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– CASE STUDY –

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## Doing legal empowerment differently

Learning from pro-poor litigation in Bangladesh

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March 2015

Tam O'Neil, Craig Valters and Cynthia Farid





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### Key messages

- Marginalised groups and their allies can, and do, use the law and justice systems, including public interest litigation, to improve their access to rights, goods and services.
- Yet there is no automatic link between legal action and improved outcomes for poor people.
- Where some minimum conditions are met – a progressive legal framework, a sympathetic judiciary and legal advocacy organisation – pro-poor litigation is a *potential* tool in disputes over rights and resources.
- But concrete benefits for poor people also requires state action to enforce progressive rulings.
- Much depends on whether claimants, legal activists and state reformers cooperate around shared interests, and whether activists can negotiate power and interest structures to motivate government action to implement rulings.
- Effective strategies are those that link litigation with grassroots legal action and other forms of political and social activism and advocacy.
- Donors need to fund legal advocacy organisations in ways that enable them to select social issues that are locally relevant and political feasible – and allows activists and reformers to work in politically smart and adaptive ways.

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# Abbreviations

ACHR	Asian Coalition of Human Rights
ADB	Asian Development Bank
AL	Awami League
ASK	Ain O Shalish Kendra
AYGUSC	Association of Young Generation of Urdu-Speaking Community
BLAST	Bangladesh Legal Aid Service Trust
BNP	Bangladesh Nationalist Party
COHRE	Centre on Housing Rights and Evictions
CUP	Coalition of the Urban Poor
DFID	Department for International Development
FGD	Focus Group Discussion
GSDRC	Governance and Social Development Resource Centre
LIFD	Local Initiative for Development
NGO	Non-Governmental Organisation
ODI	Overseas Development Institute
RAJUK	Capital Development Authority of Bangladesh
RMMRU	Refugee and Migratory Movements Research Unit
SPGRC	Stranded Pakistanis General Repatriation Committee
SPYRM	Stranded Pakistanis Youth Rehabilitation Movement
UK	United Kingdom
UN	United Nations
UN-Habitat	UN Human Settlements Programme
US	United States
USPSM	Urdu-Speaking People Student Movement

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# Executive summary

This case study is part of the Overseas Development Institute's (ODI's) work on the politics and governance of public goods and services in developing countries. As a case study of successful pro-poor legal mobilisation in Bangladesh, it contributes to the effort to document approaches and ways of working that make a difference in terms of achieving development results.

In many countries, marginalised groups and their allies use the law and justice systems to contest and improve their access to rights, goods and services. This is the essence of legal empowerment. Taking a claim to a dispute resolution mechanism, such as a court or community mediation forum, is one way poor people can use the law. Yet there is no automatic link between litigation, or other forms of legal action, and improved outcomes for poor people. The success of legal mobilisation depends not only on a favourable legal ruling or decision. It also requires the enforcement or implementation of rulings in ways that redistribute power and resources to poor people in practice. Successful legal mobilisation therefore depends on actions taken along the entire 'justice chain' and is deeply political (Domingo and O'Neil, 2014; Gloppen, 2008).

We use two cases of successful public interest litigation in Bangladesh to explore the conditions that favour, and constrain, pro-poor mobilisation. One case centres on a 2008 Supreme Court ruling that confirmed the citizenship rights of thousands of Urdu speakers living in camps set up after the War of Independence in 1971. As a direct result of the 2008 ruling, Urdu speakers now have national identity cards and can vote, hold a passport and work in the formal sector. The second case centres on a 1999 Supreme Court ruling that has prevented the government's forcible eviction of thousands of residents of low-income settlements in Dhaka, and continues to do so.

Drawing on Domingo and O'Neil's (2014) framework, we look at how the relative presence or absence of six enablers of pro-poor mobilisation influenced these two cases. We find that countrywide enablers frame the possibility of marginalised groups using public interest litigation to further their interests. These include a progressive legal framework, a sympathetic judiciary and the existence of social justice lawyers and legal advocacy organisations (Epp, 1998; Farid, 2013).

Just as important, however, are the ways reformers and activists work with and around political interest structures, in adaptive and locally led ways, in order to achieve pro-poor outcomes (Wild et al., 2015; Wilson, 2011). Whether activists devise appropriate strategies, as well as their capacity for collective action, informs how effectively they negotiate power and interests structures – and therefore whether government is motivated to implement rulings. Of particular importance is activists having incentives to sustain legal action, to link public interest litigation with community legal services, as well as with other forms of political and social mobilisation, and to adapt their strategies over time.

What donors fund, and how they fund it, has a significant impact on whether they help, and do not hinder, legal empowerment in developing countries. The possibility and quality of pro-poor legal mobilisation is directly related to the presence and strength of rights and legal advocacy organisations and social justice lawyers. Donors should fund organisations able to provide legal advocacy, aid and other services at all levels. But how donors fund these organisations is also important. They should use funding and reporting arrangements that empowers local reformers to pursue their own agendas and allows them to learn from their failures, scale up their successes and follow legal action through from claims to concrete developmental benefits for poor people.

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# 1 Introduction

## 1.1 The politics of pro-poor reform

In the past 15 years, the common sense idea that development is a political process has become established in development policy circles, and political economy tools and studies are now commonplace (Unsworth, 2008). But advisors and practitioners in all development sectors have found it difficult to turn analysis, or ‘thinking politically’, into programmes and funding mechanisms that work differently (Rocha Menocal, 2014; Rocha Menocal and O’Neil, 2012; Wild and Foresti, 2011). In response, there has been a growing call for the development organisations to move beyond analyses that focus only on political and other obstacles to reform. New communities of practice instead advocate the need to gather evidence and lessons on when and how successful reform has happened, even in the face of complex and seemingly intractable development problems (see, e.g., the Doing Development Differently manifesto<sup>1</sup>). Box 1 sets out some of the key features of these reforms.

### Box 1: Common features of successful pro-poor reform efforts

Based on a range of recent research and practice, at least three features appear to characterise successful, pro-poor reform efforts:

- **Reforms are locally led:** People with a vested interest in solving the problem at hand initiate and operationalise reform efforts.
- **Reforms are politically smart:** Reforms are not only ‘technically sound’ (and, it could be added, ‘ethically desirable’) but also ‘politically feasible’. Reformers find ways to work with and around extant political interests. They use informal networks and form alliances with others with overlapping interests.
- **Reform efforts are problem-driven and adaptive:** Reformers start with development problems not predetermined solutions. They work towards possible solutions through trial and error, learning and adaptation. Funding arrangements support this way of ‘doing development’.

*Sources: Andrews (2013); Booth (2014a); Booth and Unsworth (2014); Denney and Kirwen (2014); Faustino and Booth (2014); Wild et al. (2015).*

This case study is part of the Overseas Development Institute’s (ODI’s) work on the politics of legal empowerment, which looks at the political economy of how poor people and their allies use the law and redress mechanisms to advance their interests. This is part of a broader programme of work that looks at the politics and governance of public goods and services in developing countries. As a case study of successful pro-poor legal mobilisation in Bangladesh, it contributes to the effort to document approaches and ways of working that make a difference to achieving development results.

## 1.2 The politics of legal empowerment

As a distinct approach to rule-of-law and justice programming, some international organisations have promoted legal empowerment as a response to the failure of overly technocratic, top-down, large-scale institutional reform in the justice sector (Carothers, 2006; Golub, 2003a; Kleinfeld, 2012). Legal empowerment advocates call for aligning development assistance with the needs and priorities of poor people and supporting their capacity to use the law and legal services to improve their situation (see Box 2). However, legal mobilisation activities of local activists in development countries predate and mostly exist independently of international development efforts.

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<sup>1</sup> <http://doingdevelopmentdifferently.com/>

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## Box 2: Defining legal empowerment and legal mobilisation

**Legal empowerment** is the use of the law and justice systems (both formal and informal) by marginalised groups or individuals to improve or transform their social, political or economic situation (Domingo and O’Neil, 2014). The law and legal redress can empower people by giving them access to new resources they can use to make and enact strategic life choices (Kabeer, 1999).

**Legal mobilisation** takes place ‘when a desire or want is translated into a demand as an assertion of rights’ that can be taken up into the formal court system (Zemans, 1983, cited in Domingo and O’Neil, 2014).

In an assessment of the evidence base on the politics of legal empowerment and pro-poor legal mobilisation, Domingo and O’Neil (2014) find most research and development assistance in this area tends to focus on how people make claims and/or their experience of formal or informal dispute resolution. As such, they stress the need to look at the *entire* ‘justice chain’<sup>2</sup> to evaluate the conditions under which legal action can be pro-poor, lead to redress for vulnerable groups and/or facilitate broader social change. This includes addressing the range of decision-making processes and the relevant actors at the different stages of the justice chain – from the point of making a claim, the decision or ruling by the competent authority (e.g. a judge or community body of elders), whether and how this is implemented and enforced and with what effect for claimants and others.<sup>3</sup>

Different actors are important at different stages of the justice chain – and include claimants, lawyers and legal/rights organisations, the judiciary (or other informal adjudicating authority), politicians, government and international agencies. They also differ according to who brings what claim to which dispute resolution forum. Domingo and O’Neil (2013) therefore argue that the process and outcome of legal mobilisation is deeply political: it depends on the power, interests, ideas and actions of many different people and organisations, and the relationships between them.

Legal empowerment efforts have also been thought of primarily in terms of community legal services, often involving alternative dispute resolution, community mobilisation efforts and, where necessary, legal aid to access formal courts. Domingo and O’Neil (2014) recognise that grassroots legal support to help people solve or seek redress for their individual, practical problems is important, but also stress that legal empowerment includes action in the formal court system, including public interest litigation to forward collective interests. They make the case that legal mobilisation can contribute to pro-poor change and development through the combination of different forms of legal action, both litigation and community services, often over prolonged periods of time and supported by other forms of political and social activism and advocacy. Dispute resolution in courts is necessarily adversarial, but tactics legal activists employ outside the courts can be cooperative; they may involve informal negotiations and loose alliances, and litigation is often embedded within broader political and social strategies and struggles (Wilson, 2011).<sup>4</sup> This means what happens outside the courtroom is as important to the outcome of legal mobilisation as what happens inside.

Yet there is no automatic link between legal mobilisation and better outcomes. The courts and other redress mechanisms *can* be a force for social justice, and legal mobilisation *can* be an

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<sup>2</sup> The ‘justice chain’ follows closely the conceptualisation that is presented in the work of Gloppen (2006, 2008, 2011) and is considered in relation to difference thematic areas in, for example, Domingo and Denney (2013) and Denney and Domingo (2013). Domingo and Denney, moreover, recognise how dispute resolution forums other than formal court systems can be used in similar ways to achieve protection, redress or justice around a claim.

<sup>3</sup> Important questions include what interest and incentive structures shape some of these decision-making logics, and what are the relevant norms (formal and informal), capabilities and resources that make a difference.

<sup>4</sup> Also see, for instance, Couso et al. (2010); Gauri and Brinks (2008); essays in Gargarella et al. (2006); Gloppen (2011) and other pieces in Yamin and Gloppen (2001); Wilson (2011).

