Report of Seminars on Legal Services for the Rural Poor and Other Disadvantaged Groups

South-East Asia
(Jakarta)
11–16 January 1987

and

South-Asia
(Rajpipla)
27–31 December 1987

INTERNATIONAL COMMISSION OF JURISTS

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Preface

The International Commission of Jurists (ICJ) has been promoting a series of seminars in Asia, Africa and Latin America on the provision of legal services in rural areas, where the great majority of the population live. These seminars have been inspired by a number of Asian organisations which have found a solution to this problem in the training and deployment of 'para-legals', who will work at village level to inform people about their rights, to help them to claim and secure those rights and, where necessary, to put them in touch with lawyers in the towns who will take up their cases at a higher level, and as a last resort take proceedings in the courts.

In 1987 the ICJ, in cooperation with the Indonesian Legal Aid Foundation (LBH), held in Jakarta, Indonesia, a seminar on this subject which was different from the others in the series. Rather than seeking to educate and stimulate lawyers about this programme, the Jakarta seminar brought together representatives of groups in South-East Asia which had been undertaking this work for many years. The purpose of the seminar was:

- to examine and compare the working of existing organisations in the region engaged in educating the rural poor about their rights and making legal services available to them;
- to identify the obstacles encountered in this work;
- to discuss how to overcome these obstacles;
- to make their work more effective through sharing of experiences, and
- to evolve ways and means to stimulate new groups.

Participants who came from Indonesia, Malaysia, Philippines, Singapore and Thailand included practising lawyers, law teachers and students

and representatives of grassroots development organisations. There were also observers from organisations in India, ESCAP, the Christian Conference of Asia, the Asian Human Rights Commission and the Asian Cultural Forum on Development.

The conclusions of this seminar and the working papers prepared for it, give an unparalleled insight into the difficulties in carrying out this work. We believe they will be of great assistance to other groups in all regions who are trying to make a contribution to the assistance which lawyers can give to disadvantaged people in rural areas who, in their ignorance and lack of organisation, are being cheated, oppressed and denied their basic human rights.

A similar seminar with the same objectives was organised in December 1987 (27-31) for the representatives of legal services groups in South Asia.

The Seminar was organised jointly with the Rajpipla Social Service Society and was held in Kevadia Colony in Gujarat, India. It is situated close to the Narmada River dam site and also to the headquarters of the Rajpipla Social Service Society. This venue was chosen so as to provide the participants with a first hand exposure to the legal aid programmes carried out by the Rajpipla Social Service Society, in particular the Society's legal aid programme for the tribals living in the area.

The participants who came from Bangladesh, India, Nepal, Pakistan and Sri-Lanka included lawyers working with disadvantaged groups, law teachers, students and representatives of grassroots organisations. In addition tothe South-Asian participants, there were also observers from the Philippines and Thailand as well as from the UN Economic and Social Council for Asia and the Pacific (ESCAP), the Ford Foundation and the Asian Regional Exchange for New Alternatives (ARENA).

The conclusions, recommendations and the working papers prepared for these two seminars, give an unparalleled insight into the difficulties in carrying out this work. We believe they will be of great assistance to other groups in all regions who are trying to make a contribution to the assistance which lawyers can give to disadvantaged people in the rural areas, who, in their ignorance and lack of organisation, are being cheated, oppressed and denied their basic human rights.

The International Commission of Jurists and the co-sponsors of these seminars wish to express their gratitude to the following organisations whose generous financial contributions made possible the holding of these seminars.

The South-East Asian Seminar was organised with the support of: Asia Foundation, EKD (Diakonisches Werk) Germany, Ford Foundation, Fried-

rich Naumann Stiftung, Inter-Church Committee for Development Projects (ICCO) and the Netherlands Organisation for International Development Cooperation (NOVIB).

The South-Asian Seminar was organised with the support of: Catholic Organisation for Joint Financing of Development Programmes (CEBEMO) Netherlands, Ford Foundation, MISEREOR Germany, and the Swedish International Development Authority (SIDA).

Niall MacDermot
Secretary–General
International Commission of Jurists

June, 1988

Seminar on Legal Services for the Rural Poor and Other Disadvantaged Groups in South-East Asia

Jakarta
11–16 January 1987

Conclusions and Recommendations

Introduction

The purpose of the seminar was to:

- examine and compare the work of existing legal resource groups in the region,
- identify the obstacles faced by the poor and the disadvantaged and by the legal resource groups that work with them,
- make their work more effective through sharing of experiences, and
- evolve ways and means to stimulate new groups.

Legal resource groups (LRGs) are those which seek to "enable people, themselves, working collectively, to understand law and use it effectively to perceive, articulate and advance or protect their interests".

The participants identified the following methods as those commonly used by the LRGs in the region. Not all the methods are equally popular or effective in all the countries, but they have been used in various combinations depending upon the circumstances. The methods used are:

- Promoting legal literacy, including translations and publications in layman's language,
- Group counselling,
- Individual counselling,
- Networking and advice support to communities and their organisations,
- Promoting law reforms and making changes in the law,
- Training para-legals,
- Monitoring implementation of legislation,

- Litigation (ranging from individual to class actions), and
- Conciliation and/or mediation.

Most LRGs started off with only lawyers as members and working from one central office. However, there is now a trend towards including other disciplines and members of community organisations, and to providing legal services directly at the regional and village levels.

In keeping with this the participants at the seminar included representatives of grassroots development organisations and environmental groups, as well as members of regional international organisations.

Based on the experiences of the LRGs and other groups the seminar identified the obstacles faced by the poor and the disadvantaged as well as by those groups that work with the poor and made recommendations to deal with these obstacles.

