Mitigating corruption in informal justice systems
NGO experiences in Bangladesh and Sierra Leone

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Informal justice systems are the principal mechanism for dispute resolution in many societies, but they suffer from two drawbacks. First, in individual cases, well-off and/or well-connected individuals may engage in transactional corruption, distorting justice processes and outcomes. Second, over time, elites may use their control over these systems to perpetuate their power, status, and financial advantage, resulting in systematic unfairness that is closely linked to transactional corruption. As shown by experiences in Bangladesh and Sierra Leone, nongovernmental organisations often can work with, adapt, or modify informal justice systems to reduce corruption and unfairness and increase positive development outcomes.

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Informal justice systems (IJSs), also called nonstate, traditional, or customary justice systems, originate in indigenous mores falling outside of statutory law.[1] IJSs typically seek to resolve everyday family, property, and community disputes, and such activities are the main focus of this brief. In some contexts IJSs may also handle serious criminal offences such as rape and murder, though this is usually in conflict with state law.

Informal justice systems have received increasing attention from the international development community in recent years because they are the main ways in which many people in the world's less affluent societies settle local disputes (Golub 2007). However, they pose issues for development agencies seeking to understand whether and how to engage with them. On the one hand, such systems tend to be far more affordable, comprehensible, and accessible to the poor than formal state justice systems. On the other hand, just like formal justice systems, informal systems may feature corrupt and otherwise unfair influences and biases that produce unjust outcomes and perpetuate inequities. This brief reports on promising

approaches to this conundrum as illustrated by the work of nongovernmental organisations (NGOs) in Bangladesh and Sierra Leone.

Addressing corruption in a particular society's IJS requires an understanding of how power and influence are used and distributed in that society – what might be called a political economy analysis. In this regard, a distinction should be made between individual (transactional) instances of corruption on the one hand and systemic abuses and unfairness on the other. Constructing strategies for reducing IJS corruption, however, requires that the two phenomena be viewed not in isolation, but rather as interwoven. In the two societies discussed here and in many others, transactional and systemic problems are entwined.

Combating IJS corruption in Bangladesh: NGO engagement with shalish

The predominant IJS in Bangladesh is called *shalish*. This is a traditional, community-based process in which small, loosely constituted panels of influential local figures (almost always men, until NGOs become involved) help resolve property, family, and other disputes between community members. Successive government efforts over many years to turn *shalish* into state institutions called village courts have proven problematic due to the politicized and bureaucratic nature of such bodies. This makes civil society engagement with *shalish* – beginning 30 years ago, and gradually expanding since then – all the more noteworthy.

Shalish displays elements of both mediation and arbitration. Sometimes disputants reach resolutions of their own accord, but often they are subject to community pressure that pushes the negotiations in specific directions. In any event, the phenomenon is a far cry from the calm, orderly deliberations that "mediation" and "arbitration" may imply:

> The actual *shalish* is often a loud and passionate event in which disputants, relatives, [*shalish* panel] members and even uninvited community members congregate to express their thoughts and feelings. Additional observers – adults and children alike – gather in the room's doorway and outside. More than one exchange of opinions may occur simultaneously. Calm discussions explode into bursts of shouting and even laughter or tears. All of this typically takes place in a crowded school room or other public space, sweltering most of the year, often with the noise of other community activities filter¬ing in from outside. The number of participants and observers may range from a few dozen to well over one hundred (Golub 2000, 137–38).

Shalish is often about far more than settling disputes. Panel members' solutions to cases brought before them can aim to "ensure the continuity of their leadership, to strengthen their relational alliances, or to uphold the perceived cultural norms and biases." Sometimes the process is influenced by "corrupt touts and local musclemen" hired to manipulate or intimidate the participants (Khair 2002, 8–9). Another study describes an often corrupt "triumvirate" of interests

that controls village affairs, including *shalish*. This alliance comprises low-level elected officials who control public resources and are tied to local politicians and other power brokers; village elders who have "vested interests in the village economy as rentiers and moneylenders"; and religious leaders who "are sometimes quite influential as they endorse the activities of village elders albeit in the name of Islamic or *Sharia* law" (Hashmi 2000, 137).

The "continuity of leadership" and "triumvirate" of interests underlie both the transactional corruption and systemic abuses in *shalish*. This suggests that corruption should not only be viewed as applying to individual cases: it also manifests as systemic inequities through which influential parties affect dispute outcomes so as to secure their long-term power, status, and/or financial benefits. An influential *shalish* panel member might favour a man, tenant farmer, or potential voter in a dispute not just out of bias toward that individual but because taking that side reinforces the panel member's own privileges as a man, landlord, or political power broker in the community.

