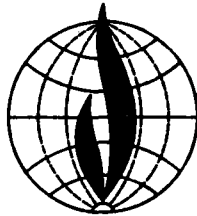


~~MASTER~~

**LEGAL SERVICES
IN
RURAL AFRICA**



**INTERNATIONAL COMMISSION OF JURISTS
AFRICAN BAR ASSOCIATION
ALL-AFRICA CONFERENCE OF CHURCHES**

box 9/6

**LEGAL SERVICES
IN
RURAL AFRICA**

**Report of a Seminar
held at
Limuru, near Nairobi**

1 to 4 October 1984

**INTERNATIONAL COMMISSION OF JURISTS
AFRICAN BAR ASSOCIATION
ALL-AFRICA CONFERENCE OF CHURCHES**

C. number 22

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P R E F A C E

In April 1983 a seminar was organised in Dakar, Senegal, bringing together leading African social scientists and lawyers under the auspices of CODESRIA, the African social scientists organisation, and the International Commission of Jurists.

The purpose of that meeting was to tell the participants something of the work that has been done in Latin America and more particularly in Asia to provide some basic legal services to the people in the rural areas who comprise the great majority of the population in third world countries. This was not the traditional legal aid, concentrating on providing defence lawyers in criminal cases. Rather, it was an attempt to provide the poorer sections of the population with all the other legal services which more affluent people enjoy - informing them of their rights, telling them how they can assert and claim those rights, giving advice on how to overcome obstruction and difficulties, negotiating on their behalf, where necessary, with those in authority, on occasions undertaking court work in cases of importance to the rural communities, and studying their problems and promoting necessary reforms in the law.

The basic problem to be overcome is that lawyers are in the towns and cities, and usually know relatively little about problems and conditions in the rural areas, and the rural populations are ignorant of the law and view lawyers with their traditional suspicion towards people from the towns. If they have any experience of lawyers, as often as not it is as an instrument of their oppression rather than of their liberation.

Consequently, in many of the projects in Latin America and Asia, recourse has been held to training 'para-legals' or 'bare-foot lawyers' from within the rural communities who will act as a bridge or link between the

lawyers and the rural populations.

The lawyers and social scientists at the meeting with CODESRIA were asked to consider whether the lawyers could play a useful role in the very different context of the African states in assisting the process of rural development, and in particular self-reliant community development. After some initial scepticism they were persuaded that the idea was worth pursuing. As was stated in the preface to the Report of the Seminar, "influential, educated and wealthy groups (both urban and rural based) are often able to make use of law and administrative institutions for their own narrow group or individual gains. The poor peasant has no chance of knowing and disentangling his legal rights in order to assert them. Even if the peasants are well informed, they often have no means and resources to pursue their rights. In practice, therefore, the right to development cannot, under these circumstances, have very much practical meaning to the peasants."

The Seminar concluded that lawyers should seek "to find out ways of making law accessible to the masses. Rural people should be helped by lawyers to organise themselves on a legal basis."

Following that meeting, another seminar was held in April 1984 between lawyers and development experts at Tambacounda in Eastern Senegal. On that occasion a lawyer from Brazil explained how this work is organised and carried out in her country. The seminar came to some important conclusions on how to adapt this model to the very different conditions prevailing in Senegal. As a follow-up to this seminar a pilot project has been started with university students working in the Tambacounda area.

Meanwhile, following the meeting with CODESRIA, the African Bar Association asked the International Commission of Jurists to assist them in mounting a seminar with participants from the 14 countries whose bar associations

are affiliated to the African Bar Association. We then jointly approached the All-Africa Conference of Churches, to ask if they would co-sponsor a seminar to which they would bring persons with experience in their grass-roots development programmes in the rural areas. They readily agreed and the outcome was the seminar held in Limuru, Kenya, in October 1984.

We were fortunate in persuading Father Joseph Idiakunnel to come to tell the seminar something of his work in four provinces of the State of Gujarat in India. These provinces have a rural population of about 5 million people and his organisation has been able to establish links with and provide legal services to some 600 villages and other community centres. This programme is run on an annual budget of only \$4,000, excluding the cost of training courses for para-legals.

Father Joseph's account of the work of his organisation fired the imagination of the participants, who then discussed how to adapt these ideas to their different situations. The results of their deliberations will be found in the Conclusions and Recommendations.

As few of the lawyers present had experience of popular participation through grass-roots rural development organisations in Africa, an outstanding paper on this subject by Jacques Bugnicourt was circulated to the participants. We are grateful to him and to UNICEF for permission to reproduce it here. The other working papers give an account of some projects and experiences in India and in Africa.

On behalf of the International Commission of Jurists, I wish to express our gratitude to the All-Africa Conference of Churches and the African Bar Association for their generous cooperation in organising this stimulating and rewarding seminar, which has already led to the initiation of some pilot projects. We are also most grateful to the Attorney-General of Kenya, the Honourable

Justice Muli, for the encouragement and support he gave to the sponsors of the seminar and for the honour he did us in coming to Limuru to open the seminar, as well as to the Limuru Conference Centre for allowing us to hold the seminar in attractive rural surroundings.

Finally, our thanks are due to the International Development Research Council of Canada, the Evangelical Centre for Development (EZE) of the Federal Republic of Germany, the Danish Government, and the Churches Commission for Participation in Development of the World Council of Churches for their generous contributions which made possible the seminar.

May 1985

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CONCLUSIONS AND RECOMMENDATIONS

Introduction

1. Many if not most people living in rural areas
 - are unaware of their legal rights,
 - lack formal education,
 - are liable to exploitation,
 - have no access to legal services, and
 - are too poor to pay for them.

Hence, there is an urgent need to provide legal services of all kinds as a contribution to self-reliant rural development.

2. The participants were concerned to find ways of making these services available. It was agreed that lawyers engaged on this task should work together with members of non-governmental organisations (NGOs) working for community development who have the confidence of the rural people. These include but are not limited to church groups, women's and youth organisations, health workers, adult education and other extension workers.

3. Working with such groups will help to
 - sensitise the lawyers concerned to the attitudes, traditions and situation of the rural communities,
 - surmount the geographical, linguistic and other barriers to communication, and
 - overcome attitudes of distrust towards lawyers that may be found among rural people.

4. The principal services to be provided are
 - education about the law,
 - helping to resolve conflicts and disputes within the communities,
 - providing access to lawyers, and
 - giving legal assistance by negotiating with authorities or in court proceedings.

The Content and Method of Educational Services

5. The content of the educational or sensitisation programme should be of two kinds:
- to provide general information about the law applicable to all,
 - to provide specific information about laws directly concerning the particular rural communities.
6. General information should include information on
- the need for law in society and the value to the whole community of obedience to the law,
 - the responsibilities and duties of everyone to their fellow men and women, to the communities in which they live, to neighbouring communities and to the State,
 - their fundamental human rights guaranteed by the constitution, the laws and international instruments.
- These include:
- o freedom of expression, freedom from arbitrary arrest and detention and the right to life,
 - o the right to food, shelter, health and education to the maximum of the available resources, and
 - o the right to participate in decision-making in matters concerning them, and the right to organise themselves for this purpose and to receive relevant information.
7. The specific information should include an explanation of
- the laws relating to issues of particular concern to them, e.g. land law and laws of succession,
 - how to claim their rights and discharge their obligations, and
 - how to obtain the assistance of a lawyer.
8. The aim should be to discuss with rural people how they can make use of the law to find solutions to their

problems and difficulties. The aim should be to find ways, wherever possible, to resolve disputes through mediation and conciliation. Recourse to litigation should be a last resort. This will not only promote reconciliation and harmony within the community, it will also help to minimise costs.

9. All information should be imparted in a simple and practical manner, in language and terms which will be meaningful to the rural people and related to their own experience. Use can be made of a great variety of means of communication, including meetings, visual aids, dramas in which the people can participate, puppet shows, posters, illustrated pamphlets, as well as the press, radio and other media. These programmes may also be integrated with adult education programmes, making use of their techniques.

Organisation

10. The seminar recommended participants from each country to establish a Rural Development Legal Services Committee. This should include representatives of church and other rural development NGOs, the bar association or law society, university faculties of law, social sciences and departments of adult education.

11. No universal model can be recommended for the organisation of legal services. Each committee must determine what form of organisation is best suited to national conditions and the needs of the rural people in their country.

12. However, it is recommended that schemes for providing these services should begin modestly with pilot projects based upon a survey of the area and community concerned. In some cases this may be done by expanding existing legal services, perhaps linked to services for the dissemination of information.

13. A dialogue should be established with the rural people

- to find out how they view their problems and difficulties, and the solutions which they seek,
- to create trust and rapport between them and those seeking to provide the services, and
- to sensitise those providing the services to the rural people.

14. National committees are recommended to mobilise resources for the provision of these services as far as possible within their own countries. In order to preserve their independence, they should not become dependent upon funding from their governments.

15. Paid staff should be kept to the minimum, and use should be made as far as possible of voluntary services, whether full-time or part-time.

16. Law firms, particularly those established in provincial centres, should be persuaded to devote a small percentage of their working time to the scheme for legal services without payment, or subject only to payment of their expenses. In particular, those engaged in litigation on behalf of the rural poor should be invited to provide this service for reduced or no fees.

Para-Legal Field Workers

17. Having received impressive accounts of their operation in other countries, the seminar strongly recommends that schemes for the provision of rural legal services should include the training and use of para-legal field workers. These are persons who will work within the rural communities and act as a link between practicing or university lawyers and the rural people.

18. Their work may be of three kinds:

- participation in the educational function described above,

- assisting in securing mediation and reconciliation in matters in dispute, and
- where necessary, conducting a preliminary investigation in cases which have to be referred to a lawyer, and reporting to the lawyer with witness statements and other relevant information.

19. Some will be able to perform all three functions, others only one or two. Some may do this work full-time. Most will do it part-time, combining it with other activities in the rural areas.

20. Where possible, it is preferable that para-legals be recruited from the area in which they will work, from development NGOs working in the field, or from other persons having the confidence of the people and speaking their language. Others may be court clerks coming from or having a particular interest in the rural areas, and, in particular, university students.

21. University law schools should be encouraged to create Legal Aid Clinics, and practical legal education centred on such clinics should be either compulsory or an optional course for which credit is given. Other faculties should give courses of a para-legal nature, so that their research projects in rural areas are sensitive to legal issues. Such research students could also be involved in para-legal services and studies for which academic credit is given.

22. Any fears among practicing lawyers that para-legals will deprive them of work or violate laws relating to legal practice are misconceived. Para-legals do not practice law. They inform people of their rights as many teachers and other non-lawyers do, and they collect information and statements to pass on to lawyers.

Training of Para-Legals

23. The training of para-legals should be undertaken jointly by persons from rural development NGOs, practicing lawyers from local bar associations or law societies and university staff or senior students, who should together draw up the training programme. They may be assisted in the training by others, such as community leaders, social workers, customary court officials, serving or retired judges or magistrates.

24. The training programme should be based upon research into the problems and needs of the rural population concerned and after the dialogue with them described in paragraph 13 above.

25. The nature and content of the training programmes will depend upon the prospective functions and level of education of those to be trained. The programmes may vary from short weekend courses, repeated periodically, for persons selected from the villages, to courses in depth lasting several months for persons with a more advanced level of education or experience. In general, programmes will include training in the basic principles of law, human relations and civics.

26. Those under training may usefully spend several days attending court to have some practical knowledge of court procedures. The education of para-legals, like that of the rural population, should be essentially practical and related to their experience or the work they will undertake.

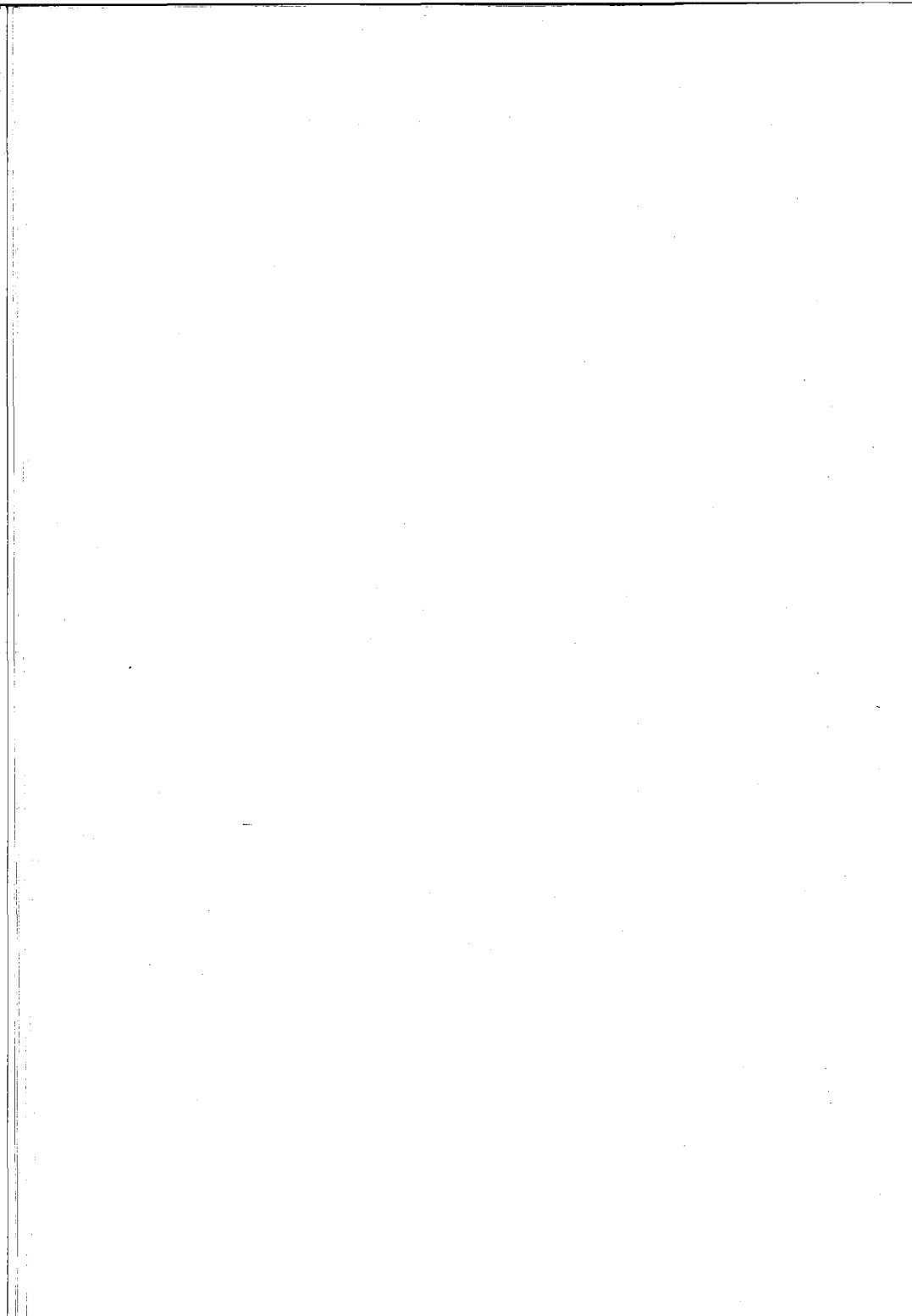
Evaluation

27. Finally, the seminar resolved that the participants from each country and organisation should undertake to implement the conclusions and recommendations of the seminar in their respective countries. The hope was expressed that the sponsoring organisations will organise a similar

seminar in Africa in, say, three years time to enable the participants to share their experiences, evaluate the results and make further recommendations.