Obstacles identified from the viewpoint of the disadvantaged groups:

- Cultural: arising in paternalistic, traditional power structures (e.g. people do not question leaders);
- Unresponsive judicial and legal systems;
- Restrictions imposed by the authorities on freedom of association and assembly;
- Ignorance of the law and the technical and complex nature of the law;
- Low literacy and ethnic and language diversity;
- Lack of access to courts and non-recognition of community institutions in settling disputes;
- Provisions of legal services which are based on western models and concentrate on private disputes.

Obstacles identified from the viewpoint of particular disadvantaged groups i.e.:

Women

- Women lawyers and other women's support groups who help disadvantaged women (e.g. battered wives) are themselves subject to physical

attacks and abuse without protection from the police and other local authorities;
- Lack of access to the judicial system and support services;
- Discriminatory laws;
- Lack of women personnel/lawyers to provide services;
- Cultural inhibitions and acceptance by women of their subordinate position;
- Government inaction in relation to the subordination of women;
- Status degradation due to economic impoverishment and lack of recognition or credit given to the participation of women;
- Sexual harassment.

Tribal Groups

- Land problems arising from settlement policies; eviction due to modernisation;
- Replacement of tribal law by state law;
- Cultural domination, e.g. failure to provide primary education in their tribal languages;
- Lack of knowledge and appreciation of the problems of the tribal groups by policy makers and administrators;
- Very few legal service groups operating in tribal areas;
- Tribal members are trapped in traditional, paternalistic structures;
- Lack of tribal participation in government, leading to the implementation of top-down policies;
- Resettlement policies incompatible with the cultural and socio-economic needs of tribal communities.

Informal Sector
(e.g. hawkers, seasonal and temporary workers, illegal immigrants)

Problems are difficult to generalise because of their lack of identity and unorganised nature.

- No legal status;
- Failure to recognise the contribution of these sectors.

Environmental issues and the disadvantaged

- Environmental issues are regarded as separate from the survival problems of rural poor;
- Environmental issues are not given serious attention by the authorities at the level of policy-making implementation and coordination;
- Some environmental groups are hesitant to use existing legal structures to promote their objectives;
- The existing administrative system does not provide adequate solutions to environmental problems;
- Lawyers seldom understand the technicalities and substance of environmental issues that affect the poor and the disadvantaged.

Obstacles identified from the viewpoint of the legal service groups

- Lack of personnel or volunteers, resources and logistics;
- Difficulty in getting lawyers to offer their services for legal aid;
- The limitations of the existing legal system;
- Inappropriate rules in legal professions;
- Codes of ethics that prevent lawyers from taking up the problems of the rural poor and the disadvantaged;
- Lack of an independent judiciary;
- Governmental interference, attitudes and controls which limit the effectiveness of groups;
- Corruption of those who administer the law;
- Harassment of groups by local officials, police and vested interests and inadequate protection against such harassment;
- Ideological differences between groups, lack of cooperation and sharing of experiences and available resources between them;
- Ethnic divisions lead communities of a particular ethnic composition to mistrust legal resource groups of a different ethnic background;
- Lack of access to the press and mass media, which are often controlled by the state or in some cases by the military; private radio stations where they exist are expensive;
- Lack of awareness and interest by universities to help the disadvantaged or the grassroots organisations.

Recommendations

Education programmes for the rural poor and the disadvantaged

Education programmes should be conducted so as to make people aware of their rights. This can be done through:

- dialogue on their problems and the legal implications, thus making them articulate their problems and rights,
- legal literacy and outreach programmes,
- information drives through dramas and mock trials by law students to depict a court case and make the disadvantaged understand the procedures,
- mobile exhibitions with slides, pamphlets and posters,
- translations and publications of laws in local and simple language and production of guide books on basic rights in local languages.

Training of para-legals

Different groups should be identified and trained as para-legals. These groups would include community workers, religious workers, law students and community leaders. There can be different levels of general legal training suited to the needs of the different groups of para-legals. This can be combined with in-house and on-the-job training for field workers. Training on specific legal subjects should be given to cater for problems that may be peculiar to particular communities.

The tendency of para-legals to return to lawyers for frequent consultation should be avoided by making them more self-confident. They can acquire confidence through successful experiences and sharing of experience with other groups at the local, national and regional level. Initially, there may be a need for lawyers to maintain a physical presence at places of crisis but this can be gradually reduced as para-legals gain confidence. Thereafter lawyers can support the para-legals through further training and advice.

The judiciary

- It is a precondition that the judiciary and the legal profession must be independent. Any pressures upon the judiciary should be opposed by all groups;

- The judicial process should be made more accessible to the poor and disadvantaged and courts encouraged to take up cases themselves or mediate in some cases;
- Conventional reforms such as eliminating corruption and speeding up court proceedings should be introduced;
- Tribunals should be established in rural areas;
- The granting of a certain judicial competence to community institutions should be encouraged and the role of such institutions enhanced;
- The decisions of judges should be critically examined on legal grounds, being careful to avoid contempt of court;
- Judges should be "reoriented" by, *inter alia*, inviting them to act as formal or informal advisers to legal aid and legal resource organisations and/or to participate in human rights meetings.

The legal profession

- Bar Councils and Bar Associations should be encouraged to commit themselves officially in conducting legal aid programmes;
- Lawyers who are interested in human rights should be encouraged to undertake this work full-time, or to cooperate on a part-time basis with organisations that work for the poor and the disadvantaged;
- Lawyers working with the poor should maintain contact with traditional legal aid programmes so as to encourage them to change their approach;
- Lawyers should contest restrictions imposed by professional codes of ethics;
- Lawyers should also choose cases which highlight common problems of the poor;
- Young lawyers should be motivated to join legal aid programmes, and the benefits to them should be explained, such as gaining practical experience, opportunities to visit places and meet with other NGOs, to establish relationships and work with senior lawyers, and to acquire a sense of identity in the fight against injustice.

Role of universities

Most legal resource groups in the region recruit their members from university students and lecturers. However, the majority of university members are not familiar with the hard facts of the daily human rights struggle of grassroots organisations.

