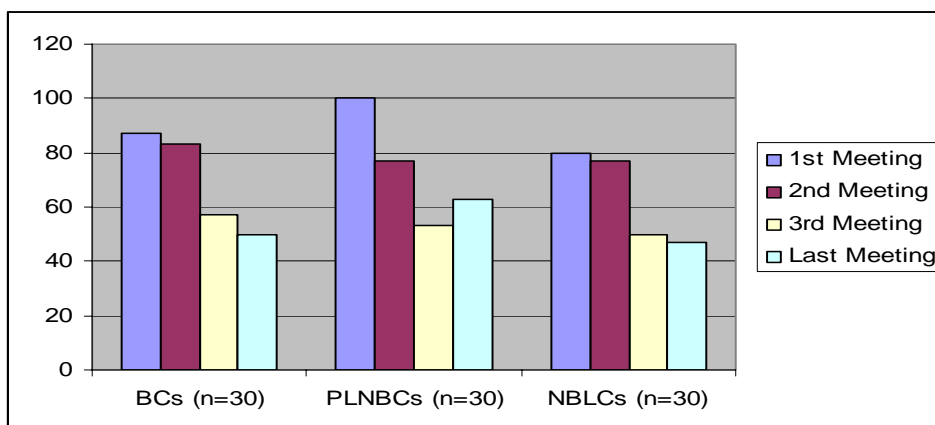
Note: the number of respondents for each group was 30.

On the first meeting, almost all the clients reported that their lawyers were patient with them. Over time, the proportion dropped to 50-60%. Considering the proportion of clients that answered "No" remained constant over time. This trend can be attributed to a rise in absenteeism.

Again, it is difficult to isolate the causes of increased absenteeism, but the correlation with the previous indicator (speaking directly with the client) suggests that decreased need for client input and apathy are not important factors. However, frustration over the case's progress and the challenge of explaining its increasing complexity are other possibilities. As before, these factors must nevertheless be considered communication challenges rather than naturalistic explanations. Thus, there is still reason to attribute these findings to a poor lawyer-client rapport.

The client understands the lawyer: Whether a client understands what her lawyer tells her is the most direct measure of communication quality and client participation. Figure 7.4 presents clients' recollections over the first three and last meetings.

Figure 7.4. The client understood what her lawyer said (%)



There is a statistically significant difference between PLNBCs and NBLCs for the first meeting, otherwise there is no significant difference between the three groups. As time proceeded, fewer clients from all groups understood what their lawyers said, decreasing from 80-100% at the first meeting to 50-60% at the 3rd meeting and last meeting.

Increasing client apathy and case complexity are possible explanations for this trend, as well as a poor lawyer-client rapport. Combining the findings from the three indicators in this section, it appears that communication is not the only factor at work. Indeed, its impact cannot be isolated using these indicators. Nevertheless it the only factor that can be changed, and therefore should be the focus of efforts to improve performance on this issue.

INDICATOR 8. THE LAWYER MAKES THE CLIENT MORE AWARE OF HIS/HER RIGHTS

Awareness of one's rights is critical if one is to use the law to defend them. Whether lawyering practice promotes critical conscience building is an essential measure of whether clients' legal experiences are empowering.

All BRAC lawyers stated that they had made their clients aware of their rights. Ninety seven percent of non-BRAC lawyers reported the same. Lawyers did not claim to inform their clients about rights except those directly related to dower and maintenance.

Eighty-three percent of BRAC clients, 77% of PLNBCs and 87% of NBLCs stated that they learned about human rights from their cases (The differences between these groups are not statistically significant). As observed in Indicator 1, it should be noted that most lawyers did not correctly understand what human rights law is. Therefore, it must be kept in mind that these statistics reflect what clients think they know, not what they know.

Of those clients that claimed to learn about human rights, 44% of BRAC clients, 20% of PLNBCs and 30% of NBLCs reported that they shared this knowledge with their family and neighbours. The difference between BRAC clients and PLNBCs is statistically significant.