The African Charter

28. The seminar also passed a resolution that all African States that have not already done so should be urged to ratify the African Charter of Human and Peoples Rights. It was considered that this would help to promote conditions of stability and peace which are necessary for the full realisation of human rights.



EXTRACTS FROM SPEECHES

Extracts from the speech of
The Hon. Justice Mr. Matthew Muli, M.P.
Attorney-General of Kenya

... The theme of this seminar is Legal Services in Rural Areas. This is an important topic that you have chosen to discuss during the seminar as it comes at a time when the Kenya Government has launched its current programme called District Focus for Rural Development. The Government has seen the dire need of approaching development of the country from a focal point which in our case is the District so as to encourage local initiative in order that we improve identification of problem, resource mobilisation and utilisation and project implementation.

The majority of our people live in the rural areas and this is where services are mostly required. We have found that services centrally directed do not reach out into the rural areas and when they do, they are not sufficient and effectively implemented. We have also learned from experience that our people are not consulted sufficiently on the type of services they would like to receive in the rural areas. It is the intention that they should be consulted and should participate in the implementation of any policy that will affect them. In this way decentralisation of services to the rural areas will enable the Districts which will now be the centres of development to identify priorities to be attached to development within the entire Districts without direct reliance on Central Government Development Plans but at the same time working within the entire National Development Plans.

In Kenya, legal and judicial services are part of the many services the Government offers to its people. They must be decentralised to reach the rural folk. In

your discussions today and the days that follow you will examine these services and see whether as they exist at the moment they serve the rural folk sufficiently. You will no doubt make appropriate recommendations which the Government will be happy to receive and consider. In this context I would suggest that you examine the subject not only from the legal point of view but also in the context of our social, economic and political background. I say this because our society used to have a legal system which suited circumstances in the past and upon this system was superimposed the modern legal systems based on borrowed ideas and complex machinery of legal systems. From your deliberations you will find out whether our present legal system is understood fully.

... I wish also to point out that my Chambers help in a small way to educate the people of Kenya through the Voice of Kenya on their legal rights and responsibilities. The programme, which is called "Radio Lawyer", appears in English. Various topics of public importance in law are discussed on the programme and I am happy with this little contribution my Chambers makes towards providing legal services to the rural folk. I cannot say straight-off how effective the programme is to the rural folk but I can definitely say that it is a positive step in the right direction.

The Law Society has started a magazine called "The Advocate" whose aim is to educate our people on their legal rights and responsibilities. It is at the moment only published in English and it is hoped that if facilities were to allow it, it should be possible to publish it both in English and Kiswahili so that a majority of our people would be able to read and understand it.

* * * * *

Extracts from the speech of

Mr. Lee Muthoga

President of the African Bar Association

... For the benefit of those who are not familiar with the African Bar Association, I should perhaps say that it is an association federating all the Bar Associations and Law Societies in what is commonly, but loosely, referred to as Anglophone Africa - that Africa which "enjoyed" the colonial domination of Great Britain and which on becoming independent states became members of what was originally the British Commonwealth and subsequently became the Commonwealth of Nations. One of the main objects of the African Bar Association is:

"To improve legal services to the public generally, including:

- (i) education of the public concerning the importance and meaning of the Rule of Law, and
- (ii) the promotion and development of strong, efficient and independent legal aid services."

Another equally important object of the association is:

"To improve the standards of legal practice by:

- (i) exchange of ideas, knowledge and cooperation through newsletters and conferences."

It is also an object of the Association:

"To encourage cooperation with other associations or bodies throughout the world having similar aims and objects.

It is in pursuance of these objects that my Association approached the International Commission of Jurists about the possibility of holding a Seminar somewhere on the Eastern side of Africa to discuss the topic "Legal Services in Rural Areas" or, more specifically, "The type and manner of dispensation of Legal Services to Rural Communities in Africa".

... In Kenya, as everywhere else on the continent, the majority of the population live in rural areas. It is a legacy of our colonial past that in nearly all countries of Africa, except perhaps the insular states, well over 80% of the total population live in rural areas enjoying, in comparative terms, fewer social amenities than their urban compatriots. It is the tragedy of colonisation that rural life is equated to poverty and indigency. One cannot talk of the rural communities without talking of the poor communities. The comparative affluence of urban dwellers and the inequitable distribution of social amenities has tended to make people believe that rural communities must, by definition, be poor. It has led them to believe that they are rural because they are poor and not the other way round. If this seminar is to succeed, as I have no doubt it will, it must address itself to and perhaps formulate a strategy by which the "rural folks" as they are sometimes called, can be enabled to become active consumers of legal services - a strategy which makes it possible for them to understand, claim and enforce their legal rights in the same way as their urban brethren do. The strategy must be one which is typically African because the circumstances of our rural poor are, to some extent, quite peculiar to Africa. Urbanisation was, as everyone knows, used as an instrument of colonial administration and a method of asserting the superior nature of the coloniser's culture. Urban societies enjoyed, and still enjoy, comparatively better social amenities than the rural ones. The towns and cities are regarded as the preserve of the lucky few. The enlightened and the well-off are expected to drift away into the urban centres to enjoy a better standard of living. The provision of social amenities and economic benefits to the rural masses has, of course, been hampered by the fact that in

most cases the population is dispersed in the countryside with families living distances apart. In some cases the problem is compounded by the fact that the communities are nomadic and move from place to place as weather and climatic conditions dictate. We must in the days ahead grapple with this problem and perhaps evolve an appropriate strategy.

... Delegates and participants have been chosen on the basis of their special involvement in the advancement of one or other aspect of rural life or for their concern for and special knowledge of the problems related to the rural poor and rural life in general. It should not, therefore, be too difficult for us to find solutions to the many queries that the seminar will raise. Speakers and paper presenters have been chosen on a like criteria. Working papers have been prepared by people who are very knowledgeable in their fields and who have some experience in one or other aspect of rural life.

My challenge to you this morning is to come out with a method by which we shall, in the not too distant future, be able to consider and debate the problems and conditions of the rural communities in their presence and with their participation.

* * * * *

Extracts from the speech of
Mr. Akafwale Muvale
Personal Assistant to the General Secretary
of the All Africa Conference of Churches

... The AACC 4th General Assembly held in Nairobi in 1981 looked very seriously at the churches' role in development and came up with the recommendation that:

"In order to enable the churches to be more effective the All Africa Conference of Churches should endeavour to enhance their awareness of the political, economic and social realities of the African continent and the world, as it is only after this is achieved that the churches can determine their role in Africa."

... In analysing the churches' involvement in objectives for development we realise that contradictions exist between these objectives and what we are able to or committed to accomplish. It is evident that in order to increase the effectiveness of our efforts we must be able to identify clearly the causes for those contradictions between our goals and our performance.

... Africa abounds with varieties of peculiar national contexts and development philosophies that influence and sometimes shape the expression of the churches differently in different situations. But there are general patterns of constraints to the churches' involvement in development that should be the objects of conscious attention. Indeed they represent inherent contradictions between development objectives/assumptions and the concrete historical realities in which churches must operate.

The African political-economic contexts, for instance, are recognised to be highly restrictive. It would seem that the pre-independence cry for *freedom* has degenerated into

a freedom merely for the leading nationalists to rule their people, not paying much attention to the ideals of liberty, that should have fired the struggle. Nearly a quarter century after the end of the colonial era in many countries the result of independence is a litany of repressive systems of government, if not outright horror. More than half of the 50 members of the OAU are controlled either directly or indirectly by military regimes. In most of those, civil liberties are almost virtually non-existent. Autocratic one-party rules are increasing, being portrayed as the only way Africa can be governed. Executions and detentions without trial are commonplace. For the sake of "development", human rights and individual liberties are suspended.

... The condition of under-development which began with the process of cultural alienation is being perpetuated within the structures now being employed for development.

It is important for the Church to recognise that development today, even more than programmes, is a political activity, for it cannot happen if questions of power and social structure are not tackled. Why, for instance, do hundreds of thousands of peasants in Africa continue to perish for lack of food, when it is they who produce the supply of cereal, tubers, oilseeds, fruit and meat, theoretically holding the power of life and death? Instead of transforming peasants, the "modernisation" strategy has merely stagnated them, creating dual societies with ominous statistics.

... Development is a specific way of looking at and promoting social change, with the understanding that change should bring improvement to all categories of people. Thus development is concerned with justice, as well as means.

Development therefore presupposes that the structures through which it must operate would be designed to work for change in society. A pre-requisite for such a task is that the agencies that assume development work must have in their

own structures and operations, built-in self-evaluation mechanisms that promote flexibility and progressive change. Awareness within the churches and within the communities they serve is essential. This raises the need for Development Education. The position of the AACC, therefore, is that if the Church is to fulfil its role as a catalyst for development, education must become a priority. The goal of development education is to build awareness among the churches and communities in order to make them partners in development and active participants rather than passive recipients. More specifically, development education:

- (i) would help the people understand social and economic changes as it affects them in their environment,
- (ii) would help them establish the proper channels to receive information, to express themselves, and to participate in social and economic change.

... Christian institutions offer an exceptionally good framework for promoting a new set of social relations adapted to development; for reasons both ideological and political:

- they maintain a set of values based on the commandment of love which reinforces the notions of sharing and cooperation,
- the Church has structures and personnel through which grass-roots programmes can be carried out with the maximum coverage and efficiency.

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WORKING PAPERS

Popular Participation in development
in Africa*

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Some concrete examples of participation in Africa

The term "popular participation" can, of course, be defined in several ways.

In principle and in practice, "popular participation" is opposed to centralised decision making and to the reduction of rural and urban populations to the role of passive executants. It has, nevertheless, several forms: participation in discussions, participation in decision making (at various levels), in training, in execution, in management, in control, and in education. Participation also varies in intensity - those participating may feel themselves more or less committed, for a shorter or a longer period...

Rather than discuss abstract definitions, it may perhaps be more useful to try to define some cases of popular participation, in order to take its exact measurements.

A water supply for a squatter settlement

In Africa, the taking over of problems of urban development by the inhabitants of poorer areas offers some significant examples of participation.

* From Community Participation, UNICEF.

There is a district in a town in Central Africa that is built on marshy ground and so little recognised by the administration that it used to appear on the town plan as "open space". An interdisciplinary team came to work in the district after consulting with the local leaders and various local groups. The goal of these economists, town planners, geographers, engineers, etc., was, first of all, to listen to the people, who did in fact begin to talk about the problems they thought essential - more particularly, about health problems. "What worries us", said the women, "is that our children grow sick and die". It quickly became obvious that the main cause of this morbidity and mortality was the polluted water. A team was then formed, consisting of outside experts and local inhabitants. The team visited the water works and the municipal council: they found that there was no piped water in the area because, legally speaking, it was not a human settlement and because the funds available had been spent on tarring the roads in the wealthy quarters. Neither could the authorities say how much a piped water supply would cost.

So, on the basis of a map rapidly drawn up by a geographer from an aerial photograph, the inhabitants went to work. Various alternatives were studied, and those whose houses were close to the future water points were called on for their opinion.

A rough plan for the network was soon established, on the basis of the wishes of the inhabitants and their approach to the problem. But it became clear that there would not be enough money for such heavy costs. The following evening was one of discouragement. By the next morning, however, the inhabitants - who had talked all night - had broken the costs down and now offered to do a large part of the work themselves, including the digging and filling of the ditches. A number of masons were ready to supply their labour free of charge to build the bases for the water taps.

After some explanatory meetings, which included most of the inhabitants of the area, an arrangement was arrived at whereby most of the costs were assumed by the population; lists were drawn up of each one's commitments.

Anxiety about health, irritation over the absence of a drinking water supply, and the slum dwellers' feeling of powerlessness thus gave place to a calm certainty on the part of the people that they were in a position to solve for themselves an important problem of their daily lives. From a situation where, in the dialogue with the authorities, the inhabitants played the role of those receiving aid, the scenario changed to one in which discussion made the technical aspects understandable to all, and where groups of neighbours undertook to contribute their labour or make cash payments to accomplish something for the common good.

Neighbourhood pharmacies and public services instead of eviction

Consider now the case of a slum in a large city in West Africa.

Among the threatening problems that weighed upon its inhabitants, sickness on the one hand, and the risk of its demolition - since it was classed as "unauthorised" - on the other, seemed to be the most disquieting. Towards the end of 1980, several families expressed a wish to have access to commonly used medicines. Groups of several persons set up inter-family pharmacies and ran them, without problems, for almost a year.