The universities, and in particular the faculties of law and social sciences, can be helped to play a greater role by:

- grassroots organisations adopting a multi-disciplinary approach to the problems of the disadvantaged and inviting students and academics to participate in their programmes;
- persuading lecturers and students to become involved in human rights activities by providing them with first-hand experience through internships with grassroots organisations;
- encouraging law and social science faculties to include human rights or related subjects in their curriculum;
- encouraging law schools to introduce subjects such as 'law and poverty', 'law and society';
- enhancing the activities of existing legal aid bureaus in law faculties;
- building cooperation between LRGs and universities by introducing LRG members as co-lecturers and inviting university members to be active in LRGs;
- persuading law schools who do not already do so to send law students to rural areas under legal dissemination out-reach programmes. These programmes can, for example, be held two to three times a year with students staying in a rural area for 12 or 15 days in one project as is done in Thailand;
- encouraging law schools to cooperate with fair-minded prosecutors to investigate situations in rural areas that have led to criminal law complaints;
- involving law faculties in preparing and publishing simple statements of the relevant law which can be used in legal outreach programmes.

Role of LRGs and other non-governmental organisations

LRGs and other development organisations should:

- recruit non-lawyers with special emphasis on bridge building with other social action groups;
- identify locally based groups working for self-reliant development and urge them to form a network among themselves at local, national and regional levels through workshops, seminars and exchange programmes;

- assist the disadvantaged to organise themselves and work to overcome restrictions on freedom of association and assembly;
- identify the problems and needs of the rural poor and the grassroots groups and provide them with services they need such as legal aid and advice, information on legislation, and assistance in negotiations with officials;
- organise fact-finding missions in the rural areas and report in the media or pursue individual cases in court;
- whenever necessary take formal stands on issues that affect the poor and the disadvantaged;
- use the mass media to highlight the problems of the disadvantaged, through press conferences and, where possible, through radio programmes. In some of these, as in the Philippines, listeners can call up the host of the programme to promote discussion;
- organise public meetings to highlight the issues concerned with the poor and the disadvantaged. In the Philippines, one organisation holds weekly meetings which are open to all members of the organisation and the proceedings are covered by the media;
- take up cases that illustrate clear cut violations of laws and use them for applying public pressure on the authorities to prevent future violations;
- set up training and orientation programmes for high school and graduate students, lawyers, journalists and other professionals;
- ensure greater coordination between existing organisations so as to share the resources available; this can be done by creating formal committees or through informal networking. Such coordination and pooling of resources would also avoid duplication of similar activities;
- seek the help of regional and national organisations to break the isolation of grassroots organisations by organising exchange and internship programmes among groups within each country as well as internationally in the Asian region.

Research and documentation

A legal resource or documentation centre can be set up to monitor unjust laws and compile case histories on the use of such laws.

An ASEAN human rights jurisprudence can be collected to develop the rights of the rural poor and other disadvantaged groups.

LRGs and other organisations should press for necessary law reform and prepare draft model laws.

Research should be undertaken on environmental and development policies so as to monitor their impact on the survival problems of the poor and the disadvantaged.

Regional and international organisations should help local groups to conduct research on the effectiveness of legal services programmes and disseminate the finding to other groups.

Statement

by
D.J. Ravindran

In 1981, the International Commission of Jurists organised the seminar on "Rural Development and Human Rights in South–East Asia". The Penang seminar, as it came to be known, discussed the subject of legal aid and legal services, and concluded that

"Traditional legal aid schemes for the representation in conflict of individual litigants are not in themselves sufficient to meet the needs of the poor for legal assistance. Disadvantaged sectors of society can and should be assisted to secure their rights by legal assistance in the form of:

- information and education about their collective and individual rights and available legal remedies;
- the defence of such rights in class actions as well as individual cases;
- explanations as to the purpose and nature of legislation affecting them and what it requires them to do or not to do;
- assistance in formulating and submitting their demands to the authorities;
- negotiations with the authorities on their behalf;
- assistance in forming organisations to secure and defend their rights."

The Penang seminar, in addition, emphasised the need for training para-legals and creating a new breed of lawyers who see the true purpose of the legal profession as the establishment of justice in human relations.

In the last five years since the Penang seminar took place these conclusions have come to be accepted widely and legal resources groups in the region have contributed further to these ideas by their own experiences. Many groups have emerged in the region who are actively engaged in implementing legal resources programmes to the rural poor and other disadvantaged groups.

Hence the idea of this seminar is to facilitate a process of stock-taking by groups who are conducting legal resources programmes. We are grateful to LBH (Indonesian Legal Aid Foundation) for agreeing to cosponsor the seminar and help organise it in Jakarta.

In the last five years the region has witnessed many new developments. At one level the concept of "people's power" has been legitimatised, giving rise to hopes about people taking power to delegitimatise authoritarian governments.

At another level legal aid and legal resources groups have expanded their area of concern and are using law, for example, to prevent nuclear waste dumping and to protect the rights of people who are displaced by official development programmes.

Another positive development in the last five years has been the growing number of regional networking organisations each of them, in their own way, providing support and services to the grassroots organisations.

However, there are obstacles in the path of these positive developments in the form of different restrictions that continue to exist in various countries preventing the rural poor and other disadvantaged groups from exercising their rights.

The idea of this seminar is to look into both the positive and negative developments that have taken place in the region in the last five years. In view of this, we suggest that the seminar looks into the actual experiences of groups in the region, and avoids lengthy discussions on the basic ideas on legal resources to the poor that were concluded in the Penang seminar and that have already been accepted by groups in the region.

We envisaged the seminar dividing into two committees: Committee I discussing the problems encountered by legal resources groups and evolving new strategies to deal with these problems; Committee II discussing the training of para-legals and ways and means to stimulate new groups in the region. In addition to the two basic working papers there are other short papers by different participants detailing the experiences of different groups, and the ICLD (International Center for Law in Development) publication on "International Content of Rural Poverty in the Third World."