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effective way to advance the interests of the poor. But the law, or legal action, is not an inherent ‘good’, and much depends on the content of the law and the nature and outcome of the action. Moreover, in most countries the justice system tends to be stacked in favour of the powerful and rich (Santos, 2002). When poor people get good outcomes from legal action – not only favourable or progressive rulings but also their implementation – these are always won against the odds. This report looks at when and how this can happen, with a specific focus on Bangladesh. Thus in this case study we ask, what conditions favour marginalised groups and activists being able to use the law and litigation strategically to advance their interests within their broader social struggles?<sup>5</sup>

### 1.3 Six enablers of pro-poor legal action

What are the conditions likely to make legal mobilisation an effective response to a development problem or structural injustice? Using Domingo and O’Neil’s (2014) analytical framework, we set out six categories of enablers for pro-poor mobilisation. These bring together learning from both legal scholarship on the enablers of ‘rights revolutions’ (Epp, 1998) and pro-poor legal action (Gloppen, 2008, 2011; Wilson, 2011). The more recent research and advocacy on ‘doing development differently’ also helps focus attention on the ways reformers and activists work with and around political realities and interests, in adaptive and locally led ways, in order to achieve better outcomes against the odds – and the implications of this for funding agencies (Wild et al., 2015). We focus here on six enabling conditions that seem to be recurrent features in effective outcomes of legal action:

- **Progressive legal framework.** A progressive constitutional framework enables the courts to hear a broad range of rights, including social and economic rights. Procedural rules that enable judges to review the legality of government action and/or to make a ruling in the absence of a petition are conducive to judicial activism. In addition, standing rules that allow unaffected individuals or organisations to file a petition on behalf of others with actual grievances support class action and public interest litigation.<sup>6</sup> In plural legal systems, the legal framework includes other types of law or normative orders. The content of customary and religious law can be more conservative or regressive than that of constitutional and statutory law, particularly for women and other marginalised groups, in ways that can influence the content and outcome of legal mobilisation.
- **Sympathetic or activist judiciary.** Regardless of the content of the law, who hears a case can make a significant difference to the outcome. The receptiveness of a judge – or other types of adjudicator or mediator – to a progressive claim depends on many factors, including legal culture, their own moral values and political leanings, their knowledge and experience, how they were appointed and their understanding of their role in the polity and how directly they should interfere with policy processes. Judges are subjective people not neutral instruments, and the scope for a judge’s own values and ideas to inform their interpretation of the law is often greater in disputes over social and economic rights and resources (Wilson, 2011). The judiciary are themselves an elite group and often conservative. Political interference, corruption and appointment systems that reduce judicial independence can restrict even the most liberal, activist judges.
- **Support structure for legal empowerment.** People can use the courts only if they have access to money, specialist legal knowledge and social contacts. All justice systems therefore tend to be stacked in favour of wealthy and educated people – and

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<sup>5</sup> See Appendix for a description of the research design.

<sup>6</sup> ‘Public interest litigation aims to serve or represent large categories of persons, to the benefit of society as a whole. In ruling on a public interest case, a court may set a precedent that guides the way in which courts will determine cases involving similar situations in the future’ (The Asia Foundation and ADB, 2009: 45).

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the accumulate nature of legal change accentuates this effect.<sup>7</sup> The practical value of the courts for poor people is therefore determined by their access to external support (Epp, 1998).<sup>8</sup> This includes ‘social justice’ lawyers who have the social inclination, technical expertise and other professional skills and are willing to do *pro bono* work (Farid, 2013). Community organisers are also essential because marginalised people often do not have critical consciousness of unjust structures, and/or incentives to act collectively to challenge them. Between these sit legal and rights organisations and paralegals. These provide legal aid and advice, either directly or by connecting communities to lawyers, and the organisational support needed for sustained litigation.

- **Motivated government.** Progressive or pro-poor judicial rulings can have important symbolic value but they make a material difference to people’s lives only once enforced. Implementation of judicial rulings always relies on some sort of action from state bodies. Where implementation entails complicated policy measures involving several agencies – as in the case of land development, urban planning and some service provisions, for example – the scope for ‘spoilers’ to resist or subvert implementation is much greater. Government will be more inclined to resist implementation of court rulings where they threaten the entrenched interests of politicians or their supporters (Booth, 2014b).
- **Interested parties have the incentives and capacity to act and/or cooperate.** While external allies can help individuals and groups mobilise the law, legal empowerment also requires the direct beneficiaries to have a minimum degree of critical consciousness and capacity, including associational (Domingo and O’Neil, 2014). The power, resources and incentives of beneficiary groups influences whether and how they cooperate to further their common interests. Grassroots activists are often key to build the association capacity of beneficiaries with little power and few resources (and often also few incentives to cooperate), and to connect them to elite groups, such as social justice lawyers or academics (Wilson, 2011). But successful legal action also depends on the relations – both adversarial and cooperative – between reformers within society and the politicians and bureaucrats who are responsible for implementation and enforcement.
- **Strategies of activists.** How activists use the resources available to them also influences their effectiveness. Making the right decisions on when to use legal mobilisation and the tactics activists and reformers employ outside of the courtroom to get the claim to courts, and to make a favourable outcome *and its enforcement* more likely, are all-important (Domingo, 2010; Wilson, 2011). Integrated strategies that combine social mobilisation and political protest and/or lobbying with legal action are often necessary. Alliances, based on overlapping (rather than identical) interests, are needed to co-opt allies and block opponents. Staying power is also essential, as activists must motivate and connect different groups of people and maintain their interest over the long term.

These six enablers are relative and not absolute variables: it is rare for all six to align in any country, particularly in their more developed forms. In fact, it is precisely the nature of their interaction and levels of strength that shapes the possibility and success of pro-poor litigation and

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<sup>7</sup> ‘Repeat players’ in courts tend to be private corporations with the money to use litigation to further their interests (Wilson, 2011).

<sup>8</sup> Based on a comparison of Canada, India, the US and the UK, Charles Epp (1998) argued the critical factor in the courts increasing protection of individual rights was not constitutional guarantees of individual rights, judicial activism and popular awareness – although these are also important – but instead the existence of activists outside the courts willing to champion and support claims from the bottom up. Epp called this the ‘support structure for legal mobilization, consisting of rights-advocacy organizations, rights-advocacy lawyers and sources of financing’ (p.3).

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other forms of legal action in different contexts. Using this framework to structure within- and cross-country comparisons can build knowledge on the factors that inform successful pro-poor legal action.

## 1.4 Why Bangladesh?

As the next section describes, Bangladesh has many of these enabling conditions. It has been a leading country in the recent revival of legal empowerment programmes in international development discourse, and has an established legal sector supporting legal action from the community to the Supreme Court (Golub, 2003a; Harrold, 2007; Kolisetty, 2014). At the same time, much of the discussion on legal mobilisation in Bangladesh has been legal debate around court judgements (Ahmed, 1999; Hoque, 2011; Hossain et al., 1997). There is also a gap in terms of analysis of how grassroots legal empowerment and mobilisation connects up with action in the Supreme Court, and the implications of this for implementation and impact on poor or marginalised groups in practice. There is limited literature on the *politics* of legal mobilisation in Bangladesh, in terms of either the power and interests of the relevant actors (claimants, legal professionals, politicians and bureaucrats) or how legal activists have negotiated politics.<sup>9</sup>

This case study addresses these gaps by looking at the justice chain as a whole, from claim formation through to implementation and impact. We have selected two cases where poor, urban communities and their allies have used litigation to address a development problem and the Bangladesh higher courts have issued progressive rulings: the struggle for citizenship of Urdu speakers living in ‘refugee’ camps; and the struggle against the forcible eviction of the *bosti bashees*,<sup>10</sup> the people who live in large, low-income settlements across the city. We examine how, in the two cases, the relative presence/absence of the six enabling factors has influenced the process of legal mobilisation and outcomes for poor people.

We find that conditions common to Bangladesh are important, but that the outcomes of legal action depend on the particular issue, the characteristics of the beneficiary group and the interests and strategic decisions of activists and government. All six enablers must inform decisions about whether legal action, and what type of legal action, is likely to be pro-poor and part of an effective strategy to address development problems and social injustice.

The structure of the report is as follows:

- Section 2 provides an overview of the enablers (and constraints) to legal mobilisation common to Bangladesh as a whole.
- Section 3 presents the findings from the case study on the struggle for citizenship rights of Urdu speakers living in Geneva Camp, Dhaka. It analyses how a group of young Urdu speakers, with the support of long-standing allies, challenged the Bangladeshi government’s denial of their citizenship in the Supreme Court, and won.
- Section 4 presents the findings from the case study on the struggle against forcible eviction in low-income settlements, Dhaka. It analyses how, on the back of persistent mobilisation and public scandal in relation to forced evictions, the Supreme Court delivered a landmark judgement in 1999 in support of adequate rehabilitation and advance warning for those in these settlements.
- Section 5 draws out the policy implications from the two case studies for politically smart, pro-poor legal action in the context of Bangladesh, and for the legal and development policy community more broadly.

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<sup>9</sup> For a practitioner perspective on legal mobilisation and the political circumstances to enable legal activism, see, generally, Farid (2013).

<sup>10</sup> Following Banks (2012), to avoid the negative connotations of the word ‘slum’, we use the Bangla translation, *bosti*, to refer to low-income (often informal but not always) settlements. This is a term used by the residents of these communities, *bosti bashees*, themselves. Where appropriate, we also use ‘low-income settlement’, or ‘settlement’ for short.

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## 2 Opportunities for legal mobilisation in Bangladesh

While some of the enabling conditions for legal mobilisation are specific to a particular issue or group, others apply to a country as a whole. This section looks at these more macro features of the enabling environment in Bangladesh. These include a progressive legal framework that a broadly sympathetic, and sometimes activist, judiciary has often interpreted in a pro-poor way. It also includes a small but active group of social justice lawyers, and legal and rights organisations, who support both community legal services and litigation in the formal courts, including class action. Finally, we consider how government and political competition in Bangladesh provides both opportunities for, and constraints to, pro-poor legal action.

### 2.1 Legal framework, judicial capacity and activism

Much like its South Asian counterparts of Nepal, Pakistan and Sri Lanka, Bangladesh's Constitution reflects 'the socialist vision of a post-colonial state in the second half of the twentieth century', with emphasis on democracy, non-discrimination and equality, but also some protection of social and economic rights (Byrne and Hossain, 2008: 125). In the context of broader political liberalisation, the judiciary slowly saw itself as having a societal role (Hoque, 2011). Since 1990, there has been a 'progressive realization by the Supreme Court of its constitutional mandate', which, in time, has extended from a focus on its independence to social justice issues (Farid, 2013: 446).

As a result of judicial activism, the Supreme Court has rendered many notable decisions through liberal and creative interpretation of the Constitution. The courts are widely used by rights and environmental campaigners, with one Supreme Court justice noting that Bangladesh now has a wider field of public interest litigation than any of its neighbours (Interview #5).<sup>11</sup> Overall, the court has fairly significant room for manoeuvre on key issues of social justice, and public interest litigation has been used to 'limit the state's illiberal practices and to exact a certain degree of accountability from both state and powerful business groups' (Hassan, 2013: 13).

The court has managed to maintain relative independence by keeping to the margins of social justice and not straying into what are manifestly perceived to be political interest issues (although this has important exceptions).<sup>12</sup> Equally, as one Bangladeshi academic argued (Interview #12), 'These courts have been here for 100 years. Hence they have their own institutional practices and memories.' The legal framework in Bangladesh also allows for *Suo Motu* rulings (Farid, 2013; Hoque, 2011), whereby judges can rule on issues of public interest in the absence of a petition.<sup>13</sup> While politicisation is a real possibility and does occur, the procedural checks and the framework of the legal system mean it is difficult for elites to blatantly flout the law.<sup>14</sup>

### 2.2 Collective action and legal support structure

Collective action for social justice has historically allowed poor rural people in Bangladesh to make gains, including through the use of local courts and administrative redress to fight for legal control of *khas* resources (state-owned land), by women campaigning on dowry and literacy issues and by workers mobilising to increase wages and incomes (Kramsjo and Wood, 1992). More recently, legal empowerment programmes and services tend to focus on individuals' access

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<sup>11</sup> To protect the anonymity of informants, interview sources are designated by number only. However, the Appendix provides a summary table of interviews by category.

<sup>12</sup> The higher courts are vulnerable to political influence when dealing with issues such as corruption, which curtails legal activists' scope for action.

<sup>13</sup> One judge said he had been prompted to make rulings based on media reports, for example (Interview #5).

<sup>14</sup> This may change if one party emerges as dominant and remains in government for successive terms.

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to legal rights, services and justice at the local level (Harrold, 2007; Kolisetty, 2014; The Asia Foundation and ADB, 2009).<sup>15</sup> Non-governmental organisations (NGOs) now give increasing attention to urban areas (and in particular low-income settlement areas), but this tends to remain service-orientated, focused on health, education and microfinance – in part because of the demands of international donors (Hassan, 2013; Lewis, 2011). While Bangladesh’s remarkable economic growth means donors no longer carry the influence they once did (Lewis, 2010), international funding still keeps afloat many rights-based organisations.