At that point, the minister of health asked the medical attendants at the public dispensaries "to encourage popular participation in the creation of health committees". In the district in question, the medical attendant at once tried to install a committee of his own cronies. The district's general assembly did not agree: "Since we already have among us neighbours who know about drugs and who have shown for months now that they know what to do,

let us appoint them to the committee". This was done and delegates from the family pharmacies were put in charge of the dispensary's stocks. Very soon they protested that there was a certain amount of waste. The medical attendant did his best to get rid of this "intolerable" supervision. But the minister did not back him up. Instead of regarding health as a problem for technicians, and putting up with the continued misappropriation of the drugs, the people took responsibility for it.

Problems of the same kind arose in respect of housing: certain technicians tried to apply to the neighbourhood the broad outlines of the city's master plan, drawn up fifteen years earlier. They agreed, however - and with them the students at the School of Architecture - to the proposal that another method should be tried, and that they should work with the population and with an international non-governmental organisation* to draw up a plan that would respect most of the housing that was already there. After consultations lasting eight months, a general assembly of the residents approved a plan under which public utilities and services would be installed and roads constructed with a minimum of demolition.

In an unexpected reversal of direction, however, the administrative services suddenly decided to disregard this plan, in which they had collaborated, and to adopt a scheme based solely on technical considerations and implying the demolition of at least a quarter of the existing built-up area. A bulldozer was sent in, but, in the face of the feeling aroused among the population by its arrival, knocked down only one building. The people called a new assembly to bring the matter to the attention of the political leaders: "You agreed to discuss this with us, and now you want to impose unilaterally your out-dated plan: what are you playing at?" In less than a year, the inhabitants had passed from the stage of anonymous and passive citizens of a city where decisions were made without them to a clear

* In this case, ENDA, P.O. Box 3370, Dakar.

perception of the urban imperatives and of their own possibility of taking part in the decision making.

In a rural area, the recording of local knowledge and kits of traditional and modern drugs

In various African countries, a number of similar examples can be cited in the rural areas.

In the loop of the Niger River, there is a group of villages inhabited by Peuls who are both farmers and herds-men. One might have expected them to ask for help in drilling wells, improving the pasture lands, or diversifying the fodder crops along the trails. However, that is not what the inhabitants of the area gave priority to; instead, they asked to "make books in their own tongue". When it was explained to them that it was not possible to set up a printing press, they suggested that other procedures should be looked for. In fact, silk-screen printing appeared to be a possible answer to the problem. "Give us", they said, "these simple machines so that our papers can be printed." But the NGO concerned preferred a different approach, and instead provided tools, boards, and silk gauze - as well as sheets of paper - so that the peasants could do the work themselves.

Which they did. They built several silk-screen frames and assembled "printed" pages on these simple machines, making collections of texts to which everyone contributed what he thought was interesting: proverbs, legends, riddles, history, linguistics, agronomy... Everything, from the viewpoint of modern science, higgledy-piggledy - but in fact a reflection of the complexity and the interactions of real-life situations.

Rather than being satisfied with information and books coming from the capital and the regional centres, rather than remaining passive and waiting for information and books from elsewhere, these Peuls decided that they knew some important things, that this knowledge was their

own affair, and that they could, by themselves, respond in part to the expectations of their own group in that field.

There then arose, in the same area, the problem of health. Doctors and nurses were far away, drugs were often out of stock and, when they were available, expensive to buy.

There was some traditional medical knowledge. But for a long time the attitude of the city people had been to liken it to witchcraft and quackery. The peasants wanted to discuss health seriously: they therefore invited a number of renowned traditional healers and the partner organisation provided them with a physician. To prepare the meeting, they drew up a list of the principal diseases, in the Peul language, together with their symptoms and the traditional remedies. On the basis of the list, the meeting was to propose either local medications or "modern drugs", and to determine, for each type of malady, the most suitable and least costly treatment.

Going still further, some of the inhabitants and their neighbours organised health huts, where a simple medical kit was kept together with the most frequently used herbs and pharmaceutical products. Instead of relying on a reinforcement of the centrally organised medical services, the peasants of this area thus got together to find appropriate responses to their most serious medical problems.

An exchange of agricultural know-how
for greater food self-sufficiency

Let us turn now to a plateau in south-western Togo. Export crops have expanded to the best land and henceforward it will be necessary to buy food. The population has discussed the problem and sent delegations to other peasant groups who have recently started expanding food crops again. The people of the plateau charter trucks for the visit, discuss methods, invite the farmers from nearby to come and given them the benefit of their advice. After

a few months, the fields devoted to food crops have expanded considerably. Collective reflection, action decided upon locally, and self-organisation have reduced dependence on supplies from outside and partly restored the balance of the agricultural system.

These examples can be multiplied - they are to be found in nearly all the countries. The sequence of events on each occasion is the same: the villagers or the city dwellers analyse the situation jointly and then take action, also jointly. This is rightly called "participation".

Most of the examples uncovered are so convincing that one wonders how it happens that participation has not taken on wider forms, since it seems to go in the direction of true development. But is this really the case ?

Arguments for popular participation

Can we go so far as to state that participation constitutes, in actual fact, a precondition for African development ? And if so, in what forms ?

Need for recourse to human resources

The need for a general recourse to what has been called "human investment" can hardly be doubted. There cannot be enough pre-fabs for all the schools and all the dispensaries that must be built. Bulldozers are too expensive to be used to clear every track. And engineering and construction firms are not in a position to prepare and carry out the hundreds of irrigation projects required... The choice in many cases is simple: either the people will do a good part of the work or it will not be done at all.

Considering the tremendous amount of under-employment, it is clear that there exists a considerable potential for the mobilisation of manpower. There is then a choice between recruiting it as paid labour, requisitioning it, or encouraging voluntary collaboration. In Africa, the

first two solutions have not, in general, produced striking results. Requisitioning, in particular, is still looked at askance by Africans, who are reminded of the forced labour of colonial times.

From an economic viewpoint, one of the main levers of development must surely be the supply of labour that could be made useful - provided the population so wished, provided the aims were chosen and accepted by the people, and provided their mobilisation involved genuine participation. Added to this is the fact that many of the results (schools, dispensaries, roads) are in the local interest: the fact that they are built by those who will benefit from them provides a certain guarantee that the work will be well done, and that the future operation and maintenance of the installation or services will be taken care of.

A better use of local possibilities

Another economic aspect further reinforces the argument in favour of participation: since the resources are no longer identified and put into effect by a centralised process, the discovery and exploitation of many unperceived local resources becomes possible. Given generalised participation, multiple local responses to needs appear, without the need for government intervention.

From the social point of view, the presence or absence of popular participation has immediate implications. The imitation of European or American methods and techniques leads to recourse to types of equipment that require specialised personnel and the use of imported parts; these mechanisms presuppose ties between government departments and commercial firms, and lead to profit-making and increasing social differentiation.

The tendency, on the other hand, of rural or urban groups seeking a solution to their problems is most often to share responsibility among many and to maximise collective advantages: the distaste of many African societies for the

creation of new forms of inequality is well-known. In most cases, participation has the merit of strengthening the cohesiveness of what are called grass-root groups.* Various forms of solidarity thus have an opportunity to reaffirm and consolidate themselves.

Politically, it is true that centralised systems of decision making and execution often seem essential to the existence of newly created states. From this point of view, things must be done according to the decisions of the central power, whether it is democratic or not, and it is the duty of each citizen to obey political instructions and implement directives aimed at bringing about development. This system - which in the abstract no doubt has merit - has not shown itself to be truly effective in Africa in the last two decades.

Therefore, there is every reason to wonder whether generalised participation might not serve as a basis for an alternative system, where decision making and the direct execution of a part of the essential tasks would be assured through the local exercise of power. Instead of a national power effective only on certain issues, with ill-defined and often arbitrary local centres of power, a division of labour could be brought about between the grass-roots and the regional and national levels through which a large part of the local problems could be solved locally. This is - in many countries - envisaged in the constitution - but, from one country to another, translated very differently into fact.

In other words, it seems that many of the people's aspirations and many of their essential needs could be relatively speedily served, if popular participation in development were to become generalised. But in order to do so, serious difficulties still have to be surmounted.

* This term is taken to mean a group of peasants or town dwellers who are aware of a certain common interest and who may be linked by a more or less loose form of organisation.

Obstacles to a generalisation of popular participation

The reduction of differing realities to a simple abstraction

What must be guarded against, first of all - particularly in matters of popular participation - is reducing differing realities to a simple ambiguous abstraction. The concept of participation and the diversity of specific participatory forms only take on their full significance in relation to the productive forces, the social structures, the ideologies, and the modes of thought of the various regions of Africa.

There are vast areas where the management of the land and other basic resources has remained largely in the hands of the group, and where there are still the original ties, binding individuals one to another and families among themselves, where the "common good" of the village or the district retains a meaning for most of their inhabitants. The nature of the tasks to be accomplished, the reference to a customary solidarity still present to all minds, gives participation a special significance.

Elsewhere, where the influence of the world market is more direct, the "modern" forms of production more dominant, and monetarisation more widespread, the most forceful ideology is that of competition and free enterprise. In this context, limited forms of popular participation can be of interest to the most disadvantaged. But the general trend is not to practice it, not to understand it, and, sometimes, to distrust it.

Participation must be situated in relation to these deep socio-economic structures, even if its present importance and its chances in the long term are not unrelated to the ideologies proclaimed by the various political regimes which share the African continent.

To be sure, some forms of active participation have asserted themselves - and still do - in certain places and at certain times. This is the case with the peasant and

worker self-management movement in Algeria immediately after independence, the fighter villages organised in Guinea-Bissau according to the principles laid down by Amilcar Cabral, the animation rurale in Senegal in the 1960s - in which Mamadou Dia saw "the veritable revolution of the people" - and the Ujamaa villages in Tanzania, established, at the wish of President Nyerere, for peasant participation. This type of more or less socialist-inspired participation had its counterpart, in other parts of the African continent, in efforts of a different inspiration. In the Arab countries, some movements were related to the Uma - in other words, the community of the faithful - and defended community concepts without really succeeding in translating them into action. In a number of countries that had been under British trusteeship, the reference was to "community development"; it was as though the types of organisation set up by the social workers would be managed without difficulty by village committees truly drawn from the peasantry and expressing their will.

Thus, in most African countries, it has been possible, at one time or another - but rarely continuously - to encourage popular participation. This has resulted, on the one hand, in a great number of highly diversified isolated participatory activities, and on the other, in a number of major projects, some attaining a certain repute.*

The pitfalls of government-organised participation

The overall impression one draws from these attempts - through having been in contact with a number of them and even involved in some of them - is that although open or

* Whatever their outcome, these projects should be subjected to a systematic analysis. Within the limits of the present paper, however, it would be tedious and not very meaningful to try to review the most significant participatory activities that have taken place in Africa during the last twenty years. It would be interesting, on the other hand, to undertake a comparative study of them, paying particular attention to a correct evaluation of the internal and external factors which played a part in their genesis and evolution.

incipient hostility on the part of public authorities towards participatory activities may seriously impede them, government goodwill on the other hand does not suffice for popular participation to unfold on a large scale. In the latter case, the truth is that official support has often resulted in a blossoming of forms of pseudo-participation. Two variants are frequently encountered: the first is the pseudo-cooperative, which sometimes serves as a framework for the entire peasantry of a country, while being in fact an adjunct of the administration and providing an opportunity for a few merchants and notables to exercise power. The second form is that which gives pride of place to the local committee of the party, which is deemed to express democratically the will of the members but which in reality most often reflects hierarchically transmitted impulses.

In assessing the various forms of popular participation in Africa, it is always essential to take into account the economic conditions and the divergencies of interest among social groups. Reference to the formal political framework is not without use, though less of a determinant; a doctrine that is in favour of participation will undoubtedly create more favourable conditions than ideologies which are opposed to it, but it will also enlarge the possibilities for distorting the concept and its practice. In actual fact, it is only by sharing the life of the people and together with them - on the basis of their needs, their aspirations, and of relations of trust forged in the daily struggle of life - that one can determine whether or not a particular activity involves genuine popular participation.

Varying cultural traits

It would be a mistake, however, to believe that the greater or lesser degree of participation found in one area or another is determined only by recent social and economic changes and by the penetration of more or less strong ideological currents. The interest of a people in participation and, perhaps, its motivation for achieving it, seem to vary. It would be interesting to bring out the specific

cultural traits which encourage or discourage popular participation among the different African peoples.

The indiscriminate application of participatory models

One of the greatest difficulties encountered in connection with popular participation in Africa is that those who support it or who desire to become the partners of grass-root groups tend to be insufficiently informed about the economic and social contexts and to favour the indiscriminate application of participatory models designed at a higher level.

The distortion of the concept of participation

Other obstacles to success and to the expansion of popular participation in development lie in the existence of many experiments wrongly baptised "participation".

Forced participation has known many forms. No doubt in traditional communities there existed forms of participation - particularly those imposed on the lower social orders - which were not all greeted with enthusiasm. Onto these were grafted certain colonial or post-colonial administrative practices, such as the repair of certain roadways or the cleaning of certain neighbourhoods, which were forced labour pure and simple.

Yet the distortion of the concept of participation has been pushed much further. First, it has been used to camouflage all sorts of contributions levied on both town and country dwellers: the arrival of a leading citizen, a speech to the assembled population, acquiescence out of courtesy, and work started without anyone having found out whether the people concerned have really understood what is being asked of them and are volunteering to do it.

This has become the daily reality in a number of so-called participatory institutions. There is an institutional model in which the social worker or moniteur in fact

does the deciding for the rest of the population. Many of the achievements presented as the result of participation were planned and put into effect quite independently of the people concerned, who were merely asked to contribute a few days' labour. A second type of institutional deviation which is widespread almost throughout Africa is the pseudo-cooperative, whose statutes, internal regulations, and modes of operation are all pre-determined, and whose chief officer and treasurer are very often not at all the persons whom the growers or breeders or fishermen would have liked. It would be interesting to examine this sector of pseudo-participation closely.*

A third type of participation - referred to earlier - is assumed to be widespread in countries where the structures of a single or pre-dominant political party are particularly powerful. In one of the countries responding to this description, experiments were started in urban self-help housing projects; collective building enterprises were set up and the replacement of make-shift homes by new dwellings began. The groups carrying out these operations consisted of volunteers and made their own decisions. The party then gave them a choice: either to allow themselves to be integrated into the political structures or to disappear. "We represent", said the party officials, "the only form of participation that is conceivable, for we are the Party of the People, and no one can claim to participate apart from the people." The self-help construction and the concerted development of these districts stopped shortly afterwards...