I would like to conclude my introduction to this seminar by quoting

from U. Baxi's article in this publication.

"Unless the liberational potential of the law is enhanced as a part of the struggle for emancipation of the poor, the repressive reality will continue to haunt them with all its diabolical force. Herein lies the challenge of law to social action."

I would like to situate the challenge before this seminar as that of making an honest assessment of our own role and contribution in strengthening the existing strategies to enhance the liberational potential of law for the empowerment of the poor.

D.J. Ravindran
January 11, 1987

Statement

by
T. Mulya Lubis, Chairman
Indonesian Legal Aid Foundation

First of all, permit me to welcome all of you to the Seminar on "Legal Services for the Rural Poor and other Disadvantaged Groups" which is jointly coordinated by ICJ and LBH.

It is a great honour for LBH to be able to be your host and a happy occasion to greet you here. Through this seminar, we shall be able to learn many new things from you participants and this, of course, will strengthen our conviction to continue our step forward in developing the legal aid movement in Indonesia.

Why do I say that this seminar will strengthen our conviction to continue our step forward in developing the legal aid movement in Indonesia? This is because our task in providing legal services is not an easy one. It forces us to become involved with target groups, in our case, the poor, and we are often faced with obstacles and challenges, be it from the law, economy, politics, or culture. There is, it seems, a distance which separates the people from the legal aid movement.

The legal aid movement has thus far articulated itself in a language of words and symbols different from those of the poor. This is partly because a majority of legal aid workers originate from the middle and upper class, such that legal aid has been identified as a form of social philanthropy from the middle layer of society, the legal professionals, to the lower layer of society – a clear misconception. We are all aware that the legal aid movement would fail

if it was merely based on social and professional philanthropy.

The time has come for the legal aid movement to become one with the poor and the time has also come for professional arrogance to be done away with. The social distance which has existed up to now must be eliminated so that in days to come the target group can itself fight for the rights that have been taken from it. The legal aid movement will at the same time cease to be patronizing and become one with the people. This is the reason why the legal aid movement in Indonesia has recently advocated the formation of what we call "Masyarakat Bantuan Hukum" or the Legal Aid Society, as a manifestation of the unity between legal aid workers and other social workers and justice seekers. We are therefore hoping that the Legal Aid Society will reactivate the spirit of social unity, of social solidarity, of social defence in the form of collective advocacy. It is here that we can sharpen the work priority by formulating further the term 'public interest litigation'.

I hope that this Seminar can transform the experiences of the legal aid workers in the region, into a mirror for comparison. It would be ideal should this Seminar produce a number of recommendations and a publication which can be used as a reference for legal aid workers in the future.

Finally, as host of this Seminar, I would like to extend my apologies should you find our services less accommodating that you had hoped. We are not sufficiently experienced in holding seminars as this, but we realize that this seminar will be of great value to us. Because of that we have collected enough courage to accept the ICJ's offer to hold this Seminar. All my thanks on behalf of LBH to the ICJ for giving us this valuable opportunity and also many thanks to all who have enabled this Seminar to be realized, among others Asia Foundation, Ford Foundation, Novib and FNS.

Happy Seminar!

Obstacles to Using Law as a Resource for the Poor: The Recapturing of Law by the Poor

by
Clarence J. Dias

Introduction

"It is common knowledge," writes a Nairobi law teacher, "that the majority of Kenya citizens want nothing to do with official law." The observation holds true in rural settings throughout the Third World and especially so for the poor. Infrequent attempts by the poor, or those working with them, to use law to assert rights or defend against oppression often produce unsatisfactory outcomes. The rights, certainty and formal equality promised by jurists who extol the rule of (official) law often become illusory to those who view it from this kind of experience. Nevertheless, ignoring law and adopting a strategy of "legal nihilism" is a luxury that the rural poor cannot afford. Dominant groups and official bodies, frequently, are able to institutionalize transactions and relationships which produce impoverishment by maintaining the impression that these practices are sanctioned by law. Thus, the poor may wish to ignore law but the law does not ignore them. Moreover, law and legal resources can be (and indeed must be strengthened as) a two-edged sword which the poor can turn back upon those who victimize them. In this paper we attempt to identify obstacles that organizations of the rural poor (ORPs), legal support groups (legal SAGs), and other support groups working

with rural communities (SAGs) have encountered in efforts to use law and legal resources in struggles against impoverishment and oppression. We also attempt to identify some approaches, tactics, and strategies that could help overcome these obstacles. We end with an emerging action agenda which ORPs, SAGs and legal SAGs (and, in particular the last named) must begin to address if law and the legal system can be recaptured by and for the poor.

Structural obstacles

An impressive body of legal writing adopting a political economy approach has developed, to critique existing social structures in developing countries and the impoverishment, exploitation, and oppression they impose on the majority of the populations of such countries. Thus, for example, "the rape of the peasant" has been shown to be linked to "the penetration of transnational capital." Just social structures (including law) will come after the glorious revolution of the proletariat. But, in Nyerere's Tanzania, Allende's Chile and Castro's Cuba, the legal system seemed largely unaffected by popular revolution. In Sri Lanka (under the previous government), Mozambique, Angola, and Nicaragua today, serious efforts are being made to dismantle unjust legal orders and replace them with systems of "people's law." But legal SAGs, in Third World countries, cannot wait for "the revolution." They must help make it happen by conscious and directed efforts to use law and legal resources for the disempowerment of the oppressing elites. Clearly, such efforts will run into obstacles produced by existing social and power structures but strategies must be devised, and implemented, to use law in attempts to overcome these obstacles. Below, we address, briefly, three of the more commonly encountered structural obstacles often described as abuse of power, attitudes of the poor, and societal values and lifestyles.