Bangladesh also has a small but active network of ‘social justice lawyers’ and rights organisations that advance a range of social issues through public interest litigation (Farid, 2013). Larger rights and legal advocacy organisations, such as the Bangladesh Legal Aid Service Trust (BLAST),<sup>16</sup> provide legal support at all levels, including community mediation services, legal aid in the lower courts and public interest litigation. Its national advocacy work is informed by its work with local actors through legal aid clinics (Harrold, 2007). These links are crucial for these organisations to be made aware of forcible evictions, which often unfold rapidly and with little warning. While under authoritarian rule NGOs played the role of the opposition, and they were at the forefront of the mass movement that led to democratic transition in 1990, the relationships between NGOs and government have been combative and increasingly tense in recent times.<sup>17</sup> As a consequence, heavily politicised issues over citizenship, land and urban development remain at the margins of the NGO sector’s work in Bangladesh.

### 2.3 Political competition and the possibility of pro-poor legal action

Political competition in Bangladesh is plural but deeply fractured and clientelist, as parties compete ‘to control the state in order to service partisan interests within a “winner-takes-all” system’ (Lewis, 2011: 108).<sup>18</sup> Two alternating political parties have dominated government: the Awami League (AL) led by Sheikh Hasina and the Bangladesh Nationalist Party (BNP) led by Khaleda Zia. Politics in Bangladesh is dynastic and both parties rely heavily on iconography of past leaders, such as the respective founders of AL and BNP, Sheikh Mujib and Ziaur Rahman, to mobilise voters.<sup>19</sup>

The political environment generally militates against pro-poor changes, but can also provide openings for socially motivated action, either when it plays into the interests of a political party or during ‘caretaker’ periods between governments. The ‘caretaker government’ is an interim government that oversees election and manages the transition between two governments. By minimising charges of electoral fraud and foul play, this constitutional mechanism is a novel institutional solution to the problem of instability around elections common in highly competitive and clientelist political systems (Khan, 2010b). The caretaker government was largely successful in organising elections for three consecutive terms but failed in 2007, leading the military to step in.

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<sup>15</sup> These include some or all of the following: provision or reform of *shalish* (community mediation forums); human rights community-based education; community mobilisation through community-based outreach workers and paralegals; and recourse to the courts through provision of legal aid or referral to other legal organisations.

<sup>16</sup> BLAST has engaged in significant public interest litigation on criminal justice, economic and social rights (including the right to shelter), equality issues and women and children’s rights, leading to a number of landmark judgments (Farid, 2013).

<sup>17</sup> While the relationship between NGOs and the state has often been tense, in the context of the growing dominance of the Awami League (AL) and an aggressive political context it is risky for organisations and activists to appear overtly political or partisan.

<sup>18</sup> These features led Khan (2010b) to describe the political settlement in Bangladesh as one of ‘competitive clientelism’. In this type of settlement, elites informally agree to compete for control of the country’s resources through periodic elections in which the strongest political grouping takes power. Through this system, a relatively small coterie has been able to strengthen and perpetuate its power. Affluent and socially powerful, this political elite monopolises representative institutions and uses its electoral office to enhance its wealth and perpetuate its hold over power (Sobhan, 2010: 8-9).

<sup>19</sup> For an account of the development of dynastic politics in Bangladesh, see Gerlach, (2013) and Mohiuddin (2008).

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Increasingly, political competition and control in Bangladesh also involves the use of political violence. This primarily includes a combination of protests and political strikes (*hartals*), which frequently involves arson and destruction of public and private vehicles on the road as well as inter-party or group confrontations in the street. The political parties generally do this through the harnessing of a network of actors, including grassroots party recruits, student political wings in universities and local strongmen (*mastaans*), among others. State institutions lack oversight and accountability, which severely impedes access to justice and other basic public services. Both parties also use vertical patronage networks, which percolate from the national level down to the grassroots, to punish or co-opt opponents and distribute resources to supporters. The depth of this system means disadvantaged people have little choice but to work with the patron–client relationships, which perpetuates the prevailing hierarchies of power (Sobhan, 2010).

Over the past three decades, the politicisation of the judiciary has also meant extra-legal actions of the ruling party and other elite actors have become beyond challenge (BRAC University, 2009).<sup>20</sup> In this context, what judicial independence exists in Bangladesh appears to be on the wane, largely because of significant executive encroachment tied to the growing dominance of the AL (Hassan, 2013; Interview #13).<sup>21</sup> With reference to the higher courts’ decision-making, one academic argued that, ‘In the last 10 years there have been some deviations – and we mourn those deviations’ (Interview #12). This aligns with the feelings of many others, who feel the ‘higher judiciary is currently enjoying the lowest level of autonomy of the entire post-authoritarian phase’ (Hassan, 2013: 12). The room for manoeuvre NGOs and the media currently have to work on social justice issues may be closing up.

The following section tells the story of the respective struggles of Urdu speakers and *bosti bashees* in Bangladesh. Through these case studies, we draw out the politics of how and why poor and marginalised groups have been able to fight for their rights – as well as what happened once they appeared to have got them. Both Urdu speakers and *bosti bashees* have achieved significant legal victories, but neither of their struggles is at an end.

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<sup>20</sup> For example, for decades there were promises from all sides of politics to separate the judiciary from the executive so as to limit political interference. Although a Supreme Court ruling was made declaring a formal separation of the judiciary and providing directives to the government to implement, neither party fulfilled this promise once in power. It was not until 2007 during the military-backed caretaker government that a formal separation was underway (BRAC University, 2009; Farid, 2013). However, the directives remain partially implemented, with the lower courts still largely under the control of the executive.

<sup>21</sup> Its two consecutive terms in office has allowed it to consolidate power and recruit loyalists into the Supreme Court.

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## 3 The struggle for citizenship rights of Urdu speakers living in Geneva Camp, Dhaka<sup>22</sup>

In this section, we present the findings from the case study on the struggle for citizenship rights of Urdu speakers living in Geneva Camp, Dhaka. We describe the problems Urdu speakers face, then outline the process of legal mobilisation and analyse the factors that enabled and constrained it. We conclude by looking at gains and ongoing challenges.

### Key points

**Problem:** Thousands of Urdu speakers have lived in camps across Bangladesh since 1971. They have been denied access to the basic rights, goods and services of citizenship, such as voting and representation, legal identity, bank accounts, access to government and other formal sector jobs and higher education. They have also been denied the means to improve or contest their situation. This changed in 2007/08 when a group of young Urdu speakers, with the support of long-standing allies, challenged the Bangladeshi government's denial of their citizenship in the Supreme Court, and won.

**Outcome:** The 2008 legal ruling led directly to the voter registration of around 80% of camp residents and their being given a national identity card. These are the gateway to other goods and services, and camp residents can now apply for birth certificates, passports and business licences. While discrimination against Urdu speakers continues, and life for most Urdu speakers has not (yet) improved, community paralegals can now work in the camps to help residents negotiate and take advantage of their new rights as citizens.

**Enablers:** Legal action in 2007/08 built on successful legal action by other young Urdu speakers in 2001-2003 and the presence of several of the enablers of successful legal mobilisation. Bangladesh's *progressive legal framework* has clear provisions on citizenships rights, and a *broadly sympathetic judiciary* consistently interpreted these in ways that supported Urdu speakers claim to citizenship in successive cases since the 1970s. The generation of Urdu speakers who were born in the camps had *new interests, aspirations and networks*. Bangladesh's highly competitive system produced *political opportunities* to advance these interests inside and outside the courts – and the technical and legal support and networks of a small but *dedicated group of domestic activist-scholars* has been critical to the strategic decisions of young activists and their ability to read the politico-legal climate accurately and to take advantage of opportunities.

### 3.1 What main problems do people living in Dhaka's camps face?

Divided allegiances and sectarian violence between the Urdu-speaking linguistic minority and the Bengali majority during Bangladesh's War of Liberation in 1971 led around 1 million Urdu speakers to seek refuge in Red Cross camps after the Pakistan Army retreated (Kelley, 2010). Around 151,000 Urdu speakers, the original camp inhabitants and their offspring, continue to live in 116 camps across Bangladesh (Sholder, 2011). Of the 32 camps in Dhaka, Geneva Camp is the biggest, with 25,000 residents living on around 235,000 square feet (ibid.).<sup>23</sup> Camp residents face four main problems.

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<sup>22</sup> An accompanying working paper provides a fuller account and analysis of the Urdu speakers' legal mobilisation (O'Neil et al., 2015 forthcoming).

<sup>23</sup> We chose to focus on Geneva Camp based on access for interviews and focus group discussions (FGDs), and availability of primary and secondary material.

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First, **diplomatic deadlock between Bangladesh and Pakistan has closed down the option of either repatriation to Pakistan or citizenship in Bangladesh.** Most Urdu speakers opted for repatriation to Pakistan rather than Bangladeshi citizenship after the War of Liberation.<sup>24</sup> But the Pakistani government has been reluctant to receive Urdu speakers, and only around 120,000 Urdu speakers have been repatriated (Sholder, 2011). For its part, the government of Bangladesh has consistently maintained that Urdu speakers in the camps are refugees rather than Bangladeshi citizens. As a result, the Bihari<sup>25</sup> community, or ‘stranded Pakistanis’ as many self-identified, have become the longest standing *de facto* ‘stateless’ people in the world (Kelley, 2010).

Second, **camp residents are denied access to adequate basic services and other rights.** Since the Red Cross withdrew in 1973, camp residents are wholly dependent on the Bangladesh government and charity for basic services. The perimeters of the camps have not expanded with their population. In Geneva Camp, families share an 8ft by 8ft room, and 200 people share each of the approximately 130 functioning toilets. During monsoon, the drains overflow, flooding homes with sewerage. Water is free but there are only one or two pumps in each of the nine sectors. Health problems associated with overcrowding, poor sanitation and polluted water are rife, such as leprosy, asthma and diarrhoea, as are social problems associated with poverty, such as crime (gangs, drugs, lack of police protection), child labour and under-age marriage of girls (Abrar and Redclift, 2007; Hussain, 2012; Lynch and Cook, 2006; Mantoo, 2013; Shoulder, 2011; FGD #3).

Third, **denial of citizenship has left camp residents with few options to improve their situation.** Camp residents have been denied basic rights, such as a legal identity, a passport and the right to vote and to participate in the formal economy – let alone the rights accorded to linguistic minorities in other countries, such as being educated in their own language or affirmative action programmes. This means their livelihoods are concentrated in insecure and low-paid jobs (common occupations are rickshaw pullers, workshop mechanics, barbers and butchers) (FGD #3). Few Urdu speakers have been able to afford the fees for private schools to get the education that might provide a passport out of the informal economy, and possibly even out of the country if they are willing to pay the under-the-desk fee. What is more, ‘stateless’ people have almost no mechanisms for redress, challenge or influence. Urdu speakers cannot leverage their vote or lodge complaints and appeals with the City Corporation or regulatory watchdogs for poor services. Even political protest and *ad hoc*, ‘rude’ forms of accountability (Hossain, 2009) are limited by the Urdu speakers’ precarious situation and hostility from mainstream Bangladeshi society.<sup>26</sup>

Fourth, **official exclusion is compounded by social prejudice.** Urdu speakers face systematic informal discrimination when they interact with mainstream Bangladeshi society (FGD #3). While ethnically indistinguishable from Bengali speakers, a camp address instantly marks out an Urdu speaker as a ‘Bihari’. For example, Urdu speakers are able to attend government-run schools outside the camps but the dropout rate is high because of harassment by teachers and other pupils.<sup>27</sup> Only those with an address outside the camp have been able to access formal employment and university (Sholder, 2011), and stereotyping and discrimination mean that even those Urdu speakers who can afford to live outside the camp have difficulty finding landlords who will rent to them (Abrar and Redclift, 2007; Interview #16).