The expansion of participation thus suffers, in many countries, from the misuse of the concept and the image it has in the eyes of the population as a result.

* During the preparation of this paper, a large number of cases of participation were examined, covering about 30 African states. Except for those which the writer knew personally, it proved impossible from the descriptions available to determine whether they really were cases of participation or whether they were in fact experiments manipulated either by the government authorities or by national or foreign organisations.

The difficulty of expanding traditional forms of participation

A problem of another kind results from the difficulty of expanding "traditional" forms of participation. Peer groups, customary associations of women or young people, tontines, etc., constitute types of participation that function smoothly through long usage - though they may in certain cases have been weakened slightly by modern living. One would think it would be easy to enlarge their role and their impact. But no doubt there is hesitation on the part of those concerned to identify these practices with the concept of generalised participation and to extend them to areas that have hitherto been outside their field.

The anti-participatory orientation of educational and administrative systems

There is, however, a much more essential obstacle to generalised participation: namely, the ideas and behaviour inculcated by the educational and administrative systems that have been installed.

Competition, not cooperation and solidarity, in the schools

In nine out of ten schools in Africa today, what the children are taught is not participation but rivalry: the most gifted, or the most hard-working, or the luckiest, keeps his results for himself and the weaker or less fortunate are condemned to elimination along the educational way. What President Nyrere wrote in 1967 is still true: the school system inherited from colonialism "encourages the individualistic and not the cooperative instincts of man" and "reinforces attitudes of inequality".

We are far from the spirit of solidarity of the peer groups in pre-colonial societies, where everyone helped everyone else. The modern school means a rupture of this solidarity both with fellow pupils and, what is more serious, with society and the environment. Neither

lessons in civics nor the little work done in groups truly rectify the anti-participatory orientation of the school system. Are not school farms or gardens, for example, often cultivated by the worst students for the teacher's benefit, with all the negative educational values that this implies? Paradoxically, if there is any participation, it is before the school starts to operate, at the time when the village or the district is gathering together the means to obtain a school, in order to provide the children with better opportunities. Then the school functions by breaking these ties without providing any new ones.

Of course, notable attempts have been made to offset this trend: for example, the Ujamaa villages, ruralised education, functional literacy campaigns... Few of the results have been conclusive or capable of generalisation, as is shown by the courageous evaluations made by the countries that have tried such experiments. Schools remain, almost everywhere, an education in individualism.

Little interest among administrators in contact
with the grass-roots

The administrative system is a prolongation of the anti-participatory attitude of the schools. The hierarchical spirit, bureaucratic tendencies, preference for written communication and paper work over direct contact (when, in Africa, many important problems are settled by oral debate), the desire for standardisation, insufficient personal commitment on the part of public servants - all this contributes to the formation of a real allergy to participation in administrative circles.

In both villages and town districts, government workers seem to believe that by disseminating a particular idea or a particular technique, they will automatically obtain a particular result. They think they can do without a dialogue with the grass-root groups, which in fact would give them access to the inside system of communication, the real place where opinions are formed and shared. Presenting

themselves as "specialists", situating themselves in the hierarchical system of "modern" society, the majority of government agents show little appreciation of the experience and knowledge of the people, little awareness of the creative potential of the peasants or slum dwellers, and little ability to examine their behaviour in relation to the majority of the population in town or country.

Not only are many public servants unwilling to live in the country, but they have not been trained to listen to the peasants, to adjust to their rhythm of life and their ways of arriving at decisions, to place themselves really at their service.

A past scorn for "traditional" knowledge

Moreover, a screen of sorts has been erected which fosters an indifference towards participation: this is the stereotype of the peasant or slum dweller as seen by the ruling classes. They entertain serious doubts as to the ability of grass-root groups to understand situations, to analyse them and propose solutions, to translate these into action and to evaluate the results. A certain scorn subsists in regard to "traditional" knowledge and the colonial prejudice against the "savages" encountered in the bush still lives on. There are doubts about the capacity of the most disadvantaged, in terms of intelligence and freedom of action. The technicians think that their science should provide all the answers and many politicians believe it is their responsibility to think for others. Participation can only be promoted where there is a degree of humility on the part of technical experts and political officials.

The encouragement of dependence on the state

In addition, there is an aspect of government's approach to participation that gives cause for concern. This is the way in which a limited government contribution to the construction of a silo, or the digging of a well, will be accompanied by a discourse on the theme: "See now,

your troubles are over, the State is helping you." It would be quite a different style to support the same type of project while explaining: "You are disadvantaged in comparison with certain parts of the country; you have completed this project basically by yourselves, and, to the extent that you increase your efforts, you are entitled to more support from the government." In other words, some types of relationships between the government and rural or urban communities can help to demobilise the population, while others can increase both their ability to solve their problems on the spot and their capacity to analyse the overall situation.

It is true that this second hypothesis is difficult to verify, as it is rarely encountered in practice. In general, the administration administers; it does not delegate, it does not negotiate, it does not consider groups of peasants or town dwellers as partners. When it asks for their participation, its aim is the execution of pre-determined tasks at the lowest possible cost, or else the alleviation of its own obligations.

The burden of participation the heaviest
for the most disadvantaged

This brings up yet another limitation to participation: is it not often used as an alibi to shift the burden of certain responsibilities which the state ought to assume onto the shoulders of the urban or rural poor ?

Imitating what takes place in the industrialised countries, people come to look upon the state as the great provider and ask it to provide food, to build houses, to set up and run schools for all... A degree of collusion takes place between certain outside organisations and some privileged groups in Africa to defend the argument that, after all, the peasants and poor town dwellers have only to "participate", that is to say, make themselves the effort needed to secure what the privileged part of the population enjoys free of charge, thanks to public financing.

The criticism of participation becomes even sharper when it is demonstrated that in a village or district, the burden of participation - on the face of it, egalitarian - in fact falls much more heavily on the most deprived than on the more advantaged. Added to this is the danger that social differentiations at the local level may be glossed over and the clashes of interest between social categories minimised in the name of participation.

In addition, unlike parliamentary participation, popular participation, which functions directly, and necessarily on a local scale, can divert attention away from problems of national interest.

Inappropriateness of foreign theories to the African situation

The prospects for popular participation have been rendered even more confused by the incursion into Africa of theories of participation from the East, the Mediterranean, or across the Atlantic. This participationism - often influenced by Christian or Maoist thought - undoubtedly mobilises much goodwill, but is not exactly suited to the African situation, and leads to distorted interpretations.

The cornerstone of participation: a sharing of power

Thus the difficulties pile up. The example set by those who talk about participation is far from being always conclusive, and it is a long way from fine words to deeds.

In the end, the stumbling block in the way of generalised participation is political: there is a social choice to be made not only by government, but at every level where authority is exercised. If popular participation is to be limited solely to the execution of tasks, it will have little chance of obtaining real and lasting support. If it is accepted that participation should start at the stage of conception and still be in evidence at the stage of supervision, then it is necessary to agree

to share certain elements of power. The extent to which participation genuinely exists in the different African countries depends on the degree of confidence that governments and public servants have in their people.

The priorities for a generalised popular participation

Attention to the methods used in problem solving

Among the possible responses to the question of where to begin, some spring to mind at once. Either one must devote oneself primarily to the satisfaction of the most pressing basic needs, or else one must first reinforce the potential for participation.

Of course, questions must be raised about the style of participatory actions. It is obvious, for example, that there are several ways of ensuring food supplies the year round, of building a school, or of fighting an endemic disease. The main product of an operation will, of course, be granaries to store the harvest, a finished building, or a lower incidence of disease. Yet there is an additional product: the way in which those results were achieved will result in either the reinforcing or the weakening of the capacity of the villagers or townspeople to analyse, to discuss, to decide, and to achieve.

In point of fact, in every development activity undertaken, the question should be raised as to whether the approach taken will, or will not, strengthen the population's sense of responsibility and its capacity for initiative. The end results will depend to a large extent on the response of the grass-root groups to the participatory approach, and on how conducive their situation is to making evaluations and exchanging opinions.

Recognition of and support for traditional systems of communication

It is for this reason that communication at the grass-root level takes on a special importance. Recognising its fundamental role implies, no doubt, a break with the idea that the transmission of information, or the demonstration of a technique, automatically engenders a change in the group being addressed, and that one is faced with a stimulus-reaction or transmitter-receiver type of phenomenon. In fact, in most parts of Africa, the extension worker or organiser - even if people are polite to him - has no real audience until he finds his place in the network of human relations. This is made the more true by the fact that, as far as many groups are concerned, messages from the outside do not necessarily have a high degree of credibility: on the contrary, they have only too great an experience of the effects of messages that are erroneous in themselves or dangerous to the survival of the group.

In many areas, the system of inside communication remains very much alive, even if messages from the outside increasingly interfere, so to speak, with exchanges within the village or district and with "traditional" knowledge. Exchanges within the grass-root group, or between neighbouring villages or city districts, carry an emotional charge related to those who transmit the messages, for they are judged on the basis of who they are and what they have done. It is not a question of transferring a store of knowledge from one brain to another, but of developing one's imagination, memory, and ability to communicate.

Support for these systems of inside communication, their reinforcement and extension, opens up new possibilities for those at the grass-root level to grasp their development problems with greater assurance and consistency. A new emphasis on communication at the grass-root level must be one of the priorities in any popular participation policy.

A radical transformation of the methods and content of education and training also demands the greatest attention. Instead of spreading imported scales of values and the lure of the cities, they should prepare for participatory development.

Social development and public services
probably the most urgent felt needs

The very logic of free participation in development means, as a consequence, that the direction in which the people will steer their efforts cannot really be foreseen. It seems likely, however, that, in the majority of the African countries, the population will concentrate on making appreciable improvements in the food and health situations. Identifying risks of food shortages or famine, preserving and distributing food supplies, dealing with cases of malnutrition or under-nutrition, readily accessible medical care, environmental hygiene, health education - all these could make rapid progress, given generalised popular participation.

Another field in which popular participation could lead to rapid advance is housing. Formerly, in many African villages, the houses were built by groups of neighbours, as was the mosque or the church; improved systems of self-help construction could respond rapidly to the demand for housing, in both rural and urban areas. It would have the advantage of promoting the use of local skills and materials.

A third field in which popular participation could be decisive is in the extension of the various services from which the population would like to benefit (postal service, telephone, civil registration, etc.). A redistribution of roles could take place among the inhabitants of a city district or a village - the population providing part of the necessary resources, including a share of the wages of the public servants deemed necessary. Participation would thus be seen as a point of reference for local governments, and as a system whereby those concerned would assume responsibility for a major share of their daily problems.

Another particularly important field of application for participation would be the joint management of rural and village land, as well as of urban districts. Upgrading or development plans formulated with the advice of those concerned and relying on their supervision would have a chance of really being translated into action - unlike most of the projects envisaged at present.

In the last analysis, however, it is in the light of the situation in each country, and of the possibilities and limits of each human group considered, that the priorities of popular participation must be defined. To schematise and generalise in this field would be totally inadequate.

Extract from

Development Legal Aid in Rural Asean:
Problems and Prospects

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The strategy is to help the poor, as members of communities or social sectors, become aware of the causes of their situation and organise and mobilise themselves to overcome these causes.

This strategy rests on the belief:

- That just as law can be and has been used, misused and abused to institutionalise poverty and privilege, exploitation and inequality, it can also be used properly to establish social justice and equity, participation and autonomy.

To accomplish this, however, law must be generated by the people themselves; the role of development legal aid is purely supportive. The poor and the oppressed must rely on their own efforts, not on lawyers, to forge a better society. But their efforts must be organised to be effective, not only because of the strength of numbers, but also because the poor have been alienated from each other as much as from the elite, they are subject to the same temptations and suffer from the same frailties as all men, and have to learn to work together since, in the end, they will attain development only by that self-liberation that generates social liberation.

The tactics used to implement this strategy are:

- to inform people of their legal rights;

- to show how these rights are often inadequate or inadequately enforced;
- to search with them for the causes of the inadequacies; and
- together to devise legal and social solutions.

This process produces a heightened awareness in both the poor and the lawyers that is the beginning of development. But that beginning will be abortive unless awareness is converted into action. So the process is supplemented by steps designed:

- to encourage the poor to organise and mobilise themselves, such as by explaining the advantages of organised effort, citing examples, and informing them of the legal requirements and pitfalls of organising;
- to urge them to cooperate with other groups similarly situated, specially when the similarities are not immediately apparent, as in the case of tribal groups and urban squatters; and
- to motivate them to invent and use metalegal tactics - non-violent group actions that transcend normal judicial or administrative procedures yet remain faithful to the basis of law in that they seek the common good - to supplement and strengthen standard legal tactics to change law and society.

Practitioners of developmental legal aid do not expect this strategy to succeed in all cases. But they do expect that, more often than not, the strategy will help overcome the sense of impotence - the most serious obstacle to development - that centuries of oppression have instilled in the poor, and replace it with a sense of power that will release the creativity and the drive immanent in them as in every man. And that is in itself development.

Developmental legal aid groups face the same problems that traditional legal aid groups do - and more. Like traditional legal aid, they suffer from:

- lack of time, manpower and resources;
- difficulties of communicating with the poor they serve.