Power and power-wielders

It is indeed axiomatic that power corrupts. Benign, paternalistic dictatorship is often prescribed as the form of government most likely to achieve rapid development in the countries of the Third World. But the reality is that governmental lawlessness is the most serious problem encountered by ORPs and SAGs in developing countries. Private sector power-wielders and transnationals are equally lawless and ruthless and indeed often, the line between

private actor and governmental official becomes indistinguishable with the formation of unholy oppressive coalitions comprising transnational corporations, local private sector elites and government officials. Legal SAGs must, therefore, consciously address the task of *disempowerment*. Law can, has, and indeed increasingly must be used for this purpose by:

- curbing governmental lawlessness by the imposition of *accountability* through unwavering assertion of existing laws aimed at securing public accountability. An allied task will be the strengthening of such laws and the processes of their enforcement.
- securing the *sharing of power* through assertion of laws aimed at securing participation. Very few governments can profess to work through legal structures which are designed to exclude participation. Most governments indeed openly espouse, at least at the level of rhetoric, the objective of participation. Legal SAGs must strive to enforce laws which are ostensibly created (even if clearly not intended) at securing participation. Through participation comes the sharing of power and thus simultaneous disempowerment and empowerment.
- the *recapture of power*. Organizations of victim groups working at grassroots level have, in a number of countries in Asia, succeeded through their struggles in recapturing portions of their local political space. "People power," is becoming a force increasingly to be reckoned with. Law, and especially human rights law, can be used by legal SAGs, in creative ways, to assist in this process of recapturing power. Governments seek to legitimate their actions through laws and, thus, they can be held to such laws. Rights against starvation and the right to life, for example, cannot be denied by governments without serious costs in delegitimation. Frequent assertion of such rights, by legal SAGs can help embarrass governments whose policies deliberately (but silently) are aimed at denying such rights to the poor.

Attitudes of the poor

Social science literature talks of a "culture of poverty" which explains the attitudes and behaviour of the poor. But it is unfair to describe the poor as passive unresisting victims. Their crushing impoverishment often brings about a near abject state of powerlessness. Rape, debt bondage, near feudal master-servant relationships that demand cringing servility, and total dependence for subsistence needs, are products of this powerlessness. In this

situation, fear of reprisals and ignorance or suspicion of law create obstacles to use of legal resources by the poor. Within rural communities there is often a general ignorance of the content and nature of official legal structures, and aversion to them. These barriers become all the more formidable where the government's laws and official proceedings are rendered in an alien language and in terms difficult to comprehend and in books difficult to find; where knowledgeable sources of legal information and providers of legal assistance are unavailable; where government bodies assume no obligation to provide that knowledge, and where the law imposes none. "Law" is associated with the power of those in authority to do virtually whatever they choose to do, at least so long as their superiors condone the actions; it is less understood as a source of limitations on authority – a possible source of rights and claims which officials would be obliged to recognize.

Even where people gain knowledge of law, they may still be afraid to invoke it to support valid claims when they believe the effort may lead to retaliation. In some regions these fears may be a major deterrent to mobilization and organization and all the more formidable where those most threatened lack access to legal knowledge and sympathetic lawyers. Of course lawyers cannot prevent this kind of repression, but they may help people to evaluate risks and gain more confidence in the legality of their position, in their potential ability to use courts and other forums to defend themselves and to use law to exploit the contradictions of lawless repression of lawful activities, and this knowledge may help them realize the potential power of numbers and organization to counteract retaliation. But, once again, poverty becomes a limiting factor since most lawyers expect to be paid. As one Indian legal aid lawyer laments, "Without the clash of coins, the laws are silent." Two strategies are essential to break out of this vicious circle of poverty. The rural poor need to organize themselves so that they can find safety in numbers. They also need to assert claims, as "entitlements" and "matters of right," to essential resources of food, health, and education without which they will be doomed for generations, to poverty, powerlessness and dependency. Legal resources have an important role to play in the process of mobilization and organization of the poor. Human rights law can be an important resource to the poor in their struggle for access to resources to meet their basic needs.

Societal values and lifestyles

A major cause of impoverishment are lifestyles, often borrowed from western countries, in which the consumption needs of the few can only be met

by the pauperization of the many. The values underlying such lifestyles must be exposed. Ambition quickly degenerates into greed. Affluence breeds its own irresistability and the poor often aspire only for "upward social mobility." But, within the present exploitative social system, their own upward mobility can only be achieved by the creation of new victims. Modernization paradigms of development promote lifestyles which are unsustainable alongside equity and justice. But so also do certain long held traditions and cultural factors which, for example, promote multiple oppression of women. Here, once again, human rights could help provide both a source of and a justification for a new value system founded upon sustainability and justice for all.

Processual obstacles

Identifying obstacles at a structural level is a useful starting point in understanding power relations and the processes of victimization (i.e., imposition of poverty, exploitation and dependency) that result from such power relations. Essential, although often neglected, next steps are: (1) to carefully examine the role of law in specific processes of victimization, and (2) examine obstacles to using law to help specific categories of victim groups resist and fight back against victimization.

Processes of victimization

These are many and varied. Below, we illustrate one such process: the adoption of development policies and programmes which, wittingly and unwittingly, create new victims or indeed, new categories of victims. In most Asian countries, we see the adoption of development policies and programmes aimed at:

- the creation of large, single-crop plantations, often run by transnational agribusiness. Usually, these plantations aim at increasing production of such single crops for export purposes;
- the construction of large-scale infrastructure projects such as highways, dams, or airports;
- the establishment of export-processing zones with the twin objectives of

attracting foreign investment, technology, and industry; and increasing exports;

- the establishment of large industrialization projects (aimed at either export promotion or at import substitution) which are aimed to create significant local employment opportunities.