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<sup>24</sup> Afraid for their safety and with close relatives in West Pakistan, almost 600,000 registered with the Red Cross for repatriation (Mantoo, 2013), although, as Abrar and Redclift (2007) note, without full information about the potential implications of their decisions.

<sup>25</sup> The Urdu speakers in Bangladesh are commonly, but erroneously, referred to as the Biharis by mainstream Bangladeshi society. This has become a pejorative term and also detracts from the correct identification of Urdu speakers as a linguistic minority (Hussain, 2012).

<sup>26</sup> Based on her research in Bangladesh, Hossain’s defines ‘rude accountability’ as ‘the informal mechanisms widely deployed by citizens to claim public service and sanction service failures, characterised by a lack of official rules or formal basis and a reliance on the power of social norms and rules to influence and sanction official performance’ (Hossain, 2008: 7). By contrast, our FGD participants said they avoided disputes with ‘outsiders’.

<sup>27</sup> Primary school attendance among camp residence is only 10% and secondary school just 2% (Southwick, 2011).

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## 3.2 How have camp residents used the law and litigation to solve their problems?

Legal action through the courts has been one of the few avenues available to Urdu speakers who wish to change their situation – and was the only avenue available for those wanting Bangladeshi citizenship rather than repatriation. This sub-section describes the constellation of factors that came together to enable this to happen.

### Legal activism and its enablers between 2001 and 2003

Urdu speakers did not use the courts to press their citizenship claim until 2001. (Although the precedent set by Supreme Court rulings on citizenship cases brought by non-Urdu speakers were important, see Box 3). The main spur for legal mobilisation came from *within* the camp. The adults who remained in the camps in the early 1970s considered repatriation to Pakistan the only real option. Led by the Stranded Pakistanis General Repatriation Committee (SPGRC), there appeared to be no alternative plan for the next 30 years, even as the likelihood of repatriation faded. By the 2000s, however, around 80% of Urdu speakers had been born in the camps (Sholder, 2011). These camp residents have a different worldview and interests to the older generation and, over time, competing power bases and leadership (Kelley, 2010). They came of age during the promise of political liberalisation, speak Bengali as well as Urdu and are much more likely to identify themselves as Bangladeshi and to see rehabilitation – that is, Bangladeshi citizenship and integration into mainstream society – as the most viable future (Sholder, 2011; Urbansky, 2009).

#### Box 3: Litigation around citizenship rights before 2000

A handful of cases were brought to the Supreme Court during between the 1970s and 1990s, challenging the denial of citizenship of people resident in Bangladesh before independence and orders of deportation by government. These cases – such as *Moktar Ahmed v. Government of Bangladesh and others* (1982) and *Golam Azam v. Government of Bangladesh* (1994) – established clear jurisprudence in the Bangladeshi Supreme Court on citizenship rights, encompassing the citizenship rights of Urdu speakers.<sup>1</sup> However, they were also petitions brought by individuals, with legal arguments made on the basis of their particular circumstances – and individual claimants were the immediate beneficiaries of rulings. This trend of petitions brought by private individuals changed in the 2000s, when the scope of rights was expanded to groups, specifically including the Urdu-speaking community. The older generation of Urdu speakers in the camps – represented by the SPGRC – had not used litigation because their focus was on repatriation not rehabilitation. In any case, the constellation of factors that favoured not only a successful ruling but also the voter registration of Urdu speakers and issuing national identity cards (concrete evidence of *de facto* citizenship) did not present itself until the 2000s.

As told by one of the protagonists, in 1999 a group of around 25 high school students from Geneva Camp began to question their identity, to ask whether they were Pakistani or Bangladeshi and the implications for their rights (Interviews #16, 18). High school clubs and youth associations within the camps appear to have been an incubator for the politicisation of these young Urdu-speaking activists.<sup>28</sup> Through these, new leaders emerged to question the narrative of

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<sup>28</sup> Such as the youth wing of the SPGRC, the Urdu-Speaking People Student Movement (USPSM), the Stranded Pakistanis Youth Rehabilitation Movement (SPYRM), the Association of Young Generation of Urdu-Speaking Community (AYGUSC), the first Geneva Camp youth association, Urdu Speaking People's Youth Rehabilitation Movement (USPYRM), is a young movement in Mirpur, the Committee for the Rehabilitation of Non-Bengalis. Recently, these different associations have come together to form a common platform, the Association of Urdu Speaking Bangladeshi, to represent all Urdu speakers (email correspondence with president of AUSP, Khalid Hussain, 26/3/15).

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the SPGRC and its right to speak for the community.<sup>29</sup> As important were the connections the new-generation Urdu speakers made through seminars and conferences with legal activists and intellectuals, such as Professor Abrar and other scholars at the University of Dhaka's Refugee and Migratory Movements Research Unit (RMMRU).<sup>30</sup> Executive Director of Al-Falah Bangladesh, Ahmed Ilias, a renowned Urdu poet, was particularly influential on these young activists' political education – and connected them up with wider networks of Bengali intellectuals and lawyers.<sup>31</sup>

Those groups working with this new generation of activists seem to have recognised citizenship was a necessary, if insufficient, condition for the rehabilitation of Urdu speakers and to have worked the system in their favour. In particular, they appear to have spotted that, rather than tackle the citizenship issue head on, a challenge to the Election Commission and the denial of voter registration to camp residents was a more effective entry point to progress their citizenship claim. Based on their advice, 10 young Urdu speakers from Geneva Camp petitioned the Election Commission (Interview #18). The Election Commission responded that their camp address precluded their ability to register to vote, opening the way for a writ petition in the Supreme Court.<sup>32</sup> This intermediary step, while lengthening the process, ensured the public interest litigation had the best chance of success, because all other potential remedies had been tried (Interview #7).

The Supreme Court ruled in their favour (*Abid Khan v. Government of Bangladesh*, 2003). Referring to the Citizenship Act and Order, the court found the petitioners were citizens of Bangladesh and their residence in camps did not disqualify them. The court directed the Election Commission to register the petitions on the electoral roll. The decision, however, applied only to these specific petitioners and not to the Urdu-speaking community as a whole. (One of the petitioners commented that this was because of a tactical error in their petition – Interview #18.) The Election Commission did not contest the facts or file an argument, and the government did not appeal the decision (Farid, 2015a). That this case was brought under a BNP government is possibly also significant, though our informants had different opinions about this (Interview #29, email correspondence with academic, 13/03/15).<sup>33</sup>

But, while the government did not appeal in the Supreme Court, it also made no steps to clarify its policy on the citizenship rights of Urdu-speaking camp residents. The BNP may have been willing to let the court ruling stand, perhaps seeing potential political capital in it, but it was not in its interest to risk censure by taking purposive action when in government (Kelly, 2010; email correspondence with academic, 13/3/15). Camp residents are not a decisive vote bank, because of their geographical dispersal and Bangladesh's first-past-the-post system, and Urdu speakers' citizenship was still a politically sensitive issue given continuing (if reduced) Bengali animosity towards them.<sup>34</sup> In the absence of purposive government action, and in the face of an unclear legal position and ongoing social prejudice, many data collectors balked at having to register camp residents, whom they perceived to be loyal to Pakistan' (Kelley, 2010 363). Nevertheless, this was a

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<sup>29</sup> We were told SPYRM actively opposed the citizenship petitions and the 2001 petitioners were 'chased out of the camp' (Interview #18).

<sup>30</sup> Abrar (n.d.) notes that, alongside the petitions, RMMRU and Urdu speakers' community organisations have been involved in activities such as lobbying the Election Commission, conducting research and holding seminars, generating newspaper articles, holding photo exhibitions, lobbying for trials of war criminals, celebrating national days, etc.

<sup>31</sup> Al-Falah Bangladesh is reported as saying he 'focused his efforts on encouraging young members of the community to file a writ petition asserting their right to citizenship' (Mudditt, 2010).

<sup>32</sup> The Supreme Court has two divisions: the High Court Division, and the Appellate Division. Writ petitions are always filed in the High Court Decisions and any appeal to that decisions will be in the Appellate Division.

<sup>33</sup> An academic argued that the BNP has more history of using minority causes as political capital than the AL (email correspondence, 13/03/15), but a lawyer thought it would be wrong to assume that a BNP government was more favourable to Urdu Speakers than a Awami League government, and that more important was that this period was the heyday of public interest litigation as the court shifted its attention from constitutional matters to social justice issues (Interview #29).

<sup>34</sup> One informant told us the AL believes Urdu speakers will not vote for them and, within the BNP, there is a faction that continues to take a hard-line view on liberation issues and therefore is not naturally supportive of citizenship for Urdu speakers; the remainder fear being responsible for granting citizenship to Urdu speakers in case the AL can later use it against them (Interview #7).

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turning point in the Urdu speakers' citizenship struggle. It established a legal precedent and indicated the need for class action, and both proved critical in 2007/08.

The existence of external support networks was instrumental to the young activists' access to technical and legal support, including the *pro bono* representation of an Urdu-speaking lawyer. Without this, it is unlikely the young activists would have been able to read the politico-legal climate, to decide whether and what legal strategy was likely to be effective or to afford litigation. For example, the lawyer for the 2001 petitioners, Advocate M.I. Farooqui, said they took risks in bringing the cases but, in deciding to take legal action, 'we had not only read the law; we read the judges' (cited in Southwick, 2011: 131). Then, in 2007, these young Urdu speakers and their allies were given another political and legal opportunity to gain citizenship by the actions of the 'caretaker government'.

### **Legal mobilisation and its enablers between 2007 and 2008**

Under the military-civil caretaker government in 2007, the Election Commission was reconstituted and directed to prepare new voter registration lists as the basis for issuing new national identity cards. The chief election commissioner, newly appointed by the military, wrote to the chief advisor (the head of the caretaker government) to seek advice on whether Urdu speakers *with camp addresses* had Bangladeshi citizenship and therefore should be included on the electoral roll. The absence of a response from the government again paved the way for the submission of a writ petition to the Supreme Court. This time, the petitioners were 11 residents of Mirpur Camp in Dhaka, including General Secretary of the Urdu-Speaking People's Youth Rehabilitation Movement, Sadqat Khan.<sup>35</sup> Crucially, the petition was submitted on behalf of *all Urdu speakers with camp addresses* rather than only the named petitioners (Southwick, 2011).

Most observers agree that, even if a favourable court ruling had been possible (as the 2003 ruling indicated was the case), the registration of Urdu-speaking voters was much less likely to have occurred under 'normal' competitive party politics than under the civil-military caretaker government (e.g. Kelley, 2010). The importance of the actions of the chief election commissioner in paving the way for further public interest litigation supports this.<sup>36</sup> One informant commented that this period of the military-civil caretaker government was full of possibilities for sweeping regime-change and the Election Commission had been designated with bringing in reform and wanted to do a thorough job – which included registration of Urdu speakers (Interview #29). There is less agreement, however, on whether the caretaker government actively facilitated the process, or simply did not act to block it in the absence of active opposition by political parties or civic groups and under the scrutiny of international election observers (Kelley, 2010; Interview #7).

What is clear is there were different positions on the issue within the state. While the chief election commissioner favoured Urdu speaker registration and citizenship, an informant privy to government decisions at the time said the Ministry of Home Affairs contested it. Apparently, the Ministry of Home Affairs had questioned whether people residing in camps were on Bangladeshi soil and sought to appeal the ruling, but the Attorney-General's Office advised otherwise (Interview #7). These differences in ideas and interests between state agencies provided an opening for the petitioners and their allies, which they seized. Abrar (n.d.) also suggests personal relationships – for example between the elite activists and the Attorney-General's Office, and political parties – also explains the lack of active resistance on the part of government to the ruling and its implementation.

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<sup>35</sup> Note that the 2001 petitioners from Geneva Camp were also members of the Urdu-Speaking People's Youth Rehabilitation Movement, and advised the 2008 petitioners (Interview #18).

<sup>36</sup> The chief election commissioner at the time reportedly stated 'the time has come to look at the issue objectively and with compassion. The case of the Urdu-speaking people needs to be separated from "stranded Pakistanis" and a decision on citizenship taken expeditiously' (cited in Southwick, 2011: 130).