Developmental legal aid groups have tried to solve these problems in a variety of ways. To save time, they have, for example:

- limited themselves to handling public disputes, cases that affect large numbers of people or reflect social issues, referring private disputes to traditional legal aid practitioners;
- enlisted the expertise of academics and social workers to supply data and insights into the sociological and psychological dimensions of the legal problems they deal with, and to carry out pilot surveys or samples where data are not available;
- produced primers which explain both what the law is and what it should be on rights to land and on rights of oppressed sectors like small farmers and landless agricultural workers, fishermen, urban poor, tribal minorities, industrial workers, students and political prisoners. These primers were drafted by lawyers who have had experience with problems of each sector. The drafts were submitted to representatives of the sector concerned, who were asked to criticise both language and content, to point out which portions were not clear, which portions were not relevant to their everyday problems, and what problems were not adequately covered. Then workshops were held, attended by these representatives and by the lawyer-authors, in which the criticisms were threshed out. Only after the drafts had been revised to meet the criticisms were they issued.

To overcome the manpower problem, developmental legal aid groups have:

- enlisted the help of organizations they work with to keep their eyes open for and recommend lawyers who display awareness of the problems of the poor and can be recruited for legal aid work;

- trained para-legals or "barefoot lawyers" in the basic concepts of law, legal procedure, tactics and counter tactics, and in the skills needed to do routine, repetitive, or preliminary jobs and carry out simple investigations, such as interviewing witnesses and taking down their statements, getting copies of public records, preserving physical evidence, filling out standard government forms, etc. Para-legals are chosen from among promising students of law and social sciences who agree to do field work with poor communities between school terms; representatives of depressed communities who are recommended by civic organisations working with them; and trade union members recommended by their unions. Para-legal training has produced several benefits. Lawyers have had more time to devote to the creative aspects of their job: counselling, negotiating, drafting, advocacy. Some law students were motivated by their experience as para-legals to join legal aid groups after admission to the bar. And para-legals have equipped the communities they live in with a knowledge of how law works and how to use law to assert or defend their rights.

There will never be enough funds for developmental aid groups. So they have tried to stretch the meagre funds they have in the following ways:

- lawyers charge no fees for their time and services, and shoulder the cost of their transportation and the overhead expenses incurred in legal aid cases. Only when lawyers devote more time than they can

afford to legal aid are they given modest honoraria from legal aid funds;

- whenever they can afford to, legal aid clients shoulder all out-of-pocket expenses for filing fees, gathering evidence, transportation to hearings, and the like. Only the portions of these expenses that clients cannot afford are paid from the funds;

- seminar expenses are borne by the organisations who request para-legal training. Often space is free, and participants bring their own food.

These policies require lawyers to devote only part of their time to developmental legal aid. This has obvious disadvantages. However, the disadvantages are offset by the fact that their paying practice keeps lawyers' skills honed, avoids the tedium of over-specialised practice, and maintains their reputation and respectability at the bar and with the élite community. It also provides an assurance that the time and skill they devote to developmental legal aid are products of firm commitment, not self-interest.

With respect to the danger of reprisal, developmental legal aid groups have adopted such tactics as having lawyers take pains to keep their relations with developmental legal aid clients on a strict lawyer-client basis and to give government no factual grounds to level charges of subversion or other wrong-doings against them.

Legal Aid And Legal Services in Rural Areas

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My experience in legal aid is limited to the tribal areas in South Gujarat, particularly Bharuch district where for the last six years I have been trying to give legal aid to the poor. The area I am working in is predominantly rural with small urban pockets. Whatever I say in this paper has direct application to the area of my experience. But from whatever little I know of other places, my paper may have some application in other rural areas in India and even some urban areas. I propose to take up the following questions for discussion in the order in which they are mentioned below:

- What forms of legal assistance are most needed in rural areas ?
- How can they best be provided ?
- What role is there for para-legals ?
- How can they be trained and financed ?
- What forms of dispute settlement can be made available other than court action ?

What forms of legal assistance are most needed in rural areas ?

One of the main characteristics of the countryside is worth noting in this context. It is illiteracy of the population, especially the females. Literacy percentage is abysmally low. Even though almost all the large villages have a primary school, teachers and a large

number of boys and girls on the rolls, there is little teaching and learning going on in those schools. Many of these schools run only on paper. At times the teachers who are appointed absent themselves. At times the teachers are found to be drunkards. In many schools, the children absent themselves from school regularly. Even children who have passed out of the ninth standard are frequently unable to read and write. It is seldom that parents insist on their daughters attending school even if they encourage their sons to attend.

Illiteracy has much to do with the type of legal assistance required in the rural areas:

- Many of the documents with thumb impression contain terms of contract which are unknown to the party affixing thumb impression.
- Illiterate persons are unable to keep count of the money they borrow from money-lenders. Whatever accounts the lenders scribble have to be relied upon by the illiterate persons. Illiterate persons buying on credit grocery goods from shops are often shocked when large sums are demanded from them or when their lands are taken away from their possession against the sums they owe to the shopkeepers.
- Illiterate persons are frequently incapable of communicating their exact grievances to the legal practitioners. For example, they may admit at first that they borrowed Rs. 100.- only. If they are asked: "Did you borrow Rs. 200.- from so and so ?", they may reply in the affirmative.
- Illiterate persons are often misled and swayed this way or that as they have little knowledge of the legal processes. If some persons having a vested interest approach them to get them to compromise, they may affix their thumb impression readily and compromise their case.

-- Illiterate persons approach legal aid personnel accompanied by some village leaders who are seldom trustworthy as they may happen to be touts.

-- Illiterate persons may not have a correct idea of the legal proceedings. But they have their own ideas about the legal proceedings. Often when they come with their grievances they are likely to give a twisted version with which they wrongly imagine they can get maximum relief.

Poverty in the rural areas is appalling. It suffices to say that hardly ten per cent of the rural population do not starve even for small periods of time during the year. Ninety per cent of the people in our area are on forced starvation-diet for at least some days each year including the years in which bumper harvests are reaped. It is most rare to see a farmer who is not steeped in debts. Interestingly, I could find only landless labourers who were not indebted, the reason being that they were not at all credit-worthy. Almost all those who had land or even a regular job were deeply indebted. The persons with more lands than others were often found to be more indebted than the others.

Poverty of this type has much to do with the type of legal assistance required in the rural areas.

-- Lands of the poor may easily be taken away from them by implicating them in some litigation. It is sufficient for an exploiter to get an injunction to enter the lands with the help of some forged documents against a farmer to ruin the latter. The farmer is so totally dependent on the land that his status and credit-worthiness disappear with that one stroke. He may not have any money to bear even the travelling expenses to legal aid centres and the court. Even should he win the case, appeals to superior courts may drag on for years and he may be left high and dry even before the appeals come up for hearing.

- Often poor farmers are taken to some third-rate lawyers by touts employed by them. Touts get a commission on each case they bring to a lawyer. This practice is against the norms of conduct of lawyers but some lawyers disregard these norms. Such lawyers are paid by farmers by selling part of their lands, or bullocks, or house, etc., in the hope of winning the case. It is often after spending all the cash they could raise by selling things and by borrowing that they may turn to the legal aid personnel for assistance.

- Mere restoration of land is likely to be of no avail to a farmer who may have sold away bullocks and agricultural implements and may lack the other inputs.

- The poor litigants are so desperately in need of cash that at times they would readily part with their disputed land if a small sum is offered to them for it as a temptation.

- People like the agricultural workers cannot afford to go to court to obtain minimum wages for fear of losing even the paltry sum they get from agricultural work. If they go to court they may not be called to work and they would become marked. Labourers from distant parts are only too willing to work for less than minimum wages.

A third characteristic of rural areas is their remoteness from secular and rational institutions. The rule of law simply does not exist in many parts of the countryside. Instead, there is a well-established rule by certain unscrupulous elements who are above the law. They and their henchmen are able to have their whims pass for law.

Most often they assume a cloak of legitimacy by joining the ruling political parties and changing their parties as the fortunes of the parties change. The local rulers have their relatives fill up the positions in the bureaucracy and police. They even try to corrupt the judges by offering temptations.

Remoteness from secular and rational institutions has much to do with the type of legal assistance required in rural areas.

- It often happens that the local exploiters who enjoy political power too, are able to beat up their opponents and on top of it institute cases against the victims on various false charges.
- The local dadas (as the usurpers of power are called) are in a position to manipulate the investigation of a case by police, journalists and administrators. They are also in a position to intimidate and turn away witnesses when they fear adverse judgments and conviction of their supporters.
- It may also happen that a partnership exists among the dadas, administrators, police, forest officials and at times even the school teachers.
- The well-trenched dadas are in a position to crush even the slightest forms of protests by spirited citizens, by physical liquidation when threats do not suffice. Normally, they do not allow protests to grow to unmanageable proportions. On the contrary, they take no chances and nip all opposition to them in the bud.

I have outlined three characteristics of the rural areas and indicated how they affect the forms of legal assistance that are most needed. Making a competent lawyer available to the poor is only a beginning of legal aid. Actions on three other fronts are greatly needed:

Illiteracy: Legal assistance is an exercise in futility if efforts to make the population literate are wanting. Not only are reading and writing to be insisted upon, but there must also be a stress on one's rights and legal ways of enforcing rights when the same are denied.

Poverty: In the drive to make people literate, people may be given opportunities to learn to solve their basic problems of food, shelter and clothing. Certain values like co-operation as opposed to cut-throat competition may be instilled and promoted.

Secular and rational institutions: I have seen that people respond positively when there is a reasonable hope of overthrowing exploiters and oppressors. People's movements are most important in creating secular and rational institutions. Setting up of a committee in each village to discuss common problems including oppression and exploitation and to create public opinion and also to initiate community action against the oppressors may be adequate means of setting up secular and rational institutions.

How can they best be provided ?

Providing a competent lawyer to represent the poor people is a hard task. After thoroughly scrutinising a case the legal aid office must decide if the person ought to be assisted. If the person deserves help the office must find a competent lawyer and hand over the brief taking the responsibility of remunerating the lawyer and monitoring the progress in the case. In deciding to assist a client in this way the office must also be prepared to go to the courts of appeal if and when necessary. In the matters of illiteracy and poverty, a mass scheme of non-formal, functional education is being tried aiming at universal literacy in our area. I believe we are making a certain breakthrough in this respect. Our scheme employs literate youths after careful training in agriculture, health-care, group activities, animal husbandry, forestry, horticulture, poultry-farming, community organisation, etc., in each village. They identify themselves with the village people and act as facilitators besides conducting adult education and educating children. They also arrange educational film shows, dramas, puppet shows, etc., with a view to provoking community thinking at village level.

What role is there for para-legals ?

Persons who are familiar with the court procedure and having an elementary knowledge of the common law applicable to the common people of the area are greatly useful in screening the cases, preparing petitions and following up the cases in court. They are also needed to make any investigations at the villages concerned, and to assess the chances of the aggrieved party holding out to the end.

The para-legal personnel are also needed in imparting to people some awareness of their rights. This may be done at village level citing case laws familiar to the people of the place. The para-legal personnel can be a link between the office and the client. They may help the client get all the documents necessary and carry messages to them from their lawyers regarding dates of hearing and documents which are required.

How can they be trained and financed ?

The training must introduce them to the laws which are most applicable to the common people. Lectures may be given to them by practising lawyers in such laws. Thereafter they may spend some hours in court every day and take notes of what they see and hear for discussion with expert lawyers later on. They may also move among the poorest sections of people who are most exploited and try to assist them by speaking of legal aid available to them and follow up the matter to the end. They may also visit villages, hold meetings and stage dramas, etc., using typical cases in which poor people are exploited. On such occasions several cases of exploitation come to light, on which they may apply their minds.

Financing the para-legal personnel is not so hard as financing legal aid projects. Training can be completed in a matter of six months of intense work.

What forms of dispute settlement can be made available, other than Court action ?

If legal aid is accompanied by a people's movement, it is possible to call upon the exploiters who are used to malpractices and gross violation of law with impunity to appear before the village community and avoid prosecution for many misdeeds by giving up ill-gotten wealth and expressing regret for the past.

The people also have certain forms of settling disputes especially in sexual matters, an important area of dispute. Normally, these are effective if outside influences do not interfere. These may also be encouraged to settle disputes.

Initial Orientation Programme for
Training of Para-Legal Workers

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This model programme for training of para-legal workers is based on the experiences gained in a development programme in South India. As this is a model, it should be suitably adapted to other situations.

The training of para-legal workers is a continuous process. What is given here is a plan for an initial five-day programme aimed at providing the basic orientation to the para-legal workers. This should be followed by regular monthly training sessions of one or more days.

Participants

If an on-going development programme plans to include the training of para-legal workers, then its own animators who are conducting literacy classes or who are doing health work, can be additionally trained as para-legal workers. If a new programme is planned, then young men and women from the village who have shown some initiative and leadership can be chosen.

Minimum objectives of a training programme would be:

- (a) To enable trainees to understand, i) the need for para-legal workers, ii) the functions of para-legal workers, iii) the skills required from para-legal workers;
- (b) To impart some of the skills required for a para-legal worker;

- (c) To plan, with the trainees, an on-going programme for providing legal resources.

Programme Plan

The duration or time-limit of each session is not given but the programme plan given below can be covered in five days.

Session I: Introduction

This session should be used to enable the participants to get to know each other. It will be useful if they could talk about their background, experiences, etc. This session could also be used for sharing their views on laws, lawyers, court and so on. This would be useful for the organisers of the training course to give them a better understanding of the trainees' perceptions.

Session II: Understanding the need for para-legal workers.

This session would deal with the objective noted in paragraph (a)i) above, i.e., to enable the trainees to understand the need for para-legal workers.

To initiate discussions, the participants can be given a case study to discuss. For example, the following case study was used in a training programme in South India and was based on a true situation.

Case study of village K: Village 'K' is situated in a remote area 50 kms from the nearest town. The nearest bus going to town stops 5 kms out of the village. Nearly 70% of the village's population are labourers. Most of the land owned in the village belongs to ten large families. The only school is a primary-level school catering for the villagers which is also situated 3 kms away in another village. Children of landless labourers do not go to school and even if they were able to, they would only receive primary-level education. The landowners send their sons and daughters to boarding schools in the city.

Recently, a Land Reform Act was enacted by the government, according to which a ceiling was imposed on land ownership. Land held in excess of this ceiling was to be notified as surplus land and redistributed among the landless labourers of the same village. Large areas of land belonging to the landowners of Village K were notified as surplus.