A variety of laws are employed to set up these projects. Often these laws provide specific exemptions from the general law of the land to help facilitate the initiation of the project. The projects themselves often produce a variety of harms and create new categories of victims. Thus, for example, large-scale agribusiness plantations create new categories of landless labourers often heavily indebted and, thereby, indentured to the project. They also, often, displace food crops and subsistence farming, thus increasing not only rural poverty but also rural hunger. They can also create serious long-term (often irreversible) environmental damage with disastrous consequences for the very survival of people in the project area. The latter is also true of large-scale dam projects. In addition, large-scale infrastructure building projects also create displacement and "resettlement" of large numbers of people, often tribals or indigenous people and "resettlement" can often be only on terms very harmful or disadvantageous to those displaced. Export-processing zones are usually created in a manner that tramples upon the rights and security of labour. The special social problems created for women working in such zones has already been well documented in literature in the region. Industrialization projects, as Bhopal so tragically demonstrates, may result in the importation into the country of hazardous products and technologies. These hazards may create victimization, both of workers as well as of communities living near the plant. At any event, law is often instrumental to the very initiation of the victimization process, as well as proving to be a formidable obstacle to attempts by the victims of such processes to fight back against victimization.

Victim groups

There has been no careful analysis of the specific difficulties faced by distinct categories of victim groups in their attempts to use law to resist or reverse the victimization process. A few remarks follow relating to specific categories of victim groups.

- *tribals and indigenous people* are often placed at a serious disadvantage because their indigenous law (including compacts and treaties) has been

replaced by modern law. Thus, for example, issues of title to land arise in cases where a tribe's indigenous law rejects the concept of individual ownership: the land belongs, in perpetuity, to the tribe as an entity. The problem is compounded when the tribe is nomadic in nature with disastrous consequences when they seek to claim rights of resettlement on being displaced.

- *subsistence farmers* have often been rendered landless through a variety of legal techniques which nonetheless are designed carefully so as not to constitute "expropriation," thus denying them rights of compensation. In other instances, they have lost their land because of indebtedness – often under circumstances officially proscribed by (unimplemented) usury laws.
- *small-scale fishermen* are doubly victimized, at times, by laws which create "concession zones," thus privatizing the "commons", and by conservation laws which restrict them, but whose ineffective implementation enables illegal commercial trawl fishing to go unpunished and uncontrolled.
- *workers in export-promotion zones* are often deprived, by "special" legislation, of rights available to workers elsewhere under the general labour law of the land. Moreover, as recent experience in Penang indicates, they are left completely helpless and without protection if their employer decides to shut down his operation because it is no longer as commercially attractive or because he can transfer to another country, offering even more attractive blandishments.
- *workers in hazardous industries* are repeatedly victimized by laws and policies which decide for them that the hazards they face, on a day-to-day basis, are "high-risk but low-probability in nature." They are further subjected to "job blackmail" by employers who threaten plant closure if the workers wish to seek implementation of safety standards and regulations. They are, thus, effectively converted into "voluntary suicides!"

The above brief sketch of victim plight as a consequence of victimization through law is meant to demonstrate the value of legal SAGs focusing on an approach that examines the role of law in victimization processes and the value of legal SAGs working closely with specific categories of victim groups to reduce the use of law as an instrumentality for initiating or implementing such victimization processes.

Legal systemic obstacles

The criticism has often been made that law is part of the superstructure of exploitative capitalist societies. The legal system, it is stated, protects the interests and resources of the "haves". Its purpose is to preserve the *status quo*. So runs the typical Marxist critique of the legal system. There are, it is admitted, "contradictions" in the legal system which can, in turn, be exploited to secure temporary gains for the proletariat but only at the cost of debilitating the class struggle and at the risk of legitimizing (by use) an unjust legal order. But such a monolithic view of law exaggerates its autonomy and misperceives its character. The legal system, in most developing countries, as Upendra Baxi reminds us, has a schizophrenic character: on the one hand it promotes "the rule of law," and on the other hand it permits "the reign of terror" (Baxi: 1986). Most PORPs (participatory organisations of the rural poor) and SAGs need such a reminder. They tend to share the monolithic view of the legal system and speak disparagingly (but not without a sense of awe) about "the law" – a rigid, abstract phenomenon which is part of the exploitative apparatus of the state. They are constantly exposed to the repressive face of law. They rarely see its benign, facilitative side. Thus, one's concept of law can itself prove an obstacle to using law. The source of law can be viewed as being the class structure as reflected in the institutions of the state. But such a view leads one to the rather sterile course of legal nihilism. Alternatively, a more dynamic view of law can be taken. Under such a broad view of law, the sources of law are not simply legislation, subsidiary rules and court decisions; the sources include the constitution and the ideology and doctrines which inform it; natural law – such as the principle that all people possess the same basic rights; jurisprudential concepts – such as the idea of the "rule of law"; customs and endogenous law – such as customs which favor decision making by consensus; the international bill of rights – the Universal Declaration and other "universal" norms which certain governments have promised to observe. The concept of *law* (used here) includes endogenous law and shared ideas about justice which can be employed to articulate grievances persuasively, to legitimate claims, to resolve conflicts and to create new community structures (as alternatives to state-controlled structures) for the allocation of resources. In such a concept of law, we are interested in the ways by which people can use all of these various dimensions of law to formulate demands and press claims; to create their own norms for their own groups to carry out other social and economic functions. We are interested in the way groups can use legal resources to change law and change their social environment. By *legal resources*

we mean something quite different than "legal services;" we mean the knowledge and skills which enable people, themselves, working collectively, to understand law and use it effectively to perceive, articulate, and advance or protect their interests in addition to a knowledge of relevant, official legislation and rules, and more than an ability to litigate in government tribunals (or an ability to work with lawyers for that purpose).