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Also of significance, Rafiqul Islam Miah, the (*pro bono*) lawyer representing the petitioners in 2007 was politically well connected and had a personal, as well as professional, interest in the outcome of the case. In 2008, Miah was the BNP candidate for Dhaka 16 constituency, which contains Mirpur Camp. While he did not win the seat, the Mirpur votes were important to his chances of doing so (bdnews24, 2008), and he has gone on to become a leading BNP spokesman and a member of its standing committee. The worth of Urdu speakers' votes – and therefore the political capital from courting favour with them – was also illustrated by electioneering by parties, with both candidates visiting Geneva Camp to make promises of rehabilitation and the AL distributing a pamphlet in Urdu for the first time. Residents from the camps said this was not repeated in the one-party race in 2014 (Interview #18).

Again in 2008 the Supreme Court ruled in favour of the petitioners, with their position made clear in its verdict: 'They are constantly denied the constitutional rights to job, education, accommodation, health and a decent life like other citizens of the country [...] [B]y keeping the question of citizenship unresolved on wrong assumption over the decades, this nation has not gained anything rather was deprived of the contribution they could have made in the nation building. The sooner the Urdu-speaking people are brought to the mainstream of the nation is the better' (Supreme Court Verdict, 2008, cited in Abrar, n.d.).

Again, the government did not appeal the decision. Three months later, *from a baseline of zero*, the Election Commission registered an estimated 80% of camp residents eligible to vote (Southwick, 2011). The 2008 ruling was a landmark because it drew a clear line under the question of whether camp residents were Bangladeshi citizens. In the absence of clear policy on the issue from government, it authorised the Election Commission to act and, critically, to issue the new Urdu-speaking voters with the national identity cards that provide official and written proof of their citizenship. A survey of Geneva Camp in 2011 found 73% of residents had a national identity card and *all* those over 18 had applied for one (Sholder, 2011).

### **Legal mobilisation after 2008**

Legal recognition of Urdu speakers' citizenship by the courts (and by the government in its lack of challenge) has symbolic and psychological value. As important, however, enforcement of the ruling by the Election Commission meant Urdu speakers had immediate access to voter registration and access to national identity cards – tangible outcomes of the ruling with material value. As such, this is perhaps an example of what Faustino and Booth (2014) call a 'self-implementing reform' (p.xii) – a reform that locks in new patterns of behaviour – in this case registration of eligible Urdu-speaking voters – by altering incentives without requiring implementers, whether state or citizens, to redefine their values or interests in a fundamental way.

By contrast, the policy measures needed to ensure Urdu speakers are able to access other entitlements that accompany citizenship are not self-implementing. In the absence of purposive government and civic action, therefore, bureaucrats and citizens' values and interests have not been significantly altered and the court ruling has not combatted official and social discrimination: a camp address and/or identifying oneself as an Urdu speaker continues to impede access to government jobs, passports and other entitlements (Hussain, 2012; FGD #3).

In response to this continuing denial of substantive citizenship, the Council of Minorities, working in partnership with Namati and Nagorik Uddyog, set up a paralegal programme in 10 camps in 2013 (Box 4). The Director of the Council of Minorities, Khallid Hussain, an Urdu-speaking lawyer (the first to be born in this camp) and committed community organiser has been at the centre of the Urdu speakers' legal mobilisation since the late 1990s. Hussain appears to have used his ingenuity and contacts effectively to advance the interests of Urdu speakers. He was the founder president of the AYGUSC and has been involved in the main Urdu speakers' associations in different capacities, he was instrumental in the first public interest litigation, he went on to be awarded a UN fellowship and he has used the networks this has afforded him to

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build an organisation, the Council of Minorities, and set up the first legal and advocacy programme for camp residents.<sup>37</sup>

#### **Box 4: Paralegal support to citizenship rights of camp residents**

In July 2013, the Council of Minorities, with support from Namati (international NGO) and Nagorik Uddyog (Bangladeshi NGO) set up the first community-based paralegal network in Urdu-speaking camps in Dhaka (Mirpur and Mohammadpur), Mymensingh, Khulna, Chittagong and Syedpur. The programme has 10 paralegals, all camp residents, and 3 volunteers, who have daily office hours, as well as undertaking outreach and community education meetings. The Council of Minorities supervises the paralegals and BLAST provides training.

The paralegals work with clients to resolve civil legal issues, and to give them the information to be in a better position to deal with future problems. In the main, requests have been about obtaining legal documents, such as passports, trade licences and identify cards, but particularly birth certificates, which make up around half of the cases. Where necessary, paralegals accompany applicants to the City Corporation, the Passport Authority or other relevant offices. Council of Minorities and Namati (n.d) say 'sometimes the paralegal's presence alone will make an official think twice before making extra-legal requests, such as extra documentation or a bribe. And when an official delays or denies a client's application for an identity document, the paralegal is there to use the law in negotiations and follow the case through to a fair resolution' (p.3). The programme has dealt with 1,475 cases in its first 14 months of operation, and reports that 1,370 were resolved to the client's satisfaction. This has led to 1229 camp resident getting birth certificates.

*Source: Council of Minorities and Namati (2015).*

The Council of Minorities' paralegals programme not only helps camp residents obtain legal documents, mostly birth certificates, but also has enabled systematic data collection about how Urdu speakers experience state services and administrative processes that is critical for both policy-influencing and further legal action (Council of Minorities and Namati, n.d.). For example, Khalid and his colleagues found bureaucrats in some, though not all, districts claimed they had a 'letter' from the Ministry of Home Affairs to the effect that camp residents should not be issued passports.<sup>38</sup> Hussain therefore used new legal action to enforce implementation of the 2008 court ruling, this time filing a right to information request to the Ministry of Home Affairs in August 2013.

On 22 January 2015, three days before the scheduled hearing, the Ministry of Home Affairs confirmed in writing that there was no official policy to deny citizenship to Urdu speakers and, on the contrary, the ministry had issued an order in 2009 that camp residents with a national identity card could be issued with passports. At the hearing on 25 January, the Information Commission disposed of the case, directing the ministry to circulate the information to the public and publish it on its website. Armed with this new information, the Council of Minorities has helped applicants successfully reapply for passports (Interviews #16, 18). As with the earlier action, prominent social justice lawyers provided support and advice in this new legal action, which was made

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<sup>37</sup> It could be argued Hussain has the attributes of a 'development entrepreneur', who are 'brokers, facilitators, doers, shakers, movers, operators, orchestrators, and activists who knew when, where, and how to mobilize other people (some in key places), interests, ideas and resources to bring about institutional innovation or change in the specific context of the [...] political and institutional environment [...] In short, they were able to use the windows, the critical junctures, or the triggers, to mobilize politically [and legally] in support of key institutional changes or innovations (Leftwich, 2011: xxv, cited in Faustino and Booth, 2014).

<sup>38</sup> Passport applications were successful from residents in Syedpur, Khulna and Mymensing (seven in total) but not Mohammadpur and Mirpur (five in total) (email correspondence, 27 January 2015), with applications turned down during the background check by Special Branch (Interview #18). In a 2010 survey, the 7% of Geneva Camp residents with passports all said they had used a non-camp address (Sholder, 2011). The common perception among FGD participants was also that their camp address meant they could not have a passport, and they reported that those with them had used addresses from outside the camp (FGD #3).

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possible by Bangladesh's Freedom of Information Act (2009), but was also strategic in that it leaves room for future public interest litigation in the face of continuing official discrimination (Interview #18).

### 3.3 What is the effect of legal mobilisation?

#### Immediate benefits

The 2008 Supreme Court ruling was a watershed moment in the Urdu speakers' struggle for citizenship. It clarified the legal status of the whole community and is a 'foundation step to claims of effective citizenship rights' (Abrar, n.d.). Urdu speakers were able to register and vote in a Bangladesh election for the first time. A generation of Urdu speakers gained access to a national identity card that is a prerequisite – although by no means a guarantee – for a host of goods and services, including education, employment, trade licences, marriage registration, bank accounts and government subsidies. The ruling also had symbolic and psychological importance for those who wished to confirm and assert their Bangladeshi citizenship and equal worth. In several ways, therefore, the ruling was a potential platform for improved livelihood and integration into Bangladeshi society (Abrar, n.d.; Southwick, 2011; Sholder, 2011).

#### Continuing problems

At the same time, activists and researchers contend that many camp residents have yet to see improvements in their day-to-day lives (Abrar and Redclift, 2007; Council of Minorities and Namati, n.d.; Hussain, 2012). Discrimination outside the camps continues and conditions and services within the camps have not changed since the ruling (Sholder, 2011). The ruling has also increased the fear, some report stoked by the old guard SPGRC, among camp residents that applying for national identity cards will mean 'government' can evict them from the camps, demand rent or withdraw electricity and water subsidies because they will no longer have 'refugee' status – and this has acted as a deterrent for some (Urbanksy, 2009). Sporadic instances of hostilities towards camp residents, with Bengalis living adjacent to the camps trying to force out Urdu speakers, perhaps reinforce this perception.<sup>39</sup> These ostensibly uncoordinated actions against camp residents also took place before the ruling (Lynch and Cook, 2006). What may now change is that there is an increase in formal government attempts to evict residents, such as the evictions in Mirpur (email correspondence with Council of Minorities, 26/03/15).

#### Platform for further legal mobilisation and action

But recognition of citizenship also gives Urdu speakers new tools to challenge and improve their situation. Where legal support is available, Urdu speakers are able to revert to the courts to prevent evictions. For example, BLAST is currently working with the Council of Minorities on a writ petition to gain a stay order against government eviction of several camp lands in Mirpur (Interview #18, email correspondence with Council of Minorities, 26/03/15). As importantly, the ruling has provided a platform for new forms of mobilisation and action *within the camps*. This includes community legal services to make residents aware of their entitlements and help them navigate administrative and legal processes so as to obtain legal documents and other services without having to pay local brokers or bribes (Interview #3). It also includes mentoring a new generation of legal activists and new forms of class action on behalf of Urdu speakers, such as the right to information claim. Finally, the 2008 ruling has given greater visibility and legitimacy to political action by young Urdu speakers' associations and increased domestic civic and middle-class attention, as well as international funders, to Urdu speakers' poverty and exclusion.

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<sup>39</sup> In June 2014, tensions between residents of the Kurmitola Camp in Mirpur, Dhaka, and residents of the neighbouring low-income settlement culminated in an arson attack that left nine members of a family, locked inside their burning home, dead and other houses damaged. Local reports suggest the dispute was over camp residents protesting a disruption to their electricity supply caused by a private slum lord connecting to the camp's electricity line, apparently with complicity from the local member of parliament. Amnesty International (2014) also expressed concern with regard to the role of the police, who are alleged to have actively joined in the attack on the camp residents, not protected camp residents and tampered with witness statements.

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## 4 The struggle against forcible eviction in low-income settlements, Dhaka.<sup>40</sup>

In this section, we present the findings from the case study on the struggle against forcible eviction in low-income settlements, Dhaka. We describe the problems the residents of these settlements face, then outline the process of legal mobilisation and analyse the factors that enabled and constrained it. We conclude by looking at gains and ongoing challenges.

### Key Points

**Problem:** The threat of eviction is a dominant issue for people – the *bosti bashees* – who live in low-income settlements – the *bosti* – in Dhaka. Many residents have lived in the settlements for years. But their lack of individual or collective formal legal ownership of land or housing places them at the whims of government, private investors and local elites, who can (and often do) displace them for their own interests. This situation is compounded by inadequate access to a range of basic services because government, and to some extent NGOs, tend not to provide services to ‘illegal’ settlements.

**Outcome:** Building on previous jurisprudence, in 1999 the Supreme Court of Bangladesh gave a landmark ruling on arbitrary eviction. This set an important precedent that enables *bosti bashees* and their advocates to achieve future stay orders against arbitrary evictions and demolition of settlements. These stay orders have been directly responsible for protection of shelter and livelihoods of thousands of *bosti bashees*.

