Legal Empowerment as a Pathway Out Of Poverty:  
Examining BRAC’s rights strategy in tackling poverty

Introduction
The denial of rights to the poor can no longer just be viewed as a human rights issue, but also must be accepted as what it is—the biggest development challenge of our times. With an emasculated legal identity that encompasses only certain rights, the poor have little security over their assets, income or their livelihoods. It is also important to emphasize that until the poor are engaged to demand and claim their rights, steps taken to address the symptoms of poverty such as hunger, illiteracy, disease etc. will remain only partially effective at best and the gains of poverty alleviation will be compromised by the reality of ever-increasing poverty creation.

Scholars and academics have long pointed out that in order to effectively tackle the specter of poverty, steps must be taken to diagnose and address its root causes rather than treat its symptoms. World leaders as well as grassroots actors are articulating clearly the inextricable linkages between poverty and injustice; and are recognizing that they are both dynamic in nature. Development thinkers have long been discussing that the poverty pool is being simultaneously depleted and refilled: even as some people move out of poverty, other people simultaneously fall into poverty. We must therefore take our focus and efforts for poverty reduction beyond simply raising people out of poverty and address the elements that go into the creation and perpetuation of poverty.

Today, it is well understood that poverty originates out of disempowerment and in turn exacerbates this very phenomenon, creating a vicious cycle of sorts. In other words, not only is the inability of the poor to exercise their legal rights and access basic services, resources and opportunities a direct result of historical and political processes of subordination, but this disempowerment facilitates further subordination. An elementary example illustrates the point: corruption in the judiciary prevents the poor from accessing the courts. As a result, the judiciary becomes a domain controlled by the elite and privileged classes, who are therefore

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not held accountable to the law, and are free to continue discriminatory and exploitative practices.

It is also widely recognized that the lack of an efficient justice system not only restricts the exercise of citizen’s fundamental rights but also retards growth and development when the poor are unable to protect their assets and livelihoods. Accordingly, issues of rule of law, due process of law, judicial independence, equality and non-discrimination have, in the past few years, have moved beyond the confines of lawyers and courts and have become the focus of sustainable development discourse.\(^3\) Legal empowerment as pathway out of poverty is a versatile agenda addressing the question of human development in the broader domain.

The concept of legal empowerment is recognized to respond to the realization that the rights-based approach complemented by the utilization of law is a critical means of maintaining state accountability on human rights issues and organizational accountability to its beneficiaries. It is different from conventional rule of law discourse in that it does not focus on the “supply side” of the justice system—improving state services—but on giving resources to marginalized groups to enact change. This paper traces the broader impacts of legal empowerment strategies on the demand for justice and their implications for poverty reduction and human development. This paper also takes the NGO BRAC as a case study, assessing the effectiveness of incorporating legal empowerment initiatives into its human development and poverty reduction programs.

**Legal Empowerment and Development**

It is important to explain what exactly we mean by the term legal empowerment. An useful definition is provided by Golub\(^4\), who describes legal empowerment as “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives”. Another definition comes from the Commission on Legal Empowerment of the Poor, which states that “legal empowerment is the process of systematic change through

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which the poor and excluded become able to use the law and the legal system and legal services to protect and advance their rights and interests as citizens and economic actors". 5

In both definitions, it is clear that legal empowerment rests on the idea that access to the justice system—and not just the courts, but public officials, lawyers and legislators—is a prerequisite to development, as it is only through this access that rights can be secured. Golub says as much when he talks of how while legal empowerment activities do indeed focus on teaching disadvantaged groups relevant laws, building their capacities to use those laws themselves, providing legal representation where necessary, etc., they also contribute to social mobilization and livelihood development in order to make human rights a reality for the poor and disadvantaged.

While both definitions emphasize on how legal empowerment improves relationship between the citizen and the State (propelling growth and enabling development), the traditional markers for legal empowerment do not extend to the relationship between the non-state actor (i.e. donor agency, NGO, CBO etc) and the citizen. It has been less often discussed how legal empowerment strategies can assist poor person translate and transform oneself from a beneficiary to a stakeholder in a manner that they themselves become a decision maker and hence an equal partner in their own ‘development’.

If we start with an agreed premise - that there can be no peace without ensuring justice, then we are faced with two sets of questions.6 Firstly, what is the link between law, legal obligations and the politics of poverty? When does a moral obligation of a State to ensure food, clothes, shelter and health-care to its citizens turn into an enforceable obligation? And secondly, how can the very development partners and organizations that plan to improve the lives of the poor, be held accountable to the poor? How can it be ensured that the interventionist strategies take into account that the poor exist, not as mere target groups or ‘guinea pigs’ of development economics but as human beings guaranteed constitutional rights and entitled to their own opinions?