Lawyers as obstacles

If groups are to develop effective legal resources to enhance their capacity to confront existing social orders, then means must be found to enable them to secure the effective assistance of legal specialists. Moreover, that assistance must be geared to the ends and means of alternative development, not to fostering dependence on outside professionals.

In many countries the demographic distribution of lawyers put them at great distance – both geographic and social – from impoverished, excluded rural people. Even where lawyers are physically accessible, the costs of legal services impose a significant constraint. Moreover, the way in which legal services are conceived and provided by those lawyers who do cater to poorer people, may also create barriers to the development of groups and of legal resources for and within groups. These lawyers usually offer a limited range of skills to their clients. Their talents are usually expended on litigation, or on counselling individual clients about problems of a typical legal sort (such as the preparation of contracts, wills, leases or similar documents). Further, the tendency of lawyers to deliver a narrow range of counselling on a reactive rather than proactive basis, often limits the value of those "services". So does the tendency of the lawyer to dominate the determination of whether and how a problem can be converted into a legal problem – particularly when the lawyer thinks solely in terms of individualized disputes and litigation. Moreover, the marketplace for legal services strongly tends to direct most lawyers' energies, and indeed to shape their perceptions of what law is all about; and the poor are generally excluded from these (usually urban) places. When their clients pay only modest fees, the lawyer seeks to develop a high volume practice entailing repeated use of familiar skills. Clients with difficult problems, requiring significant investments of time but offering meager rewards, are less desired, if desired at all. Indeed, many of the problems of rural groups described in this paper may be quite novel to most lawyers, and they may call for innovative thinking in order to develop persuasive legal theories about the proper interpretation and application of unfamiliar statutes and rules which will fit

the particular needs of a group clientele – for example: how to force a Ministry of Agriculture to provide more adequate extension services and credit to poorer, marginal farmers. If he is alien to the group the lawyer may be all the more reluctant to become involved with problems which are remote from his experience and routine. Further, a rural group may be a less attractive "client" if the lawyer is called upon to work within the group as part of its cadres. By immersing himself in the concerns of the group and embracing its claims, he risks alienating other, wealthier clients, or jeopardizing desired social connections and his status within the community. Often, the lawyer will deliberately wish to increase the "social distance" between himself and his impoverished client. Both by his recruitment and by his training, the average lawyer aspires very much to belong to the elite in society. This breeds a sense of arrogance in the manner in which he approaches his work – an arrogance that oftentimes hides his ignorance. Lawyers are often remarkably ignorant about laws which relate to rural problems or to problems of the poor.

The legal profession as obstacle

In most countries, lawyers organize themselves into a profession thereby claiming the right of self-regulation. This professionalization of law and administration has usually led to:

- monopolization of information and knowledge of law;
- monopolization of representational and intermediary roles;
- lack of power of nonprofessionals to influence the making, interpretation and administration of law.

The legal profession in most Asian countries is a highly stratified one. A few influential elites dominate the profession. Their dependence on and loyalty to affluent client groups leads to the skewed development of those fields of law of interest to such clients. This skewing gets further reflected in the skewed development of career options for young, beginning lawyers who are especially sensitive to peer group pressure. The skewing also gets reflected in legal education since the legal profession usually retains control over the training and recruitment (through Bar examinations) of newcomers to the profession. The legal profession usually wishes to retain the colonial character of the legal system as a means of perpetuating its monopoly position.

In sum, there is, among influential members of the profession, little awareness of the problems of the poor, and there are few incentives to discover

ways to use law innovatively to address them. Thus, the profession qua profession is both weakly motivated and poorly prepared to help generate legal resources.

Judges as obstacles

Most of the preceeding comments about lawyers and the legal profession apply, equally, to judges. Their recruitment and training produces even greater "social distance" from the poor. Although they lack familiarity with the facts of how the other half lives (and often the law relating to them), this does not stop the judiciary from adopting a paternalistic attitude and often, this leads to "the helping hand" striking again and again as the recent *Shah Banao* judgment of the Indian Supreme Court illustrates. In that case, the courts attempt to grant rights of maintenance to divorced Muslim wives has provoked legislation which, in practice, deprives them of whatever scant rights they had earlier. An additional problem with the judiciary stems from the fact that in several Asian countries, they are subjected to severe and unrelenting pressure from the political executive. In face of such pressure, judges are often reduced to positions of cringing servility.

Legal institutions and their processes as obstacles

Impoverished victim groups are often deterred from asserting legally valid claims by beliefs, usually valid, that the institutions, processes, and officials administering the relevant laws are heavily biased against the poor. These biases may take various forms, institutional and social. Pressing claims – whether in courts or in other institutions – can be a protracted, costly effort, especially where skilled intermediaries are lacking. The officials who make decisions often lack loyalties to the community they serve; rather they are part of a hierarchy of centralized government agencies and ministries; often they are linked in social and economic terms to the existing political economy and to those who benefit from it, and they may be reluctant to make changes in resource allocation or modes of administration which would shift power to the poor. Corruption is, often, endemic in the lower levels of the judicial hierarchy and so, too, are delays which make the pursuit of legal remedies degenerate into a war of attrition. Corruption and delays are also endemic with other local officials of the law, such as the police and prosecutors. These problems are further exacerbated by the colonial nature of legal institutions in most Asian

countries which makes them both alien and alienating to the point of intimidation.

Doctrinal obstacles

We have suggested, earlier, that broad, general criticisms of "the law", even though justified, may not be very helpful to legal SAGs. We suggest that what is needed is a careful review of specific *fields* of law to identify particular legal concepts, doctrines, and provisions which have an anti-poor bias. Below, we attempt to illustrate such an approach in relation to a few selected fields.