**Enablers:** This ruling was possible because of Bangladesh’s *progressive legal framework*, which has been interpreted liberally by a *sympathetic (and at times activist) judiciary*. In 1999, the *bosti bashees* benefited from a limited but important *support structure for legal empowerment*, which connected local people with legal aid groups and social justice lawyers who could *strategise and advocate* on their behalf in the courts. However, stay orders are a temporary fix and the political economy of land in Bangladesh makes a long-term solution unlikely for the foreseeable future.

### 4.1 What main problems do *bosti bashees* face?

Dhaka is at the centre of rural–urban migration. Socioeconomic deprivation and political oppression in the early 1970s led to an influx of new *bostis* throughout Dhaka (Rahman, 2001), and their numbers increased rapidly during the 1980s as many tried to escape rural poverty (Lewis, 2011). The World Bank (2007) estimates that 300,000–400,000 people annually move from rural areas to Dhaka. In this context, *bosti bashees* face three main related problems.

First, **rapid urbanisation puts pressure on what is already a precarious socioeconomic situation for *bosti bashees***. For example, the UN Human Settlements Programme (UN-Habitat) (2015) estimates that, out of 45 million Bangladeshis living in urban areas in 2010, an estimated 9.4 million people are absolute poor, with 3.4 million people extreme poor. There is an urgent need to address this situation, not least because within a generation the country is likely to reach the ‘tipping point’ whereby Bangladesh’s poor are predominantly urban (Banks, 2012). What is more, such a solution will need to focus on creating an equitable urban development strategy, and, where necessary, putting in place genuinely adequate rehabilitation strategies for *bosti bashees*.

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<sup>40</sup> Our research for this report focused more on the legal action of the Urdu speakers, where we had greater access to activists within the community itself. However, there is a complex political economy around *bosti* evictions and slum evictions that demands further research.

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Second, ***bosti bashees* on both private and public land regularly face the threat of eviction across Bangladesh** (Roy et al., 2012a; 2012b). While some estimate that close to 80% of low-income settlements are on private land, public ones tend to be both poorer and much larger (World Bank, 2007: xiv). In this study, we focus predominantly on settlements on public land, not least because those on public land have the potential to have recourse to the courts (Byrne and Hossain, 2008). This fact changes how eviction attempts unfold. Those on private land may have a higher degree of protection from eviction since the landlord owns the land (Roy et al., 2012a; 2012b),<sup>41</sup> but they still may be muscled out by local strongmen or a fire will be deliberately started that devastates the settlement, making way for private investors (FGDs #1, #2; Interview #15). Government views *bosti bashees* on public lands as illegal squatters. The fragility of their position is closely linked to the relative power the ruling party holds at the local level and evictions tend to take place through pressure from a combination of police, *mastaans* (local strongmen), student activists and private businesses.

Third, **the situation of *bosti bashees* is a product of, and compounded by, a failure of successive governments to develop adequate urban development strategies that include them on their own terms.** *Bosti bashees* have few political and civil rights: while politicians often pander to their interests in the time around elections, such promises are largely broken (Banks et al., 2011). Referring to evictions, one lawyer argued, ‘Pre and post-election – one year either side is safe. You need votes, slum dweller or otherwise before. And after there is the feel good factor. The rest of the time is not safe and hard to predict’ (Interview #14). According to Jahan (2009), the formal legal system is ‘alien to urban slum residents’ (p.9) except, because of the high-profile cases and media coverage, the potential of the courts to prevent eviction. The dearth of government commitment, vision and financing hampers attempts to improve the housing situation of the urban poor (Mohit, 2012). Where schemes or opportunities exist, their benefits are either captured by higher-income groups or become a source of patronage for government (Banks, 2012; Sinthia, 2013). Policy coherence and implementation is also a problem: the World Bank (2007) estimates there are ‘between 16 and 40 different bodies involved in one way or another in urban matters in Dhaka with little coordination and planning’ between them (p.xiii).

## 4.2 How have *bosti bashees* used the law and litigation to solve their problems?

### Background to the 1999 case

The 1999 ruling emerged from over a decade of previous legal mobilisation and litigation, but a much longer history of evictions. The Pakistani Army demolished settlements during the War of Liberation, with thousands of *bosti bashees* either killed or displaced (Rahman, 2001). In January 1975, the police and paramilitary forces of the newly independent Bangladesh helped the state evict around 200,000 people from low-income settlements (COHRE and ACHR, 2000: 14). Many evictions continued, despite legal protection being offered to those in low-income settlements under the Constitution (see Box 5).

The first writ before the Supreme Court to challenge *bosti* evictions came in 1989, on behalf of residents of Taltola Sweeper Colony (Pereira, 2004). During attempts to bulldoze the colony, a six-year-old boy was killed, which generated widespread condemnation and brought wider attention to the problem of settlement evictions (UCA News, 1989; Interview #13). Yet, between 1989 and 1998, over 20 further demolitions took place, with over 100,000 *bosti bashees* displaced.<sup>42</sup> Despite filing petitions, being granted stay orders and starting to rebuild their homes, many were evicted once again (COHRE and ACHR, 2000: 14).

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<sup>41</sup> Although in some cases the ‘land market operates outside formal regulations and the knowledge of the actual owner’ (Roy et al., 2013).

<sup>42</sup> According to the Centre on Housing Rights and Evictions (COHRE) and the Asian Coalition of Human Rights (ACHR) (2000) these were ‘Taltola Sweeper Colony, Gulshan 1, Agargaon, Shikdir Basti, Nikhet, (twice) Bakshi

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### Box 5: Legal provision for *bosti bashees* before 1999

Article 15 of the Bangladesh Constitution underscores the provision by the state of basic necessities of life including shelter for all citizens as a fundamental principle of state policy. However, Article 32 provides a much more concrete basis for establishing rights relevant to *bosti bashees* by guaranteeing the right to life and personal liberty as fundamental. Importantly, the Constitution provides for a number of fundamental principles of state policies, but these are generally not judicially enforceable – which is one reason why various governments have ignored them. The National Housing Policy of 1993 also prohibits evictions from low-income settlements without the provision of full and adequate rehabilitation of the residents, while the Government and Local Authority Lands and Buildings (Recovery and Possession) Ordinance of 1970 Section 5 provides that evictions must be preceded by a minimum notice of seven days.

There has also been persistent social mobilisation against governments on these issues. For example, in 1997, 16,000 people were evicted from Bashantek settlement in order to create a *benaroshi polli* (silk sari village) for the state Ministry of Textiles. According to one lawyer, the *bosti bashees* themselves made a powerful appeal directly to the prime minister, saying ‘Your father settled us here after the war, so how can you, his daughter, evict us?’ (Interview #13).<sup>43</sup> Based on this and lobbying from NGOs and civil society, the prime minister responded positively, stating ‘No evictions would take place without rehabilitation’ (COHRE and ACHR, 2000: 31). The housing minister was also forced to resign, a rare occurrence in Bangladesh. This initial success (and subsequent litigation in the Supreme Court) demonstrates the power of legal mobilisation on these issues but also that court rulings alone are not a solution, with the low-cost housing scheme offered to evictees in the aftermath becoming mired in accusations of corruption.

In the lead-up to the 1999 case, there was a growing sense – displayed through national and international media and direct confrontation between the state and judiciary – that the government evictions were politically motivated and anti-poor. For example, at the height of the AL government’s unpopularity in the late 1990s, a coalition of 52 women’s and human rights organisations filed a case in the courts to challenge the legality of forced evictions in brothels in Narayanganj district of Dhaka. As Kochanek (2000) describes, citing local newspapers at the time, the incident began as a local conflict between an AL member of parliament and a local BNP politician over the control of the brothels in Narayanganj’s red light district, which had been in existence for some 150 years. The AL cabinet decided to implement a ‘rehabilitation’ plan, which came under heavy criticism in July 1999 from a range of civil society actors (including sex workers, brothel owners and women’s NGOs), who argued the plans were insufficient and biased towards the AL member of parliament, who wanted control of the brothel. A violent police raid on the brothels to implement these plans led to widespread outrage in national and international media; subsequently, in 2000, the Supreme Court declared the forcible eviction of the sex workers illegal. This case clearly displayed the patronage and lack of transparency that runs through the politics of Bangladesh – and set the government on a direct collision course with the judiciary.

### Legal mobilisation and its enablers in relation to the 1999 ruling

In 1999-2000, about 100,000 people were evicted from low-income settlements in Dhaka. Research at the time found the prime minister and the state minister for home affairs sanctioned these wide-scale evictions, with the ostensible reason that it would curb terrorism (COHRE and ACHR, 2000: 15). Most *bosti bashees* were taken by surprise and did not have a chance to resist collectively; security forces brutally repressed those who did manage to organise people (such as Trinumul Jono Sangathan, a grassroots organisation). These evictions prompted widespread condemnation, with one large rally including NGOs, journalists and other sections of civil society

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Bazar, (twice), Barid-hara, Kamalpur, Mirpur, (thrice) Pollobi, Agargaon, (thrice) Kallyanpur, South Shahjanpur (thrice), Azimpur, Panthopoth, Karwan Bazar, and (thrice) Bashantek’ (p.14).

<sup>43</sup> Also see <http://www.blast.org.bd/issues/shelter/237>

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(COHRE and ACHR, 2000). This led to two major legal organisations, BLAST and Ain O Shalish Kendra (ASK), filing a case to defend the *bosti bashees* (*ASK v. Bangladesh*, 1999).

On the eve of 18 August 1999, the day before the scheduled hearing, scores of *bosti bashees* squatted in makeshift dwellings in the gardens within the Supreme Court compound. This is widely understood to have been at the behest of the government – a charge they did not deny – as a political ploy to embarrass the court. The court then faced the dilemma of either staying the case at hand or ordering the eviction of *bosti bashees* from the court premises themselves. The Supreme Court appointed to hear the case absolved itself and the chief justice rescheduled the hearing for 23 August 1999. On 21 August 1999, *bosti bashees* again set up temporary shelters, this time outside the home of Dr Kamal Hossain (the petitioners' advocate). The police and the Ministry of Home Affairs, both major sites for political capture and patronage by the ruling party of the day, made no efforts to remove them from either premises (Kochanek, 2000).

Those *bosti bashees* who occupied the court premises and outside Dr Hossain's home were lured by promises of rehabilitation by local AL leaders and ministers, according to Kochanek (2000), but ultimately were taking actions that undermined the broader interests of those in low-income settlements. Such actions are far from new. *Bosti bashees* are often the 'hired public', paid to participate in political processions and meetings (Jahan, 2009: 21). A group of *bosti bashees* on *khas* land suggested that whoever was in political power nationally had *de facto* control of the area (FGD #1). One local researcher who conducted multiple FGDs reflected that 'people living here are extremely poor and vulnerable and do not have the courage to say anything against these leaders due to the fear of eviction'. Here, the state appeared to coerce marginalised citizens to act against their own interest, as part of a deliberate move to affect the outcome of court proceedings. Fear of local reprisals may also explain why these evictions do not always generate large-scale local social mobilisation.

This eviction attempt generated heated debates that put the government on a collision course with the judiciary, media, civil society and political opposition. The government widely denigrated those who opposed the eviction as supporting terrorism. One NGO association retorted that the eviction initiatives were 'state-sponsored terrorism' and 'the real purpose of the operation was to take over the land so that it could be sold' (Kochanek, 2000: 543). It is a common accusation that these areas need to be cleared because they are high-crime areas, with drugs a major problem.<sup>44</sup> While drugs do remain a problem on both *khas* and private land, supply is often from outside the settlement, making *bosti bashees* vehicles for money-making schemes (FGDs #1, #2; Interview #14).<sup>45</sup> This fractious issue was taken up by the then-opposition, the BNP, which was already staging a campaign of *hartals* (protests that commonly involve shutting down public transport) and parliamentary walkouts. The BNP said the government evictions were politically motivated, alleging the *bosti bashees* were being cleared out to eliminate unfavourable voters (Kochanek, 2000).