6 Syed Ishtiaq Ahmed Memorial Lecture delivered by Fazle Hasan Abed, Founder & Chairperson, BRAC, November 22, 2008
According to Professor Matthew Stephenson of Harvard,7 “A legal identity is the keystone to legal empowerment. With it, you can be immunized, go to university, own property and an address, vote, work legally, open a bank account, bring a case to court – the state recognizes that you exist.” If we agree that the law defines the rules of the game governing this social compact, then it is not difficult for us to see how each of these elements would have fundamental implications for the poor and the reproduction of poverty.8 It is also then possible to broaden this definition to examine the use of a rights strategy by non-state actors to ensure state answerability and to enhance its own accountability to the communities it serves.

In many ways, legal empowerment is more about power and freedom than it is about law. It is about protecting assets and resources, however modest, and securing a voice for bargaining and negotiation. Looking beyond the numbers, let us analyze why it is critical if not absolutely necessary, to incorporate a ‘rights scrutiny’ of various development interventions during the design, implementation and the evaluation phase. If we go back to Professor Stephenson’s markers of legal identity we see that the poor live in a world where lack of access to justice, property rights and legal business, limits their boundary of existence. The worldview of the person trapped in poverty due to legal exclusion is framed by violence and exploitation; of deprivation from economic opportunity; and by the constant fear of eviction. This is the worldview that challenges us to take up legal empowerment as an escape route. Legal empowerment, thus, is both a process and a goal to enable and empower the majority to use the law to take control of their lives.9

**BRAC: Integrating a rights strategy in practice**

The inherent strength of BRAC’s legal empowerment program lies in the recognition that conventional legal services on their own are inadequate to address the underlying administrative and governance constraints that prevent vulnerable and poor populations from enjoying the benefits of development initiatives in public health, local governance reform, resource management, market development and other areas. In other words, while

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8 Syed Ishtiaq Ahmed Memorial Lecture delivered by Fazle Hasan Abed, Founder & Chairperson, BRAC, November 22, 2008
conventional awareness and legal aid services indeed benefit individuals/local communities, they do not necessarily have a tangible impact on broad-based poverty reduction or improved governance. In the same vein, many development initiatives fail to reach their targets on account of poor peoples’ inability to use legal and administrative processes to access services and opportunities for lack of knowledge and capacity.

BRAC’s efforts to empower the rural poor, particularly women, have evolved gradually and incrementally, and through incorporation of learning from experience. In 1972, BRAC began its activities with a relief programme. Immediately post -independence, it shifted its focus to conscientization of the poor, aiming at sensitization regarding the causes of exploitation. Much later in its development, in the late 1980s, BRAC established its innovative Paralegal Programme, providing legal awareness to its group members. At the outset, the program content was fairly rudimentary. Gradually, the need was felt to provide more elaborate orientation to group members on relevant laws. This led to development in 1998 of the Human Rights Legal Education (HRLE) program. A third stage of evolution came in 2003, with the development of the Legal Aid Services component – a significant recognition of the difficulties faced by the poor, particularly women, in approaching the formal justice system. With this third component in place, the program sought to move beyond simply raising awareness on the content of human rights and relevant laws, and to provide the poor with services to access legal remedies, both in the formal and informal sector. 10

The current Human Rights and Legal Aid Services (HRLS) program has adopted a multi-pronged approach that combines legal awareness, legal aid and related services with rural development, income generation activities, micro credit, health care, community mobilization, social support systems and so on. This is premised on the understanding that poverty reduction and sustainable development depend upon the capacity of the poor and the disadvantaged to organize themselves to achieve social, legal and economic empowerment. Central to this approach are the Shebikas, the barefoot lawyers, who function as a gateway to include intended beneficiaries in interventions cutting across social development, legal aid and human rights, gender justice and advocacy aimed at making them aware of their rights, assisting them to claim entitlements and resisting exploitation.

10 BRAC HRLS review 2007
Looking back, it can be noted that BRAC took a conscious decision soon after its birth to work specifically with poor rural women. This is because while these women constitute one of the most marginalized groups in society, they are also potentially the greatest agents of change. Historically, the legal identity of a poor woman is almost non-existent. Not only is she a victim of structural failings such as corrupt judiciaries, self serving political elites, lack of secure access to land and livelihood etc., but she also must deal with socio-cultural issues which promote patriarchies, and laws which can be read to institutionalize male domination. By promoting awareness among poor rural women, and by creating the space wherein they can challenge not only the State but also social dogma in the pursuit of their rights, it can be hoped that a demonstrative effect of sorts will promote change in other sections of society.

Ranging from radically attacking the roots of poverty to ensuring justice delivery, BRAC has strategized to maintain the inter-linkages and synergies between justice, poverty and legal empowerment while taking into account the context in which they function, namely poverty, illiteracy, discrimination, social injustice, class human rights violations, political factionalism and communal and/or ethnic discord.