However, the landless labourers of the village were unaware of this Land Reform Act and of the notification procedure under it. In connivance with local government officials, the large landowners transferred the surplus land to their relatives who already owned small plots of land. The government officials also took possession of some plots of land. In effect, the land that was to have been distributed to the landless labourers was illegally transferred to others who were already landowners. The landless of Village K continue to work as salaried labourers and eke out a hand-to-mouth existence to this day.

Questions for discussing the case study:

What difference would it have made if the landless of Village K had been aware of the Land Reform Act and the Notification procedure made under it? What could they have done if they had been aware of it? Would they have approached the local officials or a lawyer or a court?

If not, what could be the reasons for not doing so? For example, fear of officials and others, lack of education, lack of resources, lack of unity, etc.

Would it have made any difference if they were in touch with a trained para-legal worker who knew about the law and procedures to be taken? What role could such a para-legal worker have played?

During the discussion of the case study the participants could be encouraged to narrate their own experiences of situations which required knowledge of law.

Alternatively, a 'role playing' method could be used. Participants should be divided into small groups consisting of seven to eight members and should be asked to act out a situation from their own village experiences which has required knowledge of law and legal resources. The role playing method is useful for bringing out more than one situation, since each group will be acting out a different situation.

Session III: On functions of a para-legal worker

The discussion of a case study or role playing situation will have led to a question on the role of a para-legal worker, thereby leading to the next Session.

This session could begin with a brainstorming session in which the participants are asked to state what they conceive as the functions of a para-legal worker. Their statements should be noted on a blackboard and at the end of the discussion categorised into several common headings.

The functions of a para-legal worker are generally as follows:

- (1) To educate people about their rights and about laws that affect those rights;
- (2) To help people understand specific development and welfare programmes initiated by the government and to help them understand the administrative procedures related to these programmes. For example, laws on the setting-up of a cooperative, on obtaining credit, on establishing dairy and poultry farms, etc.;
- (3) To organise people so that they can make use of these programmes in a collective way and make them realise their collective strength;

- (4) In situations which require court action, preparing the essential facts for the lawyer (generally, poor villagers lose their cases by not briefing the lawyers adequately);
- (5) Helping people to write petitions, complaints, affidavits, etc.;
- (6) Settling disputes that arise between villagers so that they do not waste their meagre resources in long drawn-out litigations over matters that can be settled outside of courts.

Once the participants agree on the functions of a para-legal worker, it could be arranged that resource persons come and talk with them. A lawyer can talk about some of the basic rights and laws. Local government officials could talk about government programmes. Persons experienced in community organisation could talk about organising methods.

Since this is only an orientation programme it would not be possible, or indeed, helpful, to provide information on all aspects of their functions. The resource persons should be made to meet with the trainees regularly during the monthly meetings that follow this training programme.

Session IV: Skills required from a para-legal worker

This session will deal with the skills that are necessary for a para-legal worker to carry out his tasks efficiently. Once again, all the necessary skills cannot be imparted but the trainees could be made to understand the need to develop some skills.

Some of the skills required from a para-legal worker are as follows:

- (1) The ability to understand the dynamics of a group and be able to work in a group. This includes being able to conduct meetings, group discussions, etc.

All these are important for playing the role of a facilitator;

- (2) The ability to prepare educational materials and use innovative methods of communication. For example, the use of theatre, preparing 'role playing' sessions, producing posters, etc;
- (3) The ability to gather and interpret relevant information. This would include listening to people, conducting surveys, being able to read enacted laws and collect information by referring to books and other sources such as newspapers;
- (4) The ability to write petitions, complaints, affidavits, etc.

Session V: Planning and evaluation

This session should be used for planning with the trainees a realistic programme for them to implement. To begin with, the area or number of villages, or the population to be covered by each para-legal worker should be decided. Once this is decided, then a programme for a month can be worked out which would include the following:

- (a) The number of meetings to be held in individual villages;
- (b) The number of inter-village meetings to be held with specific groups such as women, youth, village leaders, etc.;
- (c) The time required for visiting government offices that deal with welfare and other programmes;
- (d) The time required for the preparation of educational materials;

- (e) The time required for planning and organising campaigns on specific issues.

It is not possible to foresee and plan all situations. For example, if the para-legal worker has initiated a court case with the help of a lawyer, then attendance in the court will require time. Similarly, campaigns might have to be conducted on issues that arise spontaneously (unexpectedly).

For this reason, organisers or coordinators of the legal aid and resource persons should have regular contact with the para-legal workers. As said earlier, regular one or two-day monthly meetings are very useful.

Model schedule for a two-day monthly meeting

Session I: Report of activities and sharing of experiences. For this reason, para-legal workers should be asked to maintain a diary of their activities.

Session II: Based on their experiences and the legal problems they have encountered, they could have discussions with a lawyer, followed by the lawyer talking to them on a prepared topic. The topic could be decided upon by the para-legal workers themselves during the previous meeting.

Session III: Resource persons to impart skills. For example, on communication or on organising methods. Alternatively, arrangements can be made for them to meet with the government officials.

Session IV: Planning for the coming month. This includes, if necessary, planning for some joint action, preparation of educational materials such as posters, charts, and so on.

Report on the Tanzanian Experience on
Taking Legal Aid Services to the Rural Areas

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The Legal Aid Committee of the University of Dar-es-Salaam is a committee of the Faculty of Law and therefore an integral part of the University. It is one of the three legal aid schemes currently operating in Tanzania, the two others including the Dar-es-Salaam based Legal Aid Committee of the Tanganyika law society and the two sister Legal Aid Centres of Moshi and Arusha.

Every Wednesday afternoon between 4 and 6 p.m. the faculty members of staff accompanied by several law students visit an office at the headquarters of Kinondoni District, within the City of Dar-es-Salaam. Here they listen to legal problems coming from persons from all over the three districts of Dar-es-Salaam Region and its vicinity.

In most cases we give on-the-spot advice. Where we think a case warrants the Committee's serious consideration, application forms are provided for the respective applicant to fill in. It is upon the Committee in its ordinary meetings to decide whether or not to take any case. The Committee may take a case which passes the eligibility criterion. We normally prefer cases involving applicants if salaried, who receive less than shillings 1,000/= per month (approximately 60 American dollars). It may also be necessary for the matter in question to fall within our priority areas such as (a) labour disputes, (b) compensation of motor accident victims, (c) landlord disputes. We normally refer an applicant whose matter does not fall within our priority areas to the Legal Aid Committee of the Tanganyika Law Society which, incidentally, has a wider scope of operations.

For the cases taken, the committee normally encourages out of court settlement and reconciliation of the parties. It is only where those avenues tend to fail that the committee may opt for litigation.

Cases are taken to court free of charge. Under Tanzanian law, a legal aid case is filed in a Court Registry without payment of court fees. It is also provided that in the instance of a legal aid party losing a case, he/she would not be required to pay the opposite party costs. But if such legally aided party wins a case, he would be entitled to the costs from the opposite party as in all other civil proceedings.

These proceeds do go to the Legal Aid Committee fund being the client's contribution to the furtherance of other activities of the committee. In the last academic year, 1983/84, our records reveal that we had 26 cases in court pursued by the committee.

Taking our services to the rural areas

For a long time the committee was troubled with our failure to provide legal services to a larger number of the population of our country. The committee was not able to serve people outside Dar-es-Salaam Region for a number of reasons, among others: (a) the lack of sufficient funds to support any meaningful projects in the regions, and (b) the fact that all members of the committee are members of the academic staff on the payroll of the University and thus tied to their lecture rooms or research centres for most of the time.

Consequently, in a special committee meeting, it was decided to launch the following projects in this regard:

(i) The Legal Literacy Campaign

Here the committee established a bulletin called HAKI (Kiswahili version for "rights" or "justice"). In

this bulletin were written simple Kiswahili articles on the basic rights of the Tanzanian citizen. The publication was distributed free of charge to any interested person, particularly our former clients with whom it was necessary to maintain contact. It is very unfortunate that for the last six months or so, we have been unable to publish HAKI because of the acute shortage of paper prevalent in our country. We are currently earmarking donors to provide for assistance that we may receive HAKI as soon as possible.

(ii) Legal Aid Service by Correspondence

We receive hundreds of letters from all parts of our country, requesting our assistance in various legal problems. We respond by giving respective legal advice as regards the appropriate steps to be taken in reaching a viable legal solution. This is a very important means of solving people's problems without necessarily having any physical contact with them and at the same time it provides an effective avenue for the legal education of the masses.

(iii) Legal Aid Camps

This is where the committee does physically come in contact with the people in the rural areas themselves. We had a pilot camp in the Kigoma Region, about 700 kms on the Western border of Tanzania, from 25 April to 3 May 1984.

The travel expenses were footed by the committee funds coming from various donations. The accommodation and food expenses were paid for by the Regional Commissioner. This was the person who had always been sympathetic and very supportive of the activities of our committee. It was the same person who had provided us with an office at his District headquarters when he was Area Commissioner of Kimandoni, Dar-es-Salaam.

During the camp we engaged ourselves in the following major activities:

- (a) We held six public talks in which the concept of legal aid was explained generally and particularly the activities of our committee were adequately highlighted;
- (b) We held a Law Seminar which was a sort of training session for the people who were thought could follow up after we had left, i.e., some kind of para-legals or 'bare-foot lawyers'.

The seminar lasted four days, i.e., from 27 to 30 April 1984. There were a total of 60 participants coming from a wide range of public officials. We had teachers, party secretaries at Branch, Ward Division and District Levels, office attendants, school inspectors, office secretaries, telephone operators, soldiers, security guards, land surveyors, and agricultural officers. Seven lectures were covered and these included:

- Introduction to the Legal System of Tanzania,
- The Law and the Citizen,
- The Right to Bail,
- Introduction to the Law of Marriage,
- The breakdown of marriage, division of matrimonial assets and the rights of children,
- Introduction to Labour Law,
- The Employee's Right under the Security of Employment Act, 1964.

The seminar was extremely stimulating because of the tremendous interest to learn shown by the participants.

(iv) Legal Aid Clinics

We conducted five clinics on an average duration of three hours. The total number of cases dealt with was 26, Kigoma district having had a larger number of 21 and Kasulu District with only five. It was interesting to learn that

the type of problems encountered in the rural areas was different from that we were used to in Dar-es-Salaam City.

General Observations

We were glad to receive valuable comments and suggestions from the participants, which included among others:

1. That Legal Aid Camps should be conducted more often;
2. That Legal Aid should be expanded to the villages;
3. That the Government should be requested to provide financial assistance to Legal Aid Schemes;
4. That the possibility should be considered of introducing the teaching of basic legal knowledge in secondary schools;
5. That there was a need to receive the committee's bulletin, HAKI;
6. That there was a need to disseminate legal knowledge by publishing simple legal books in Kiswahili.

Finally, a limitation was noted that for lack of funds we were unable to reach the most remote areas of the region. Nevertheless the committee learnt quite a lot and we are soliciting funds so that we may be able to hold more and effective camps.

Reconciliation in Dispute Settlement

Eric S. Ng'maryo
Coordinator, Moshi and Arusha Legal Aid
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In extending legal services to the people in rural areas, and in particular those who cannot afford such services, two kinds of tasks confront us. The first is that of education: educating ourselves about the people and educating the people about the laws. In a simple and general way, the people must be made to know their obligations. More importantly, they must be made aware of their rights and coached how to assert them and enforce them without recourse to outside help. Thus, the people will be informed about the laws, legal systems and procedures existing in their country. They will also be given political education. They will be told about the political and economic forces behind their legal systems and behind the enactment of certain laws. They will be taught how they can organise themselves into pressure groups to resist certain changes in the laws or, conversely, how to influence the enactment of others. Here, it must be borne in mind that the people are not like children; they are not helpless - all they lack is proper organisation and stimulation. This is the first of the tasks for those who extend legal services to the rural people.

The second task is that of legal aid. As commonly understood, legal aid is legal assistance given to people who cannot afford to pay legal fees connected with litigation, professional legal services, etc. In most of the litigation of this sort, the opposite party is a powerful individual, or a big organisation, or the state. It is this imbalance of power that prompts those who give legal aid to come to assist the underdog. It is alarming, however, to note that there isn't a comprehensive stance regarding disputes in which both the disputants, or litigants, are poor and possibly coming from the same rural

area. In this paper, it is strongly proposed that an effective method of handling disputes in which both parties are poor and both are coming from the rural areas is that of reconciliation. The reasons for the great efficacy of reconciliation as a method of settling disputes in certain types of rural communities will also be examined in depth.

In the third world, and in Africa in particular, rural people are generally poorer than people living and working in urban areas. Although in some rural communities there exists a superimposed money economy and production is generally done on an individual basis, in most African rural economies production is still organised at the extended family or clan level. This is more so in areas where agricultural machinery and modern inputs cannot be afforded and therefore single-handed effort in production is not enough for survival, let alone development. It is in these clan-based economies that we find - to a lesser or greater degree - the existence of traditional methods of dispute settlement, in which reconciliation and forgiveness hold a primary position. The reasons for this are worthy of our attention.

Family and clan-based economies are completely reliant upon the total cooperation of all the members of the community (the community could be an extended family, clan, settlement, or village) to be able to function efficiently. Total cooperation is necessary because every able bodied member of the community must produce at least enough for himself and some surplus for the very young, the very old and the disabled. In order to have total cooperation, it is necessary to have complete unanimity of opinion among the members. Unanimity of opinion (in all matters affecting the economy of the community, obviously) was closely safeguarded by a set of norms which had, in the final analysis, deep influence in the settlement of disputes in the community.

The first and foremost of these norms was the subordination of the rights and interests of the individual to the rights and interests of the community. In other words, the individual was more dependent on the community and the

well-being of the community contributed directly and immediately to his own well-being. Because of this, a person was assured of the total support of the community if he was very old or was ill or disabled, and he was also assured of the community's total support of his family in case he died. For this, and considering that he could not survive on his own, the individual surrendered to a large degree, his rights and interests and placed them in the hands of his small, well-known and intimately familiar community.