Eventually, on 23 August 1999, the Supreme Court ruled that rights to livelihoods and shelter, while not judicially enforceable, could be derived from constitutional rights to life, dignity and equal protection under the law. The court interpreted Articles 31 and 32 broadly in light of Article 15 of the Constitution, which makes the right to livelihood and shelter part of the fundamental principles of state policy. The court laid down guidelines for the rehabilitation of *bosti bashees* to be carried out in phases. Critically, they also ruled that government could evict *bosti bashees* only

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<sup>44</sup> Prior to this case, for example, the minister for home affairs and ex-minister for housing was reported to have said, 'Strict measures would be taken for removing the slums which have become criminals' den. We can no longer think about them from humanitarian point of view. They themselves have to solve their (accommodation) problems' (Daily Star, 7 May 1999, cited in Rahman, 2001).

<sup>45</sup> This points to the need to avoid simplistic narratives about crime and deprivation in these settlements (see Shafi, 2010).

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when alternate arrangements were in place for shelter.<sup>46</sup> The guideline the court provided requires the government to provide written notice and arrange for the rehabilitation or resettlement of evictees prior to eviction.

As the case involved government-owned land, which in and of itself underscores its political nature, it was a great feat for the judiciary to have upheld and progressively interpreted the Constitution in this way. In this case, the BNP's partisan agenda and its use of the court as a site for contestation with the government (in the absence of any meaningful engagement in the then-parliament), coupled with counterattacks from the government on everyone including the courts, played out as an opportunity for the court to consolidate its own independence and uphold the social and economic rights of citizens. Indeed, the 1999 decision was in line with the liberal political environment after the democratic transition in the late 1990s. For nearly a decade between 1990 and the early 2000s, the Supreme Court grew in confidence, consolidated its own independence and rendered liberal and pro-citizenry decisions in numerous public interest litigation and *Suo Motu*<sup>47</sup> cases. Viewed in this way, the courts, being in this activist environment, also seem to serve a political and social mandate through which the judiciary is able to consolidate power, prevent executive transgressions to its constitutional mandate and uphold fundamental rights.

### 4.3 What is the effect of legal mobilisation?

Overall, the 1999 ruling is widely acknowledged to have become a crucial tool for *bosti bashees* and their advocates, in their ongoing fight against forced evictions, providing them with a legal weapon to respond over the past 16 years. This case had significant policy implications for the state as well as addressing the concerns of millions of people living under already squalid conditions and preventing them from being pushed into further human insecurity.

#### Ongoing public interest litigation

This case formed the basis for several further instances of public interest litigation over the years on the issue of settlement evictions, drawing on the small but committed pool of legal activists who seek recourse to the Supreme Court to prevent or stop *bosti* evictions.<sup>48</sup> Perhaps most notably, BLAST, along with ASK and the Coalition of the Urban Poor (CUP), filed a writ petition on 3 December 2008. This challenged the threatened eviction and demolition of the Korail Basti in Dhaka, which 100,000 people inhabited. The court eventually issued an interim order staying the notice of eviction, which was extended on 6 April 2009, although much damage had already been caused (Shiree and DSK, 2011).<sup>49</sup>

While it is certainly encouraging that the Supreme Court supports progressive judgements for the *bosti bashees*, a huge number of cases remain pending for disposal, and there is a general acceptance that these stay orders cannot hold forever. Our focus group discussions suggest *bosti bashees* continue to live in fear of being evicted, with one participant estimating their *bosti* had been cut down to one tenth of its previous size through evictions. Part of the problem is that, through a strict interpretation of the law, the government can evict squatter settlements as it chooses – provided there is a rehabilitation plan, as directed by the Court. Right to shelter is a state policy but not a fundamental right. This means responses to eviction threats, however important, tend to be reactive and a stopgap measure only.

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<sup>46</sup> The Supreme Court gave specific directions to undertake rehabilitation arrangements for the slum dwellers and to undertake eviction of the slum dwellers only 'according to the capacity of their available abode and with option to the dwellers either to go to their village home or to stay back leading an urban life' (Farid, 2015b).

<sup>47</sup> In *Suo Motu* cases, judges can rule on issues of public interest in the absence of a petition.

<sup>48</sup> See <http://www.blast.org.bd/issues/shelter>. Subsequent decisions of the courts include *Kalam and Others v. Bangladesh and others* (21 BLD-446); in *Aleya Begum and others v. Bangladesh and others* (53 DLR [2001] 63), para 37 it was stated that even trespassers on land could not be evicted without notice; in *Modhumala v Housing and Building Research Institute* (53 DLR (2001) 540), that due process requires adhering to existing legislation, which requires a minimum of seven days' notice for eviction.

<sup>49</sup> More information on this case can be found on <http://www.blast.org.bd/issues/shelter/245>

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### **Growing awareness, social mobilisation and stronger networks**

Legal advocates argue that, over time, *bosti bashees* have become increasingly aware of their right to legal recourse in the case of eviction (Interviews #13, #14). Rahman (2001) finds NGOs have played a role in this through helping improve *bosti bashees*' socioeconomic status, as well as mobilising and educating them on housing rights. This has meant *bosti bashees* have more resources and knowledge available for mobilisation. This can result in an increasing number of cases coming to legal aid groups based in these areas (Interview #13). Legal aid clinics, often led or funded by organisations that also have the national-level profile to file cases, are an important part of legal mobilisation strategies. This does, however, suggest that, in areas where NGOs or legal aid clinics are not active, poor people are far less likely to gain support against an eviction. Problematically, NGO activity tends to be limited, apart from some small-scale initiatives on health, education and microfinance (FGDs #1, #3).

### **Failure to encourage large-scale reform process**

Perhaps the biggest problem is that these legal interventions do not appear to have convinced the government to implement general enforceable principles of sufficient notice, rehabilitation for *bosti bashees* when they are evicted (attempts are often piecemeal) or a longer-term housing policy that is in the interests of the *bosti bashees*. Rehabilitation attempts are subject to elite capture. For example, in 2003, a public–private partnership agreement was signed between the Ministry of Land and North South Property Development Ltd, with the aim of constructing over 15,000 apartments for those living in the low-income settlements (Mohit, 2012: 12). Later reports indicate that not a single *bosti* dweller was able to purchase any of these flats (Karmakar, 2009, cited in Mohit, 2012: 12).

Our interviews with land experts indicate that more holistic proposals for urban poverty were making traction during the most recent caretaker government in 2007, but this fell by the wayside once the AL entered power. As one lawyer from a leading legal aid organisation stated, 'The thing about public interest litigation [on settlement evictions] is that they help to create immediate protection. More than that [...] it's bought a whole generation shelter. But it hasn't permanently resolved this [...] There is no proper housing policy and *bosti bashees* are at the whim of major infrastructure projects' (Interview #10). These rulings have only required the government not to take an action, which is very different to the government needing to develop purposive policy measures.

It appears there is a major strategic problem here: legal pronouncements on advance warning and rehabilitation have not encouraged purposive policy measures and, *as a long-term strategy, legal activism in the Supreme Court appears to be at a dead end*. Legal mobilisation around *bosti* evictions demonstrates clearly how there are different enabling conditions, opportunity structures and institutional blockages along the justice chain (Domingo and O'Neil, 2014). Given the relatively limited influence of the courts on executive behaviour – and the make-up of the Bangladeshi Constitution – legal pronouncements have failed to incentivise politicians to act in the interests of the majority of *bosti bashees*. Opportunities for legal activism in the courts, in this instance, cannot be reconciled with the considerable institutional blockages apparent throughout Bangladesh's political system. This includes the considerable weight carried by private and corporate actors, whose interests often align considerably with government actors responsible for housing policy.<sup>50</sup>

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<sup>50</sup> According to Sinthia (2013), the main state body that governs development planning in Dhaka, the Capital Development Authority of Bangladesh (RAJUK), is highly politicised and there are a number of conflicts of interest between public and private actors in relation to land and housing projects.

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## 5 Implications for politically smart pro-poor legal action

In this section, we examine what the two cases tell us about the factors that influence the process and outcomes of legal mobilisation in Bangladesh and their broader implications for the development community. First, we reflect on the six categories of enabling conditions for legal mobilisation, what insight they provide into the relative successes of the two cases and how legal action might feature in these social struggles in the future. Second, we draw out the implications for how international agencies, both government and NGOs, support legal activists and reformers in ways that help, not hinder, legal mobilisation and pro-poor outcomes.

### 5.1 Legal action that works with and around politics in Bangladesh

Despite their poverty and seemingly adverse political conditions, people living in Dhaka's low-income settlements and camps have been able to use the courts to defend their rights and improve their lives. The 1999 Supreme Court ruling provided a solid basis for future stay orders to prevent forcible eviction, and the attendant loss of assets and livelihoods, of thousands of people living in low-income settlements. A single order in 2008 gave legal protection to the homes of 100,000 *bosti bashees*. For all 151,000 Urdu speakers living in camps across Bangladesh, the 2008 ruling gave immediate legal recognition of their citizenship, with national identity documents given to thousands more, around 20,000 in Geneva Camp alone.<sup>51</sup> The symbolic and psychological importance of the recognition of rights to citizenship or shelter should also not be underestimated. As critical, legal empowerment has generated greater awareness of entitlements within the two communities, as well as new forms of mobilisation.

These cases demonstrate the potential pro-poor impact of public interest litigation as part of a broader politico-legal strategy. But they also show the significance of the specific problem or issue at hand to the process and outcomes of legal mobilisation, and how this interacts with the enabling conditions and other relevant factors. This means strategic decisions about the likely contribution of legal empowerment activities need to be assessed on a case-by-case basis. With this in mind, we highlight three overall findings from the two cases.

First, **where some minimum conditions of legal mobilisation are met, it is a potential tool in disputes over access to, or the provision of, rights and resources.** These minimum conditions include a legal framework with an expansive bill of rights and review powers, a judiciary sympathetic to social justice claims and independent enough to rule against government if necessary, and legal and advocacy organisations that bring legal expertise, financing and social capital (Epp, 1998). Together, these features can be thought of as the **enabling environment**, or opportunity structure, for legal mobilisation – and they were the foundation for success in both of our cases, even in the context of a constrained governance environment.

However, whether and how even these base conditions enable the possibility and success of litigation depends on the particular issue and a country's political economy – because this will determine the possibility of legal challenge, how the judiciary (or particular judges) are likely to view the case and the prospects for rulings to affect government behaviour and lead to actual changes in power and resource allocation. For example, the existence of legal advocacy organisations has made possible the use of litigation to prevent forcible evictions, but these organisations have few incentives to remain engaged with the issue after a stay order is granted (interview #10, 13). The advice and support of external organisations were also key factors in the success of the citizenship case but, in contrast, it was a core group of Urdu speakers from *within*

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<sup>51</sup> As Kelley (2010: 370) comments 'without the Court's recognition of their citizenship, the Urdu-speakers of Bangladesh would undoubtedly still be waiting for a humanitarian solution to their dilemma'.

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the community who drove the case forward. They had the most to gain from the case, and their perseverance has provided forward momentum to their struggle over several years.

Second, **and leading on from this, the nature of the problem also informs the strategic choices of activist-reformers.** Lawyers will take into consideration many factors, including legal provisions and attitudes and past rulings of the judiciary, when assessing whether and how litigation might feature in the solution to a problem or as a response to an injustice, as well as the likelihood of success. However, activists also need to make choices about how litigation fits within their broader reform or mobilisation strategy. This includes both how litigation can progress their aims but also how other activities (both legal and other types) can make a favourable ruling and/or its implementation more likely. Political calculations about the interests and likely behaviour of other interested parties, particularly within government but also other allies and opponents, are central to this. Crucially, for most pro-poor solutions involving legal mobilisation, this will include different forms of legal action over an extended period of time.