This finding suggests that BRAC staff and programme activities act as a catalyst for the spread of rights awareness through the community. BRAC clients come to panel lawyers after conducting BRAC-organized ADR, which allows them to learn about and discuss their rights with BRAC moderators and others. It should be noted that non-BRAC clients often follow a similar process via *salish*⁴, an informal village arbitration mechanism. This finding, therefore, suggests that BRAC ADR is more effective than *salish* and other informal social structures at expanding rights awareness.

Clients learned only about those rights confined to dower and maintenance cases, rather than women's rights more broadly, for example. Though all clients encountered domestic violence, none was found to have learned about her corresponding rights.

INDICATOR 9. THE LAWYER PROMOTES CLIENT OWNERSHIP OF THE LITIGATION PROCESS

Indicators six (the lawyer informs the client about developments in her case), seven (the lawyer communicates effectively with the client) and eight (the lawyer makes the client more aware of her rights) address important components of client ownership. This indicator focusses on the following other activities:

- The lawyer thoroughly explains the client's options and their implications
- The lawyer helps clients clarify their goals, and
- The lawyer allows clients to decide the best course of action.

None of the lawyers were found to have exhibited these behaviours.

A handful of lawyers presented their clients with options, but in most cases, lawyers suggested that the client could compromise with her husband. In many cases, such as those involving domestic abuse, such a recommendation is inappropriate. These are not, therefore, examples of promoting client ownership of the litigation process. Among the few other lawyers that gave a brief statement to clients on their options, BRAC lawyers were more informative than non-BRAC lawyers.

⁴ A community based, largely informal Bangladeshi process through which small panels of influential local figures help resolve community members' disputes and/or impose sanctions on them.

CONCLUSION AND RECOMMENDATIONS

For most indicators, PLs showed comparable performance between their BRAC cases and non-BRAC cases and with non-BRAC lawyers. It is an encouraging finding that panel lawyers largely do not appear to neglect or underperform on their BRAC cases compared to private cases. Nevertheless, because they work with disadvantaged clients, and the mandate of HRLS is to promote legal empowerment, panel lawyers must be held to a higher standard for their BRAC cases.

The concepts of regnant lawyering and human rights lawyering appear to be particularly relevant to BRAC PLs and the Bangladeshi legal profession in general. The study findings indicate that panel lawyers are firmly entrenched in a culture of regnant lawyering in many ways.

One cannot expect panel lawyers to practice human rights lawyering without training. Only 34% of panel lawyers have attended a BRAC human rights training workshop. In addition to developing new content for training modules, efforts to reach panel lawyers must be scaled up. It is critical that training be accompanied by enhanced monitoring of panel lawyers' performance. This study provides template performance indicators.

BRAC can also build panel lawyers skills through other fora, given the limited capacity of present training infrastructure. Possible interventions could include internships for law students, clinical legal education workshops and community visits, and integrating lawyers into HRLS' Legal Rights Implementation Committees (LRIC) and Human Rights Implementation Committees (HRIC) to raise their awareness level and broaden their support. Furthermore, seeing that most PLs and all non-BRAC lawyers receive training from organizations other than BRAC, BRAC can co-develop and share training models with Bar Councils, lawyers' chambers, other NGOs and the government bodies.

BRAC can also target other actors to improve panel lawyers performance on human rights lawyering indicators. Firstly, training programmes should also sensitize judges to human rights and the principles of human rights lawyering. A study has found that if judges were sensitized to pro bono work, they better understand and appreciate it in adjudicating cases (ABA Standing Committee on Pro Bono and Public Service 2005). There is no reason to think why sensitizing judges to human rights lawyering might not yield similar results. It will additionally provide an incentive to lawyers to employ the principles of human rights lawyering; for example, basing legal arguments on rights rather than pity. Secondly, BRAC staff can brief BRAC clients before they meet lawyers, and provide ongoing support. Panel lawyers and staff lawyers complained that BRAC clients rambled too much, were not punctual, came without appointments, failed to attend hearings, brought too many people with them, offered a multitude of conflicting opinions and made unrealistic demands. With the support and guidance of BRAC staff, BRAC clients will better know how to make the client-lawyer relationship as productive as possible.