BRAC also recognizes the practical utility of forging alliances with other organizations to carry forward their mandate of empowering the poor and the disadvantaged. Indeed, the collective wisdom of legal aid, human rights and women’s rights organizations are more likely to produce tangible results in helping the poor access livelihood opportunities, establish land rights, resist illegal encroachment on land, reduce violence and social prejudices against women, challenge inequitable norms, hold service providers accountable, facilitate private-public partnerships, participate in decision-making, create space for asserting claims, negotiate power relations, mobilize communities, and ensure back-up support and safety nets (BRAC Review 2007).

The uniqueness of BRAC’s legal empowerment program also lies in BRAC’s massive outreach and national coverage. The program has to date provided legal education to 3.4

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11 BRAC HRLS Vision document 2008
million women throughout Bangladesh. In 2009, out of a total of 22,629 complaints made, 13,493 have been resolved by Alternative Dispute Resolution. A total of 4,428 cases were filed in court in 2009 on behalf of poor and marginalized clients, 2,909 judgments were given in favor of BRAC clients (BRAC HRLS MIS Report 2009). Every year, HRLS sees at least a 10% surge in the number of complaints filed with program. These numbers indicate that the justice-seeking behavior of those traditionally excluded can be improved by the expanding access to quality legal aid services.

The ‘Rights’ lenses and its impact

The vision of the BRAC legal empowerment program is encapsulated in a change model – protest – social mobilization against social injustice and human rights violations, protect – legal counseling and legal aid provision (both ADR and court), and prevent – human rights violations through proper implementation of laws and agency of people to uphold their rights. There is no doubt that this program, through its network of services and social institutions, is opening options for ultra poor women and men to seek justice and solution to legal issues. Although the numbers (of people served) really do not qualify the broader and more inherent impact of the program’s approach on the improved agency of women, the sheer extent of the program’s outreach is quite impressive.

The programs activities have both directly and indirectly contributed to a number of positive outcomes. These include improved general awareness of law and legal processes that are relevant to the lives of the poor. Last year alone, over one hundred and eleven thousand women attended the HRLS administered human rights and legal education classes. Understanding that knowing the law and rights is not enough for seeking redress—one has to know where to go and how to lodge a claim in the event of a breach of a right, the program has helped women gain basic legal skills to name a wrong, frame a charge and seek redress, whether in court or some government office. With 537 legal aid clinics in 61 districts of Bangladesh, access to legal advice becomes a reality for over two thousand marginalized community members per month, the majority of which are poor women. Hundreds of lawyers that are part of the program’s advisory panel are trained each year to provide quality legal aid.

12 CFPR Midterm Review Report 2009, DFID
13 BRAC HRLS MIS report 2009
services to traditionally excluded clients and are rigorously monitored to ensure that these services are provide free of cost to the beneficiary.

An increased number of women have been able to withstand challenges such as physical intimidation, economic power advantages and adverse community norms and values and protect their rights by compelling the system to enforce existing laws and administrative processes. Though in a lot of cases it is the organizational support that encourages women to file a case, having to go through the legal process familiarized the community member with the formal system. Till date, over 1300 survivors of rape, 540 survivors and victims of acid burn and over 6500 women who have been victims of some form of violence, have been provided legal aid by the HRLS program. Without the legal aid support most of these cases would have been buried in the administrative web of the court dockets.

Knowledge, attitude and other performance standards of government functionaries have also been improved. Responsiveness and sensitivity to needs and demands of citizens are enhanced as a result of continuous engagement and the various dialogues organized that encourages community members and district representatives to dialogue at the local level. Improvements in government performance and accessibility to local government bodies can significantly impact on the quality of life of the poor and the disadvantaged. For example, partnering of HRLS with the District Legal Aid Committees has increased pressure to reorganize the national legal aid administrative structure at the district and national level. The woes of community members in accessing national legal aid services can be highlighted to project the necessary changes required to make the system more functional.

The poor and the disadvantaged have also been mobilized to participate in law and development policy reform by identifying problems, setting priorities and recommending change. The first Public Interest Litigation filed by HRLS reflects such priorities. Based on the number of complaints and incidents reported to BRAC against extrajudicial penalties in the form of fatwas, BRAC partnered with other rights based organization filed a writ petition demanding improved and more effective measures on the part of the government against such atrocities. Due to extensive community presence BRAC is also able to take the directives from the court room premises to rural courtyards. Similarly the drafting of the Child Protection Policy for BRAC by HRLS included extensive discussions with children who come
into contact with BRAC, parents, staff and management where avenues of vulnerability, perceptions and cultural practices were identified and debated. These discussions could have jeopardized the interests of traditional economic models, where the rights-based approach is considered to create adversarial situations.