As we have seen, public interest litigation was the centrepiece of both the citizenship and the eviction cases, but the broader strategies of activists in these cases were very different. Evictions in low-income settlements are an extremely politically sensitive issue because they directly affect the interests of powerful groups and have wider public interest. In 1999, activists were therefore able to capitalise on the extremely fractious relationship between the government and the opposition, and to leverage public opinion through media attention to the case. The late 1990s was also a time when the Supreme Court was asserting its independence and was more willing to take on government interests. The Supreme Court also consistently ruled in ways that supported Urdu speaker citizenship rights. But, by contrast with the issue of evictions, this citizenship rights for Urdu speakers had no mainstream public support, quite the contrary, and neither of the political parties had incentives to champion. Lack of political traction ruled out young Urdu-speaking activists using the media and public opinion to pressure government to act (although *de jure* citizenship may slowly change this) and meant they have, instead, had to work out ways to work around ‘normal’ Bangladeshi politics – such as using the Election Commission and voter registration, and capitalising on the opportunities the caretaker government presented.

However, while the issue at hand shapes strategic choices, it also matters whether activists learn from past mistakes and adapt their tactics accordingly. For instance, the adjustment of tactics by Urdu speakers between the 2001 and 2007 petitions was critical to the ruling giving *de jure* citizenship to *all* Urdu speakers rather than only the petitioners. Khalid Hossain and other Urdu-speaking activists have also ‘learnt from doing’ (Faustino and Booth, 2014) and adapted their strategies in other ways – for example by using freedom of information laws and the paralegal programme to achieve progress on implementation of the 2008 ruling, ensuring substantive citizenship gains for Urdu speakers. By contrast, joined-up thinking and strategising within and between the different organisations working to improve conditions in low-income settlements and file legal actions for *bosti bashees* appears to be limited (interview #13). Here, *ad hoc* legal mobilisation falls short of being a long-term strategy when it is not tied into social and political action around a broader shift in housing policies and service provision for *bosti bashees*.

Third, **interested parties’ capacity for collective action around common interests, as well the potential resistance (or support) within government or other interests, also shape the choices available to activists.** Government resistance and/or insufficient collective action may result in legal rulings not being implemented, fully or at all, severely limiting the pro-poor impact of litigation.<sup>52</sup> Litigation on its own rarely results in pro-poor change. This is evidenced in the challenges facing both Urdu speakers and the *bosti bashees*. Litigation and other legal remedies in Bangladesh will continue to play an important role in struggles around *de facto* citizenship, discrimination and minority rights. Litigation will also remain important to prevent the forcible eviction of those living in low-income settlements and, increasingly it seems, in camps also. But

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<sup>52</sup> Although it can also be the case that there are symbolic and cumulative gains that may not be immediately apparent, including those arising from a victory that sets legal precedent (Wilson, 2011).

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the constellation of interests and power relations means this is likely to be only a partial or temporary solution, and cannot on its own address the underlying causes of the problem. For this to occur, strategies are needed that combine both oppositional voice (that creates reputational costs for government) and working with or around powerful interests.

One challenge *bosti bashees* face is that they tend to be organised around patronage networks and their access to decision-makers outside the camp, and the information and resources they provide, is mediated by informal local leaders (e.g. a ‘slum lord’, or a local party official) (Rashid, 2005). This vertical organisation (rather than by horizontal class interests) influences their priorities and their capacity for collective action. An additional challenge for political systems that are patronage-based *and* competitive, such as Bangladesh, is that they do not favour the long-term horizons and the coordination between government agencies needed to devise and implement many pro-poor policies.<sup>53</sup> This would seem to preclude government putting in place a coherent strategy for the rehabilitation of either the low-income settlements or the Urdu-speaking community. This suggests a comprehensive urban development plan is unlikely to be put in place and implemented, and reformers instead need to focus on specific problems that are politically feasible. Progress for Urdu speakers was achieved when their interests aligned with parts of the state (bureaucracy and politicians) to the degree necessary for change to happen – and a similar alignment of interest need to be found in looking for solutions to ongoing problems for both Urdu speakers and *bosti bashees*.

## 5.2 Broader policy implications for doing legal empowerment differently

These two cases were not priority issues for the international community, and were therefore not driven by international agendas, external funding or donor programmes. Nevertheless, they have clear implications for how donors support legal empowerment.

Civil society organisations, including rights and legal advocacy organisations, rely heavily on donor funding in Bangladesh, as in many other low-income countries. This has had an indirect impact on pro-poor legal mobilisation in the country – including for *bosti bashees* and Urdu speakers – because it influences which social issues legal activists prioritise and the way they engage. For example, legal and rights organisation have been able to use high-profile public interest cases, such as the stay orders for *bosti* evictions, to increase their profile. However, the lack of priority donors give to low-income urban settlements means legal organisations that are reliant on external funding have few incentives to continue to work on the issue after a ruling.<sup>54</sup>

Young Urdu speakers have mobilised with little funding, and have benefited from the *pro bono* work of social activist lawyers. But implementation of the ruling depends on community legal services, to make camp residents aware of their new rights and to help them negotiate administrative procedures. As citizenship rights of Urdu speakers have not been a priority for donors in Bangladesh, this has not been forthcoming until very recently. There are also few legal aid clinics to provide a link between residents and lawyers in the low-income settlements, with donor funding instead focused on microfinance. Even when donors are not directly funding legal empowerment, therefore, their broader priorities and funding decisions in a country can still have an indirect impact on the process and outcomes of locally led pro-poor legal mobilisation.

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<sup>53</sup> The importance of elite collective action, policy coherence and top-down accountabilities for public goods provision was a key finding of the five-year Africa Power and Politics Programme, which looked at public goods provision in different governance contexts, including competitive clientelist systems (see Booth, 2012; Booth and Cammack, 2014; Kelsall, 2013).

<sup>54</sup> One judge commented that ‘many of them [NGOs] come forward, they get the law, they get their laurels, and then they go home and forget about it. You got the law, publicity, money from donors [but] what about the people you’re fighting for? They’ll say donors not interested any more, which shows an ulterior motive ... If I was a donor, I would give them half a crown and then another half afterwards’ (interview #5). One long term campaigner agreed with the sentiment: ‘we are beginning to wonder what this has all come down to. It’s great to address the issue in the heat of the moment. You fight, you get a big splash, and you’re a hero for the day ... Then you wake up the morning after and wonder. There are so many loose ends ... What is the incentive to comply with it [this order]?’ (interview #9)

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The UK Independent Commission for Aid Impact (2015) recently published a report assessing UK Development Aid for Security and Justice. This found that, ‘DFID [the UK Department for International Development] focuses on security and justice as a service rather than as a set of issues or practical challenges [...] while there are pockets of success, there is little sign that its institutional development work is leading to wider improvements in security and justice for the poor’ (p.x). It noted also that an institutional approach to security and justice reform meant DFID did not engage with important security and justice issues in its partner countries, such as labour rights, land tenure and insecurity in low-income urban settlements. The Commission recommended that DFID develop an approach that focused on specific challenges and social issues in particular contexts, and address them using a multi-pronged approach.

The Commission also marked out legal empowerment initiatives and community justice, including in Bangladesh as a case study country, as a programming area of relative success for DFID – precisely because it allows for harnessing the problems particular groups face in specific locations as well as the knowledge and expertise of local organisations. Our case study also finds that local knowledge (including political intelligence), networks, learning and problem-solving are central to successful pro-poor legal mobilisation. Our two cases also suggest, however, that *linking* legal mobilisation at different levels is an important strategy for advancing the rights and material interests of poor and excluded groups. This involves linking community legal services with litigation in the formal court system, including public interest litigation in the higher courts, as well as with national advocacy. It also means providing funding in ways that supports ‘learning by doing’ and adaptation.

Public interest litigation also has its limitations (Ferraz, 2011). It will not always be the best strategy to combat poverty and injustice, not least because many rulings are not enforced and therefore have little material effect. Local activists and reformers, who are aware of the ideas, interests and power that need to be negotiated, are in the best position to assess which social issues are most conducive to legal remedies and what types of strategies they should be embedded within. But what donors fund and how they fund it will have a significant impact on whether they help legal empowerment in developing countries and do not hinder it.

### **What donors should fund to support legal empowerment: legal advocacy organisations able to provide legal advocacy, aid and other services at all levels**

The possibility and quality of pro-poor legal mobilisation is directly related to the presence and strength of rights and legal advocacy organisations and social justice lawyers. Poor people have few resources. A support structure for legal empowerment is therefore vital to provide legal advice and aid and social capital and to support associational capacity. The foundation for these structures at community, district and national levels often exist in the form of community-level kinship organisation and NGOs but lack resources. National organisations have a role as facilitators and brokers, and can provide organisational and financial resources as well as political capital and informal or ‘soft advocacy’ (Tadros, 2011). Community services can provide practical support to, and insight into, poor people’s everyday practical problems and needs. The linkages between the two are critical because this enables larger domestic organisations to find out about and support work on local problems and the community organisations closest to them.

### **How donors should fund legal empowerment: funding and reporting arrangements that enable locally led activism, problem-solving and adaptation**

What legal advocacy organisations and services do, whether national or community, is support poor or marginalised people and groups in finding solutions to their material and social problems – such as lack of housing or education, risk of violence or denial of legal identity. This is a deeply political process in which the law is a means, not the end. Only local organisations know what issues to pursue, how and when. For local organisations to make this contribution, development agencies need to allow them to select issues and problems to work on. And this means funding and reporting arrangements, such as core funding and more flexible and adaptive reporting and

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results frameworks, that empower local reformers to pursue their own agendas and allow them to learn from their failures, scale up their successes and follow legal action through from claims to concrete developmental benefits for poor people. To do legal empowerment differently, donors must provide support in ways that enable legal empowerment to be locally led and politically smart. This includes thinking about how legal empowerment efforts are nested in wider socio-political change processes rather than as isolated justice sector reform interventions.

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# Appendix: Research design

This case study is the first in a possible series on the politics of legal empowerment in developing countries, and serves as a pilot. It asks, under what conditions do marginalised people use the legal system and dispute resolution forums to their advantage? And with what effect on their everyday lives? The case study builds on an assessment of the evidence on the politics of legal mobilisation in developing countries (Domingo and O’Neil, 2014). It seeks to begin to address the gaps identified in the evidence review, including building comparative knowledge; looking at implementation and outcomes stages of dispute resolution and redress processes, as well as claim formation and adjudication; and analysing the social and economic, as well as justice, outcomes of redress processes. The case study also tests some of the lessons or propositions that emerged from the literature review, including:

- Legal empowerment is political and therefore effective support will work with locally driven processes of institutional innovation, and with awareness of particular opportunity structures and constraints.
- Finding concrete and often localised solutions to practical claims is important, but public interest litigation and follow-up political action is also needed for structural change that can influence horizontal inequalities and unjust power relations between groups.
- It is important not to focus narrowly on one part of the justice chain only, such as people’s claims or dispute resolution, but also to attend to the implementation of rulings. This means both the ‘demand’ and the ‘supply’ side of legal action are important for it to be empowering.
- Progressive social change is possible but depends on integrated social, political and legal strategies, ones that link legal mobilisation with political action and efforts to change social attitudes.

Primary data collection took place in Dhaka between 13 and 23 January 2015. Semi-structured interviews were conducted with key informants, with attention paid to collecting a range of perspectives. Further informants were identified through snowballing. The identities of informants have not been disclosed but totals by category and gender are:

Category	Male	Female	Total
Academic	2	3	5
Funder	4	1	5
Funder (intermediary)	1	6	7
Judiciary/lawyer	3	0	3
Legal service organisation	5	9	14
Informant interviews with <i>bosti bashees</i>	2	2	2
FGD with <i>bosti bashees</i>	18	18	36
Informant interviews with camp residents	3	0	3
FGDs with camp residents	11	7	18
Total	49	46	94

The informant interviews and FGDs in Geneva Camp and two low-income settlements Agargaon and Muhammadpur in Dhaka were carried out in Bangla by researchers from the Local Initiative for Development (LIFD).

The political crisis and extended *hartels* during our fieldwork period in January 2015 meant last minutes changes to our plans – for example we were unable to leave Dhaka and contracted local researchers to undertake research in the low-income settlements and Geneva Camp. It also made movement around the city difficult and prevented access to some areas and planned informants (e.g. courts, government officials).





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