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ANNEX

ANNEX 1. OBSTACLES TO JUSTICE IN DOWER AND MAINTENANCE CASES

Dower and maintenance cases tend to be relatively homogenous. Clients' grievances typically included dowry, domestic violence and polygamy. Clients usually tried their best to settle the grievance with their husbands, and eventually left the house or were forced to leave. Clients made several attempts for reconciliation, to which their husbands did not respond. Finally, the clients would file cases against their husbands.

BRAC clients' cases are significantly shorter than PLNBCs and NBLCs, and have a smaller standard deviation (Table 10.1). One reason is that a higher proportion of BRAC cases result in one party decrees. Another, as mentioned above, is that panel lawyers are paid a flat rate by BRAC, and therefore have no financial interest in permitting or causing delays.

Table 10.1. Average and standard deviation of case duration

| | Average (years) | Standard deviation | Statistical significance |
|---------------------|--------------------|-----------------------|--|
| BRAC clients (n=30) | 1.9 | 1.50 | BRAC clients vs PLNBCs; BRAC clients vs NBLCs |
| PLNBCs (n=30) | 3.7 | 2.90 | |
| NBLCs (n=30) | 4 | 2.50 | |

The other party's strategy

Clients recalled that the other party in their cases frequently attempted to prolong the case. This tactic aims to demoralize the client, and gives the other party time to pressure the client to drop the case or accept a compromise. Clients also recalled that their opponents mounted smear campaigns against them.

Sixty percent of PLNBCs and 50% of NBLCs were offered a compromise, versus 30% of BRAC clients. The likely reason for this discrepancy is that BRAC clients initiate a case after ADR fails. Clients will sometimes quietly make a compromise and break-off contact with their lawyers. Panel lawyers mentioned that BRAC clients are more prone to do so than their non-BRAC clients.

Twenty percent of panel lawyers and 17% of non-BRAC lawyers think that the client's money and influence can alter the outcome of a dower and maintenance case. Almost all staff lawyers and clients believe that power and money matter, allowing one to resolve a case faster by pushing ahead hearing dates and issues of summons.

Procedural obstacles

Clients and lawyers mentioned the following barriers to the resolution of their cases:

- Clients face community pressure and threats from the other party to withdraw their cases,
- The shortage of judges, case backlog, and slow process of issuing summons contribute to case delays,

- Rather than paying dower and maintenance, the other party can opt for three months' incarceration, and
- Due to police corruption, the client's husbands are often not arrested once a warrant is issued.

The issuance of summons

The issuance of summons plays a crucial role in delaying dower and maintenance delayed. The office that issues summons is corrupt. Staff lawyers and panel lawyers reported that clerks are paid so little, they cannot cover the transport costs to deliver each summons individually. Instead, they wait for months until they receive enough summons for a particular place, then deliver them together.

Once the summons arrives, the other party can bribe the clerk to report that he could not find the other party. The summons are hanged, and the case starts without the other party. When the case finishes and a one party decree is issued, the other party will appear in court with a lawyer. They contend that they did not receive the summons, and now want to contest the case. Judges frequently accept this petition, and the case starts from the beginning.

No lawyer from the study population had argued against the other party's petition to restart the case. But a literature review and analysis of the relevant law (Muslim Family Law Ordinance 1965 and Muslim Family Law Ordinance 1985) reveals that it is possible to dismiss the other party's petition to restart the case. Lawyers should argue that when a summons has been hanged, it also has the effect of service of summons. This will enable one to argue that the opposite party has intentionally avoided the summons to prolong the case.