To make legal empowerment work with and for the poor, it is important to promote the interests of those traditionally excluded in both theory and practice. For example, it is only possible to ensure that children feel more protected and voice their concerns when the organization demonstrates its mandate by formulating a child protection policy\textsuperscript{14}, by mainstreaming a code of conduct, by taking action against those (including its own staff) that abuse or exploit children. It is possible to improve poor people’s well being when not only the number of poor with access to basic health services increases but also there is improvement in service delivery in terms of food, water, environment, living conditions and there are pro-poor court decisions against medical malpractice and negligence.

Other examples of legal empowerment strategies in practice are reflected not only in the number of workers provided with formal contracts, but enforcement of court decisions penalizing workplace discrimination/abuse and non-compliance with labor regulations. The impacts of the adoption of regulatory framework/ guidelines for the informal sector and workers successfully recovering outstanding wages and/or compensation go beyond apparent economic benefits.

**Challenges and Barriers**

The legal empowerment strategy continues to face resistance at local levels particularly from religious leaders, who feel that the concept of women’s rights and non-discriminatory laws challenge their fundamental religious beliefs. They pose to be a serious threat in BRAC’s grassroots advocacy work. While the HRLS program’s strategy in combating these cultural and patriarchal beliefs is social inclusion and mobilization, more training especially for school children, legal practitioners and media professionals is needed to increase awareness and build a better community coordinated response to the propaganda of the fundamentalists.

\textsuperscript{14} In 2010 BRAC HRLS has started working on a BRAC wide Child Protection Policy. The policy will be finalized by the Board by the end of this year,
Limited access to the government officials and state system continue to be a major barrier for the poor and disadvantaged. Though BRAC HRLS is working to include more govt. officials in the local workshops, there is a critical need to look at other strategies to better inform state representatives and include them in the dialogues including townhalls, conferences etc where they can be challenged and subjected to peer pressure and public scrutiny. However the avenue of such public engagement is limited, since legal aid practitioners have to balance programmatic interest with overall organizational interests in community development where exposing state malpractice may impact other programs adversely at the local level. Contextualizing long term legal empowerment strategies and achievements, analysing the impression on different beneficiaries and conducting an accurate impact assessment will be very helpful in moving HRLS framework forward.

It is important to acknowledge that legal empowerment is sustainable only in the long term. Even though HRLS is largely dependent on a consortium of donors for financial sustainability at present, successful community economic development (including sustainable livelihood) is not possible without the legal aid framework. Moreover, HRLS services are designed to discourage client dependence and to encourage beneficiaries to overcome the feeling of powerlessness. In view of the recent financial downturn and increased prices, HRLS is focusing on cost effective service delivery. For example, pushing for ADR, streamlining litigation strategies and delegating a supervisory role to the divisional staff lawyers to ensure accountability from panel lawyers and legal aid coordinators.

Apart from external challenges, fighting for rights is an uphill battle organizationally as well. Though incorporating the ‘rights lenses’ is mostly perceived as non-profitable, it is hard to market the benefits of upholding the rights and dignity of beneficiaries. It is often very hard to push agendas such as gender justice, child rights, labour rights etc while designing programs (and not just for namesake) and bearing in mind the potential threats of the proposed interventions To win this battle, it is very important to have an organizational mandate to mainstream the human rights based approach.

**Conclusion**

However, despite statistics that show impressive results, much remains to be done using the platform of the BRAC legal empowerment programme. The ultimate goal is for ‘disengaged
communities’ to gain the confidence and the ability to use their increased legal awareness to challenge existing power structures that deny them their rights, and thus to tangibly advance these rights. In other words, a rights strategy seeks to provide the space and resources which allow the poor to develop into an active citizenry. Rather than relying on organizations such as BRAC to forever campaign against the denial of their rights or deciding their pathway to their betterment, the legal empowerment strategy hopes that eventually the poor and marginalized will be able to become advocates for themselves, and be able to win a seat for themselves at the high table of policy making as equal citizens, with rights, duties, and a stake in their own future.

While there is much critique of such approaches in general including that it “depoliticizes issues which should rather be recognized as inescapably political struggles over public projects, resource allocations and social arrangements,”¹⁵ there is hope that the legal empowerment strategy will yield itself as an engineering tool to advance social justice. The rights based approach allows practitioners and stakeholders to broaden the scope for development by looking at “actions, strategies and efforts that different dutybearers undertake to contribute to the fulfilment of specified human rights and hence to the advancement of corresponding facets of human development.”¹⁶

It is also important to realize that such an ambitious goal cannot be achieved without a multi-pronged strategy. Some elements of such a strategy include working to build organizational capacity within local communities, securing public information through joint action, demanding accountability of public officials etc. Without organizations that are accountable, State(s) that demonstrate responsibility and definite goals, this task may seem impossible to implement. But if this accountability can be ensured and these goals developed, then the law may well become a battleground in the war for securing justice and ensuring fair, just and inclusive development practices.