With such dynamics in mind, a diverse range of NGOs in Bangladesh have sought to combat the corruption, inequity, and harshness of much traditional *shalish* by organising, modifying, and/or monitoring *shalish* sessions (Golub 2007, 2013).[2] Among other changes, the adapted *shalish* involves women and other nonelites in more prominent roles. Over time, these NGO efforts have borne fruit in various ways. For example:

- NGO engagement helps prevent touts or corrupt local leaders from extracting payments, favours, or obligations from disputants in exchange for exercising their influence in a *shalish*.

- More broadly, through their engagement with *shalish* as well as their general community work, NGOs prevent or ameliorate abuses by members of the "triumvirate." For example, some local religious leaders mislead divorced couples into believing that they can only remarry if the wife is "purified" by engaging in sexual relations with another man, typically a religious leader. (Husbands can obtain divorce easily in Bangladesh simply by declaring it. A husband who does so, perhaps in a fit of anger, may regret the decision and seek to remarry the spurned wife.) NGO intervention educates the community and combats this practice.

- Where an NGO is very active and influential in a community, it serves as an alternative power base to traditional or corrupt leaders. In such cases it may organise a *shalish* that pressures the well-off to reach an accommodation with the impoverished. For instance, an affluent landowner might normally ignore legal demands for child maintenance payments from a woman he has impregnated, but the involvement of an influential NGO and an organised community can sometimes alter this dynamic.

- Some NGOs employ or contract with local lawyers to take on violent or other major criminal cases that cannot and should not be handled by *shalish*. This means that problems that might most lend themselves to corrupt influence via traditional *shalish* are instead

handled by police, prosecutors, and judges, with the NGOs trying to ensure (not always successfully) that those state actors are not themselves operating in a corrupt manner.

Combating IJS corruption in Sierra Leone: NGO engagement with local chiefs

Sierra Leone provides another example of NGO engagement with IJSs that combats instances of transactional corruption while ameliorating systemic abuses. Informal justice in that country features local chiefs, who in some respects have official status, presiding over disputes. Such alternatives to the formal justice system are important in Sierra Leone partly because the country's very few attorneys are concentrated in its capital, Freetown. In addition, in this fragile postwar society, minor disputes, unless dealt with promptly, can spiral into broader conflicts with community-wide or even more far-reaching political implications.

The NGO Timap for Justice was launched as a paralegal program by the Open Society Justice Initiative, a branch of the Open Society Foundations, in cooperation with NGOs based in Sierra Leone. Timap complements chief-based IJSs in some cases and provides an alternative in others: that is, it assists dedicated, honest chiefs where possible and works against or around corrupt or biased chiefs where necessary (Maru 2006). The initiative draws on the services of a few attorneys in cases where a lawyer's intervention is helpful or necessary. But the NGO mainly relies on community-based paralegals who provide dispute resolution services for individuals and sometimes work with entire communities where group interests are in play.

Timap has provided a model for a related initiative in Liberia, the Community Justice Advisor program, started by the US-based Carter Center and Liberian partner organizations (Chapman and Payne 2013). Like the efforts to adapt *shalish* in Bangladesh, the initiatives in Liberia and Sierra Leone have had positive development impacts reaching beyond dispute resolution, with implications for governance, the status of women, and socioeconomic progress. Several cases provide examples of Timap's work:

- An important chief intervened to the benefit of two of his relatives in their dispute with a local farmer. The chief also imposed fines on the farmer at several steps of the dispute resolution process. Once a Timap paralegal became involved, however, the farmer came to realise that the official law was on his side. Even more importantly, the paralegal focused the attention of other government officials on the chief's transgressions and raised the possibility of a Timap lawyer becoming engaged with the dispute. This combination of influences persuaded the chief to cease his interference in the matter and return to the farmer some of the funds the chief had extracted from him.

- A female street vendor who was beaten by a drunken local police officer found that the complaint she filed with his superiors was making no progress until a Timap paralegal became involved. Among other actions,

the paralegal provided a letter from one of the NGO's attorneys. The involvement of a lawyer who was based in the country's capital and working for a human rights organisation intimidated the officer. As a result, the officer apologised to the woman and provided her with compensation – not an ideal resolution in view of his criminal conduct, but better than the woman would have achieved otherwise.