Unanimity was also consolidated by the fact that the opinion of every member of the community was respected and given due consideration by the whole group. This was especially so in dispute settlement where one finds popular participation of all the members of the community with everyone feeling free to side with either of the disputants and defend him. Not only did this procedure allow free and democratic participation by the members of the community, but it also ensured that each party in a dispute was amply defended before judgment was passed.

One remarkable feature in dispute settlement in communities with clan-based economies is the absence of fixed procedures in dispute settlement. Every dispute was settled as it arose and with the resources at hand. Because every dispute had to be settled without the least delay lest it infected the community and destroyed the existing unanimity and cooperation, procedures, pomp and ceremony were given the least emphasis in dispute settlement. Similarly, there was absence of clear-cut findings of guilt or innocence after parties in a dispute were heard. This was to avoid having a victor and the vanquished in any given dispute inasmuch as this would only perpetuate the dispute. Instead, either of the disputants was partly "bad" and partly "good"; "guilty" and "innocent"; "liable" and "not liable". The only thing is that the guilt or innocence varied in degrees between the two parties. (For example, the complainant, the winner, would be told: "if you are so good why did you not forgive your fellow but instead asked for this case to be heard?") Wrongs were not punished

physically, but, rather, the offenders were made to compensate the victims.

After the dispute was settled, reconciliation of the parties was very necessary. Beer would usually be drunk and the dispute lightly and humorously discussed. Among a certain ethnic group in Tanzania, the "winner" in the dispute was often the one who was told to produce the beer, aptly called "the beer that brings together (two estranged persons)".

In dispute settlement in communities with clan-based economies, the opinion of elderly people was very much venerated. These were the custodians of the community's knowledge, and although everyone participated in settling the dispute, it was they who pronounced the final opinion of the community. After the disputants were reconciled, the matter was forgotten and the experience carefully noted by every member of the community. Appeals were therefore inconceivable.

The legal aid approach to settlement of disputes in which both parties are poor, both are from rural areas and (possibly) both come from the same place calls for close observation and great flexibility. There are very few communities, if any, that will be exactly as described earlier on in this paper. Most could be, to a large extent, clan-based economies; some have very little cohesion and cooperation as economic communities, especially if they are comparatively developed and have members who are already becoming independent, self-reliant small-scale farmers and not poor peasants to whom cooperation with each other is virtually the only way of survival.

At all times, those who give legal aid should discourage the spirit of litigation among rural people, especially if this litigation involves the people themselves. The danger here is that legal aid could easily be used to encourage people to sue each other. Likewise, court action should be discouraged unless all family, clan,

village and traditional/primary court efforts have failed to resolve the dispute. The people must be made aware that court action is expensive, time consuming and the result of a court case can never be foretold. Further, court action does nothing but dissipate the energy of the community by bringing about hatred and acrimony among the community members.

Rigidity in methods of dispute settlement have often led to unnecessary complication of the case and hardening the resolve of the parties to fight the case "to the end". Legalistic and formal procedures should be avoided at any cost. Respect for the opinion of elderly and honoured members of the community must always be present. It must be borne in mind that disputants will be more willing to listen to the advice of an elderly or honoured member of their community than that of a common member.

Whenever there is a legal aid reconciliation case that has had to go to the traditional/primary court, the president of the traditional court or the primary court magistrate must be asked to try to reconcile the litigants before hearing the case formally. It must also be mentioned that para-legals must be made adequately aware of the importance of reconciliation in dispute settlement in rural areas. Para-legals can also be used as scouts for information that might help in reconciling disputants. (For example, a fact that can show that a complainant is in the wrong can help to persuade him to get reconciled with the other party.)

Cooperation and harmony among the poor, especially the poor in rural areas, are their most reliable vehicles of development and their only hope of emancipation. Legal aid aims at ensuring that this development is not trampled or blocked by the rich and powerful who use the law as a tool of oppression of the poor. Legal aid must also ensure that law does not become the seed of disharmony and strife among the poor.

SUMMARY OF DISCUSSIONS

SECOND SESSION

Topic: Legal Services and Legal Aid in Rural Areas in Asia

Father Joseph Idiakunnel introduced the topic by discussing his experience in legal aid work in rural areas in India. According to him, illiteracy, poverty and "remoteness from secular and rational institutions" are three features of rural areas providing the setting for legal assistance. In his own area of activity in India, for example, there was exploitation of the villagers. Landowners were becoming landless and, later, labourers on "their own" land. Documents with their thumb impression purported to transfer land to others. Lawyers as representatives of the upper class were among the exploiters. Accordingly, he, a non-lawyer, accepted the challenge. In the first month after his request for applications from members of the rural community losing their land, he received 10,000 applications. Not only did he go to the villagers to explain their legal rights to them; he also secured the services of "barefoot" lawyers (para-legals) who listened to the villagers' complaints. In addition, he had two lawyers in his employment whose work included preparing briefs for submission to other lawyers who handled the cases which went to court. He faced two problems initially. The first was inadequate finance and the second was the Judiciary's suspicion of his activities. Oxfam and the World Council of Churches donated money to solve the first problem. The second was readily solved when the Judiciary appreciated his work. Some "fundamental" decisions of the Indian Supreme Court facilitated his work. A notable example was the decision that in cases of "public interest" the "locus standi" rule was excluded. Father Joseph's speech provoked an interesting discussion which enabled him to clarify many points. The locus standi issue was in particular the subject of a heated debate. "Order! Order!", shouted the Chairman, as several participants in unison disagreed with Father Joseph's practice of instituting proceedings on behalf of

others without a locus standi. Chief Debo Akande (Nigeria) preferred a representative action. Father Joseph had said that his practice protected the villagers against harassment. Mr. J.K. Agyemang (Ghana) objected, wondering whether the villagers were not giving evidence in the court cases and whether they were not signing their petitions themselves, thereby identifying themselves. Dr. Ombaka (Kenya) was fascinated by the locus standi decision which he described as a significant decision.

Noting that Father Joseph emphasised land cases, many participants spoke about legal aid work in other cases. Chief Debo Akande mentioned cases of deserted wives as an example. Father Joseph explained that he had given assistance in maintenance cases. A subsequent assertion by Mr. J.M. Caulcrick (Nigeria) that there were fewer cases of deserted wives in rural areas than in urban areas attracted comments from two ladies. Mrs. Lungie L. Molamu (Botswana) suggested that the law should permit the payment of maintenance in kind. She disagreed with Mr. Caulcrick. Dr. Nana Efuna Claris Pratt (Sierra Leone) expressed the view that there was no effort to educate deserted wives in rural areas in respect of their rights. She suggested approaching the husband's family to demand maintenance allowance. In reply to a question from Mr. A.O. Fayokun (Nigeria) on the scope of legal aid in matters before traditional or customary courts in India, Father Joseph noted that the traditional system of settling disputes had been destroyed by the modern system.

Mr. Lee Muthoga (Kenya) and Mr. S.J.R. Chihambakwe (Zimbabwe) asked how Father Joseph dealt with cases between private citizens. Father Joseph replied that a letter would be written to the person against whom a complaint was lodged; then both parties would be heard and a settlement would be reached. In reply to another question asked by Mr. Muthoga, Father Joseph said that the attitude of the government towards his legal aid programme was "not entirely hostile". Mr. Michael K.B. Wambali (Tanzania) informed the meeting that discussion had started in his country on government participation in legal aid programmes.

Mr. Niall MacDermot (International Commission of Jurists, Mr. James Taywor Massaquoi (Sierra Leone) and Mr. Marc Hein (Mauritius) sought information about financing the legal aid programme. Father Joseph explained that his expenses were minimal and that most of the work was done in collaboration with voluntary organisations. In answer to a question from Professor A. Oye Cukwurah (Nigeria) on the relationship between Father Joseph's organisation and other organisations, for example, Bar Associations, Father Joseph said that he had an advantage over lawyers because he was not affected by the lawyers' code of conduct. He also explained that he had avoided conflict with the Bar Association. Mr. Noel A. Quinty-Williams (Sierra Leone) asked about the use of touts. According to Father Joseph, the Bar Association condemns the practice but it is common. In reply to a question from Mr. Eric S. Ng'maryo (Tanzania), Father Joseph said that there were different types of legal aid camps. Mrs. Lungi L. Molamu suggested that a legal adviser should be appointed to assist women in rural areas. Rev. A.K. Zormelo (Ghana) asked about the reaction of non-Christian religious bodies to the success of Father Joseph's programme. The brief reply from Father Joseph was that nobody thought that he was offering legal aid as a member of the Church. Mr. Pierre O. Wandera (Uganda) asked whether Father Joseph, after granting legal aid, did anything to avoid a recurrence of the problem thereby solved. Father Joseph replied by describing legal aid as a "bare minimum structure", a "supportive" structure not aimed at changing structures.

Mr. Bai K.M. Bojang (Gambia) expressed the view that legal aid programmes should be related to development programmes. Father Joseph in reply to a question from Mr. Mordecai Pilate Mahlangu (Zimbabwe) said the population of his legal aid area was 5 million. Mr. Anthony John Nyanqulu (Zambia) noted the importance of educating people in rural areas about their legal rights.

The Chairman considered Father Joseph's speech as a challenge to churches in Africa.

THIRD SESSION

Topic 1: The Work of Development Non-Governmental Organisations (NGOs) in Africa

The first principal speaker, Mr. Muyale, examined the role of churches in development. He said that in 1981 the All Africa Conference of Churches (AACC) recommended that it should try to enhance the awareness of the people in respect of the political, economic and social realities of Africa in order to enable the churches to be more effective. AACC sees the Church as an instrument of justice and the gospel as education for liberation. He noted that the churches had faced a number of problems in their attempt to achieve developmental goals. In many African countries little attention is given to freedom after independence. More than a half of OAU members are controlled directly or indirectly by military regimes. The role of the Church is regarded in certain cases as complimentary to government effort in the area of development. This idea may lead to justifying the status quo. But the Church and the State do not share the same views on certain human rights matters. Furthermore, the Church is sometimes hampered in its development effort by restrictive church structures which tend to be authoritarian. The Church should recognise that development is a political activity. Development education must be given priority. Members of the community should be active participants in the development programmes rather than passive recipients. Christian institutions provide a good framework for development for they are based on love.

Before the second principal speaker, Dr. Diaz, spoke, Mr. MacDermot named the AACC and the African Bar Association as the two organisations that had contributed most to the promotion of human rights.

Dr. Diaz opened his speech with an emphasis on the need for self-reliance. Continued dependence on food aid spells disaster. There must be a shift from relief effort to development. There should be community participation

in the development effort. Dr. Diaz noted, however, that it had been said that in times of drought community participation could not be sought. Inability to obtain basic needs has led to depression and malnutrition. Western ideas of development tend to establish a doctor-patient relationship and this discourages participation of the people. The people should participate even in development planning.

Mr. Bai K.M. Bojang (Gambia), commenting on Dr. Diaz's observation, said that the main reason for the continued demand for food aid was drought. Dr. Nana Efuah Claris Pratt (Sierra Leone) expressed the view that the crucial problem in development work was how to obtain the resources. But according to Dr. Diaz, resources are available for community projects. The problem is that of utilisation of resources. She urged the Seminar to study the issue of accessibility to resources and expressed the view that lawyers would assist in solving the problem. On the issue of self-reliance, Professor A. Oye Cukwurah (Nigeria) said that within a global economic structure there was not much self-reliance in Africa.

Mr. Coleman M. Ngalo (Tanzania) enquired whether the AACC communicated direct with the churches in the various countries. Mr. Muvale's reply was in the affirmative. In reply to a question from Mr. Noel A. Quinty-Williams (Sierra Leone), Mr. Muvale said that in many African countries the churches had been very vocal on the issue of violation of human rights. Professor Cukwurah wondered whether the ideology prevailing in a country was not relevant in determining participation in development. Mr. J.K. Agyemang (Ghana) said that the government viewed the efforts of the Ghana Bar Association in the area of human rights with suspicion. Mrs. Eunice N. Sowazi (Swaziland) noted that intimidation and lack of information sometimes hampered the work of the Church. Mr. James Taywor Massoquoi (Sierra Leone) said that the major obstacles to development in Africa were mismanagement and corruption. Mr. Muvale's reaction to the statement was that it was easier for the churches to talk about corruption in the pulpit than elsewhere. Mr. Ben Masilo (Lesotho) said that churches had always been involved in

development. He explained that the grass-roots must be involved. Miss Mothokoa Mamashela (Lesotho), a lawyer, felt disappointed about the role of lawyers in development. According to her, the assumption that lawyers are good members of society is false. Lawyers have a monopoly of information which they like to hoard. They belong to the elite group. They lack knowledge of the economic problems of their countries. The curriculum for their training is faulty. They should be educated.

Dr. Diaz had the opportunity to say a little more about development. To him, true development is need-oriented, indigenous, self-reliant and ecologically sound. It involves the organisation of the people and it aims at social justice.

Topic 2: Description of Rural Legal Aid Schemes

Mr. Kumado described a rural legal aid scheme proposed for Ghana. The scheme is being organised by the Faculty of Law of the University of Ghana. It is intended to offer free legal services to small-scale farmers - those whose farms are within the range of 1 acre to 30 acres. It is noted that 90 per cent of members of the community are unaware of credit facilities. Therefore, there will be counselling on credit. Adult education techniques are to be used.

The village elders cooperated by providing free accommodation and meals when students of the Faculty went to collect data in the rural areas. It is proposed to use 3rd to 5th year law students. There will be permanent centres in two regions of the country manned by fresh graduates. In order to avoid any conflict with members of the Bar, the scheme will not involve any litigation. Each student will work under the supervision of a Faculty member. There is a financial grant for the project from the United States.

Mr. Wambali described a legal aid scheme organised by the University of Dar-es-Salaam Faculty of Law. There are four "priority areas" covered by the scheme. They are matrimonial cases, labour cases, motor accident compensation cases, and landlord and tenant cases. People seeking aid in cases outside the priority areas are advised to approach the Law Society. The programme is for residents of Dar-es-Salaam initially but it is proposed to extend it to other places. The programme features a literacy programme. It involves the use of legal aid camps, the organisation of law seminars and the establishment of legal aid clinics. It has been suggested that basic legal courses like a course in civics should be introduced in secondary schools.

Mr. Mahlangu described legal aid schemes in Zimbabwe. There is inadequate publicity on state legal aid. The University of Zimbabwe provides legal service as part of the final year law course. The University publishes literature on various rights. The publication is financed by a United States body.

Dr. Ombaka talked about the Public Law Institute of which he is the Director. The Institute was established in 1983 as a public interest organisation. It is co-sponsored by the Law Society of Kenya and the Council of Churches of Kenya. Dr. Ombaka informed the meeting that another legal aid scheme had been launched in Kenya. The scheme is organised by the Law Society and two other organisations. The scheme involves the use of a legal clinic. There are permanent legal aid centres in some areas. Legal clinic participation is an optional course in the law degree programme in Kenya.

Mr. MacDermot said that copies of typewritten versions of the description of the legal aid schemes would be sent to participants.

Topic 3: Possible Areas of Conflict Between Human Rights and Customary Law and Traditions

Mr. Ng'maryo emphasised the need for active preparation of the people in development matters, knowledge of the basic law, awareness in respect of legislation, complete subordination of individual interest, respect for the opinion of women and respect for the opinion of old people. He said that unnecessary litigation should be discouraged by legal aid programmes. Legal aid should discourage procedures which favour antagonism. Forgiveness should be encouraged. Para-legals should follow traditional methods of dispute settlement. Cooperation and harmony are essential to development.

Dr. Pratt talked about the plight of women in rural areas. She stressed the need to satisfy the needs of the women without breaking the traditional rules governing the role of women.

Mr. Bai K. M. Bojang (Gambia) asked Dr. Pratt whether there was any research in customary law with a view to determining areas of conflict with human rights. Dr. Pratt replied that the Bar Association and individual members of the Bar had conducted such a research on the issue of dispute settlement without litigation. Mr. Kelebone Maope (Lesotho) said that adjudicating without legal authority was an offence. Mr. Paul Shilubane (Swaziland) wondered whether subordination of individual interest was not a violation of human rights. Mrs. Julie Stewart (Zimbabwe) asked whether Mr. Ng'maryo had any experience of ill-advised law reform. Mr. Ng'maryo said in reply that such reform would operate against the poor people especially if they were not properly organised as pressure groups.

FOURTH SESSION

Topic: Training of Para-Legals

Father Joseph led the discussion with a description of his training programme. First he established a camp for university and high school students for 20 days in a rural area. He then conducted an aptitude test to determine their suitability for rural work. Out of the 150 to 200 people adult educators and barefoot lawyers were selected for six months' training. Initially, graduates were recruited but later recruitment was limited to the high school level because graduates did not stay long in the service. The training programme covers visits to local courts for the interview of people who attend court proceedings, visits to villages of those interviewed, reading and discussion of news, literacy classes and introduction to criminal law - all in the first month. The curriculum for the remaining five months includes general idea of the court system, history of the area, village structure and survey, government schemes, criminal law, the law of civil wrongs, protection of civil rights, drafting and village records. There is an oral test at the end of the training.

A long and interesting discussion ensued. Mr. Eric S. Ng'maryo (Tanzania) asked whether legal aid was an "inalienable constitutional" right. Father Joseph replied that it should be so considered. Many lawyer-participants sought clarification of the role of para-legals. Professor A. Oye Cukwurah (Nigeria) wondered whether they were in fact touts. Dr. Ombaka (Kenya) wanted to know the relationship between them and public officials. Professor Cukwurah even asked about the code of conduct governing para-legals. Mr. A.O. Fayokun (Nigeria) asked for details of the relationship between the Bar Association and para-legals. Mr. Niall MacDermot (International Commission of Jurists) explained that the para-legals were playing the role of solicitors in England who take cases to barristers. In India, the legal profession is fused but Father Joseph's legal aid office offers a service which is likened to that of a solicitor. Father

Joseph said that para-legals were not in fact touts but field workers. There is no conflict between his office or the para-legals and the Bar Association. Although there is no formal code of conduct prescribed for para-legals, they act under the instruction of his office. They keep records of their activities and it is not difficult to know when a para-legal misbehaves. In answer to a question from Mr. Stephen Kadaali (Uganda), Father Joseph said that parents would not allow girls to go for training as para-legals. So only boys are recruited to the position. But elderly women who are health workers, for example, midwives, are trained as para-legals. Mr. S.J.R. Chihambakwe (Zimbabwe) asked of steps taken to ensure that para-legals did not mislead the people. Father Joseph's brief reply was that para-legals were trained by lawyers and social workers.

Mr. MacDermot, feeling that a number of participants were wondering how Father Joseph's legal aid scheme succeeded, gave the Seminar some background information. India has a population of 600 million people - greater than twice the population of Africa. There are highly qualified lawyers at the top level. The Bar Associations are local associations to which only a few lawyers belong. In Mr. MacDermot's opinion, para-legals succeed in India because they perform an essential function, acting as an intermediary between the potential litigant and the law. The term "para-legal" is used in the United States. Para-legals are not touts. Lawyers in India derive a benefit from para-legals: they have properly prepared cases given to them. Possibly influenced by Mr. MacDermot's speech, Mr. Kofi Kumado (Ghana) said that para-legals of the type used by Father Joseph would be accepted by Bar Associations in other countries. Mr. Chihambakwe (Zimbabwe) quickly warned that it would be difficult to establish a uniform system of legal aid for the whole of Africa.

The Chairman invited comments on the view that one way of solving human rights problems is the use of para-legals. He also asked whether the idea of para-legals was accepted and if so through what agency para-legals should operate.

Mr. Coleman M. Ngalo (Tanzania) considered as relevant Father Joseph's experience. There should be para-legals in order that legal aid schemes may succeed. But the Bar Association and the Universities should be involved in legal aid schemes. Mr. Bai Bojang (Gambia) said that the cooperation of voluntary organisations was crucial having regard to the problems of finance. It is necessary to select people from villages for training as para-legals. Father Joseph, reacting to a comment made by Mr. Ng'maryo (Tanzania) said graduates recruited as para-legals were paid \$40 (400 rupees) per person per month and a non-graduate so recruited was paid 300 rupees a month. A graduate in government service in India is paid \$70 a month. Mrs. Mary Saukila (Malawi) asked whether trainee para-legals were required to pass any examination at the end of the training. Father Joseph said an oral test was conducted. Any person who failed the test would not be employed as a para-legal. Mrs. Eunice M. Sowazi (Swaziland) said that there were many people in rural areas who could be readily trained as para-legals. Mrs. Lungie Molamu (Botswana) said that community development workers should be trained in order that juveniles going to court might be protected.

Mr. MacDermot considered secondary school education as the proper level of education for people to be recruited as para-legals. According to him, it has been said that people of that level of education would not stay in the villages in Senegal, having regard to the high degree of illiteracy in that country. So, it was decided to rely on University students. Mr. MacDermot said that it was recommended that as a motivating factor there should be a course for law and social science students related to work in rural areas. The course should be a credit-earning course. That would enable the voluntary organisations to gain the confidence of the people. Accordingly, a pilot project started. A Canadian foundation has indicated its interest in financing the project. Mr. MacDermot said that para-legals existed in Thailand, Philippines and other parts of Asia. Professor Cukwurah suggested the use of law faculties as in the case of Tanzania. He said that he had introduced a similar system at Imo State University, Nigeria.

Mr. Fayokun said that the Seminar should consider which body would be the most suitable to operate a para-legal scheme, whether the body should work with governmental or other bodies, and which category of students should be involved. He suggested that if the operation of the scheme would be contrary to the law of any particular country, the law should be amended to accommodate the scheme.

Mr. Michael Wambali (Tanzania) suggested that students should go to the villages to train people there as para-legals. Mr. J.K. Agyemang (Ghana) and Mr. James Massaquoi (Sierra Leone) expressed the view that lawyers' clerks should be trained as para-legals. Mr. Noel Quinty-Williams (Sierra Leone) disagreed. He said that law clerks would be unable to serve the interest of the rural community. Mr. Anthony John Nyangulu (Zambia) stressed the need for the dissemination of ideas about human rights in rural areas. Mr. J.M. Caulcrick (Nigeria) suggested that the opinion of the people in the rural area about legal aid should be sought. Father Joseph said that grass-root organisations should, in the first instance, be given the opportunity to do legal aid work. If they fail the Bar Associations may perform the function.

The Chairman, Chief Debo Akande, stated that the discussion had indicated a consensus on the need for awareness of rights on the part of the rural population and the need for an intermediary between the people in rural areas and the lawyer. In his view, the scheme requires the support of the Bar Associations.

FIFTH SESSION

Topic: Other Forms of Legal Activity to Assist Rural Populations (Legal Research, Law Reform, Legal Education, Negotiation with Authorities, Cases, etc.)

The first speaker on the subject was Mr. Niall MacDermot, Secretary-General of the International Commission of Jurists. He mentioned a land reform law of Senegal which

gave the chairman of a local council the power to distribute land to individuals free of charge. It was reported that the chairman was selling the land and keeping the money. Thus, a law reform measure intended to facilitate distribution and use of land in rural areas was abused. Mr. Coleman Ngalo (Tanzania) noted that most of the disputes in rural areas were on land. Mr. Kelebhone Maope (Lesotho) said that people in rural areas lacked knowledge of the law. At the insistence of Professor A. Oye Cukwurah (Nigeria), Mr. Maope explained the system of Pitso as a system of disseminating information and exchanging ideas in the community on matters affecting the people by summoning meetings for the purpose. It is no longer suitable. A licence is required to hold a meeting. Mrs. Lungie Molamu (Botswana) said that the equivalent of Pitso in Botswana was Kgotla. Kgotla is still used. But lawyers undermine tradition and, therefore, do not appear to favour it. Mrs. Makara (Lesotho) said that sometimes when the people were informed that laws would be passed through Pitso important aspects of the proposed law would not be disclosed at the meeting. In one case, she said, it was said at the meeting, Pitso, that a proposed land law reform was simply a confirmation of the customary law but that was not so for the proposed law included provisions for the payment of ground rent. She also mentioned the Sales Tax Law, which, according to her, imposed a greater burden on the people than the pre-existing Tax Law. Pitso was simply told that the pre-existing law would be abolished.

Mr. Anthony Nyangulu (Zambia) said that one area requiring research was the law governing the devaluation of the property of a married person, especially a man, on death. There is a struggle for the property of a deceased husband to the detriment of the widow. Mr. Paul Shiluban (Swaziland) warned that participants should not be too excited about law reform. He said that problems of inter-state succession could be solved by preparing wills. In a will a testator might state that his estate should be distributed according to customary law. Expressing a similar view about law reform, Mr. Mordecai Mahlanqu (Zimbabwe) said that the law in Zimbabwe was not inadequate. What is needed

is education. Mr. A.O. Fayokun (Nigeria) suggested an improvement in the mode of communication in the rural areas. He said the old traditional system of communication should be used in view of the high degree of illiteracy.

Mrs. Eunice Sowazi (Swaziland) and Mr. Akafwale Muyale (AACC) favoured the use of church organisations for the purpose of education. Mr. Muyale said that an article on the role of para-legals should be sent to the All Africa Conference of Churches for publication in a magazine.

Mr. Ben Masilo (AACC) said that much could be achieved in the area of legal education in rural areas if Bar Associations worked with churches. He contended that rural people had greater confidence in the Church than in Bar Associations. Mr. S. Chihambakwe (Zimbabwe) said that use of political organisations was the most effective method of education. Mr. Stephen Kadaali (Uganda), Mr. Pierre Wandera (Uganda) and Mr. Maxwell Chambara (Zimbabwe) considered political organisations unsuitable for the education of people in rural areas. Mr. Wandera suggested the use of non-partisan organisations. Mr. Chambara said churches were neutral bodies which could be used for the purpose.

Rev. A.K. Zormelo (Ghana) said that the Church should be so used but he said that pastors needed education because they were not learned enough. Mr. Chambara said that the government too needed education. He said that the law affecting women was reformed in Zimbabwe without any consultation with lawyers.

Speaking on law reform, Mr. Michael Wambali (Tanzania) said that law itself could not be the basis of social change but law reform could effect social change. Mr. Bai Bojang (Gambia) stressed the relevance of data collection to the training of para-legals. Mrs. Julie Stewart (Zimbabwe) warned that law reform should not aim at imposing a uniform law on the people. She said that customary law was unsuitable for application to certain classes of women. Mr. Marc Hein (Mauritius) said that the degree of literacy in Mauritius was high. He suggested that the people should be educated on their rights.

Professor Cukwurah (Nigeria) named the age-grade system (a system of social control bringing together people of the same age group) and town unions as rural institutions which could be useful for the education of people on their rights. Mr. Eric Ng'maryo (Tanzania) and Mr. A.O. Obilade (Nigeria) warned against the indiscriminate use of models for the purpose of research. Mr. Ng'maryo wondered whether researchers had adequate education on people in the rural areas. Mr. Obilade said that a law reform measure based on inadequate research would not achieve its objective. Mr. Kofi Kumado (Ghana) said that research in the field of succession was essential.

Mr. Lee Muthoga (Kenya) said that in Kenya some years ago, the government had decided to identify some cases which should not be dealt with by the courts. Mr. Bai Bojang (Gambia) said that the old traditional institutions could be used for the purpose of settling disputes. Mr. A.O. Fayokun (Nigeria) said that every rural area must be within the jurisdiction of courts. There cannot be extra-legal dispute settlement without reference to the past. He said that customary or traditional courts were instruments of oppression and corruption unless properly handled.

Mr. Noel Quinty-Williams (Sierra Leone) mentioned dispute settlement by associations like Freemason as an example of extra-legal dispute settlement. Mr. Stephen Kadaali (Uganda) said that minor disputes should be settled informally.

The Chairman said that there was consensus on the following points:

Dissemination of information can be effected through the Church, women's organisations and other organisations. Throughout Africa there are similar problems of succession. The people should be advised to make wills. He further stated that there were village heads who could settle disputes.

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