- Though entitled to a grant of rice seeds from a national farmers' association, one village was refused such assistance unless it paid a bribe to a leader of the association. A Timap paralegal's knowledge of the law, his status as a relatively well-educated outsider, and his possession of a business card certifying him as an NGO human rights advocate persuaded the leader to release the seeds to the village.

How is it that Timap's paralegals are able to exert such influence? A few factors are worth noting. First of all, Timap operates under what could be called "the colour of law." That is, it is often not necessary for a paralegal to bring in one of the NGO's attorneys or otherwise work through the official, formal legal system. Timap has instituted a kind of IJS that is bolstered by the *possibility* that the NGO's attorney, or some other operator within the formal legal system, may enter the picture.

Second, the possibility of an influential person – a "big man," in the African vernacular – weighing in on the side of Timap's clients can persuade corrupt officials to reverse themselves. They may fear the consequences of challenging Timap because the law is against them. But they may be even more influenced by the spectre of politically powerful players – local or national figures, or even international actors such as donors – lining up against them.

Third, the informal justice mechanism that Timap has in effect instituted strives not to be confrontational; instead it plays a mediating role between clients and corrupt or abusive parties. The point is not usually punishment of the offenders but improved outcomes for the exploited. It is, in this sense, remedial more than punitive justice.

Of course, not all NGOs are honest, dedicated, and effective. Timap takes steps to ensure that its paralegals do their jobs well and do not exploit their knowledge and positions for their own corrupt benefit. The NGO has helped set up community committees that provide oversight of the paralegals and can report to the organisation's headquarters if there are problems with their conduct. Timap also has benefited from a World Bank–sponsored review of its operations that helped verify that its records are accurate and that clients and other community members are largely satisfied with its assistance (Dale 2009).

Recommendations for donors

While the formal justice sector is in urgent need of reform in some countries, informal justice systems are too important for donors to ignore. IJSs are the main vehicles for dispute resolution in many societies, and in some settings they can help prevent broader conflicts from arising. As an integral part of local governance structures with deep roots, informal justice systems are here to stay. But NGOs often

can work with, adapt, or modify them to reduce corruption and unfairness and improve development outcomes, as shown by the cases of Bangladesh and Sierra Leone.

In working with IJSs, donors should keep several points in mind:

First, this work must be grounded in a political economy analysis that takes account of the power structure in a community and views corruption as both a transactional and a systemic problem. Based on this analysis, donors can identify reformers and avenues for reform. As shown in both country cases, but especially in Bangladesh, the two categories of corruption are so entwined that IJS anti-corruption programs cannot be separated from broader efforts to work with and modify informal justice systems. Donors should reject mainly technical approaches that simply teach local leaders to mediate more effectively, or approaches that rely on state institutions possibly permeated by the same undue influences.

Second, civil society organisations, as a result of their greater flexibility and independence, have frequently proven superior to state institutions in working with and modifying IJSs. There is, however, no single model for NGO intervention. In Bangladesh, domestic NGOs have taken various approaches aimed at reinforcing positive elements of the country's *shalish*

system while ameliorating its corruption and biases. In post-conflict Sierra Leone and Liberia, where civil society is less developed, international NGOs have played a prominent role in working with local partners to launch paralegal programs that simultaneously strengthen and modify IJSs.

Third, donors in some countries might seek to gradually replace their own funding of paralegal/IJS programs with funding from national government coffers. But they should refrain from this path if political economy analysis suggests that national government control would fail to restrain IJS corruption. In addition, the governance and development benefits of sustained support for civil society work with IJS may justify the costs of ongoing donor aid.

Finally, action must be taken to ensure that NGOs themselves do not engage in corrupt or otherwise inappropriate activities even as they try to weed out such behaviour from IJSs. Capacity building to improve NGO record keeping can be a step in that direction. As in Sierra Leone, external reviews that utilise such records along with community interviews can help keep NGOs accountable. It can also be a good idea to establish or strengthen community structures or other mechanisms to oversee the performance of paralegals and other NGO workers.

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Notes

1 In some countries IJSs have been incorporated to varying degrees in the formal legal system. In such cases their key distinguishing feature is that they originated and evolved as informal, traditional systems, rather than first being introduced via colonial or other statutory legal systems.

2 These NGOs include, among others, the Madaripur Legal Aid Association, the community development group Nagorik Uddyog, the women's movement Banchte Shekha, and the women's legal services and policy advocacy institute Ain o Salish Kendra.

Further reading

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