Procedural law

The poor, often have trouble even getting into the courts. Doctrines related to "standing" are used to keep them out. Even if they are able to overcome this initial hurdle they still face numerous potential obstacles. Doctrines relating to "causation" create impossible burdens of proof. If the poor are able to discharge such burdens, they are often confronted with pleas of "sovereign immunity," or procedural requirements of "exhaustion of local remedies." The poor plaintiff may find himself shuttled from one legal forum to another and rules creating multiplicity of jurisdiction might end up excluding any exercise of jurisdiction unless the litigant has the stamina of a marathon runner! Doctrines such as *forum non conveniens* can provide fresh victimization, as was the case with hundreds of thousands of victims of the Bhopal tragedy.

Problems of proving governmental lawlessness in the courts deserve special mention. Upendra Baxi's comment regarding *social action litigation* (SAL) in India, could be true of most Asian countries:

> *Problems of proof are most severe in cases of state repression, and there seems emergent a common pattern or argumentation by state counsel which make these problems more acute. First, state counsel deny on affidavit any or all allegations of torture or terror. Second, they contest if no longer the standing, the* ***bona fides*** *or the degree of reliable information of the social activities who come to the Court. Often wildest ulterior motives are attributed to them. Third, they decry the sources on which the SAL petitioners rely: mostly media and social science investigative reportage. Fourth, they raise all kinds of claims under the law of evidence and procedure to prevent the disclosure of documents relevant to*

the determination of violation of fundamental rights. Fifth, even when disclosed there is always the possibility of impugning their evidentiary value. This is made possible by the device of multiple investigations; the state sets up many panels, one after another, and often consents in addition to an investigation by the Central Bureau of Investigation. When, despite all this, the state is likely to lose the proceedings in favour of the SAL petitioners, it proceeds to give concessions and undertakings, thereby avoiding a decision on the merits. (Baxi: 1979)

Remedial law

The inadequate nature of remedies available can often render a court victory pyrrhic. After several years of litigation, it is conceivable that the Bhopal victims will find themselves defrauded by Union Carbide filing in bankruptcy. What remedies can a court offer to victims of the Baghalpur blindings? Or to those youths who have lost their youth in prisons awaiting trial for offences carrying maximum sentences which are a fraction of the time already served awaiting trial?

Contract law

Consent is the key legal concept in contract law. But is not the free consent requirement of law meaningless to the poor whose lack of bargaining power forces them into virtual adhesion contracts? Similarly, what relevance does the doctrine of "caveat emptor" have to the poor who get cheated while striving to meet their subsistence needs?

Laws governing development projects

This is an area which suffers from particular neglect. Where the law denies access to information (e.g., through the Official Secrets Act), ensures the invisibility of decision taking, and permits the absence of hearings – groups adversely affected by the initiation of a development project are inevitably confronted by a *fait accompli*. The weakness of anticipatory relief further compounds the problem. Are victim groups to be left with no course of action except that employed earlier this year by a community in Phuket, Thailand? This community, after being able to get no redress against a $44 million World

Bank/IFC project, burned to the ground the metal manufacturing tantalum plant which they feared was discharging radioactive pollutants. Are communities to be left with no means of exercising their legitimate rights of self-defense except that of resorting to criminal behaviour?

Laws repressing PORPs and SAGs

A variety of laws have been springing up all over Asia to threaten, repress, control or even just impede the activities of PORPs and SAGs. Sedition laws, Internal Security Acts, law curbing rights to organize or curtailing meetings, demonstrations and processions, are just a few examples. In some countries, grass-roots workers are denied access to the communities they wish to serve by the requirement of permits before they can enter "sensitive" rural areas. In Bhopal, action groups have been forced out of the state by the bringing of serious, but specious criminal charges against them. A variety of laws seek to control organizations by requiring them to register and get subjected to stringent scrutiny and regulation, or by restricting their access to funding. The proliferation of such laws would seem to indicate a trend: a most disturbing trend. Legal SAGs will have to battle hard to retain, already sorely limited, political space for organized activities.

The above, sketchy and impressionistic survey of "fields" of law is intended to suggest that an approach of identifying legal-doctrinal obstacles might be an important, if neglected, one.

Recapturing law for the poor: an emerging agenda for SAGs

SAGs in Asia must initiate a campaign to recapture law from the elites. What is needed is the generation of truth, the generation of shame and the generation of indignation. The generation of truth is of importance because people are becoming insensitive to the atrocities inflicted on their less-fortunate brethen. The generation of shame is important because governmental lawlessness is becoming more frequent and more unabashed. The generation of indignation is important to overcome a growing sense of fatalism and futility among the public. Law can play an important part in these tasks. An emerging agenda for legal SAGs could have three main components.

1. *Research:*

a) participatory action research to identify needs for legal resources of specific communities or specific categories of victim groups;
b) a critical legal literature exposing institutional pathologies and "black laws";
c) case studies and empirical research to dramatize "processes of victimization" or "plight of specific categories of victim groups";
d) research aimed at making explicit the values underlying specific laws;
e) research aimed at generating educational materials for community legal education;
f) research aimed at reorienting education in law schools to the needs of the poor;
g) research to develop "fields" of law vital to the poor;
h) research to develop action strategies for PORPs and SAGs.

2. *Training Programmes:*

a) aimed at creating or enhancing rights awareness;
b) community legal education efforts aimed at popularizing the law;
c) community-level paralegal training programmes;
d) efforts within law schools to sensitize and reorient law students to the needs and problems of the poor;
e) programmes aimed at enhancing knowledge about relevant laws within non-legal SAGs;
f) "continuing legal education" programmes aimed at reorienting legal elites within the legal profession, the judiciary and the bureaucracy.

3. *Action:*

a) the initiation of appropriate "test cases" and social action litigation;
b) the pursuit of rule change through administrative representations;
c) the initiation of pro-poor law reform proposal, preferably by the poor themselves;
d) direct action and meta-legal tactics to enforce laws or to secure rights;

e) the initiation, where appropriate of international social action campaigns (e.g., on pesticides).

The agenda (even though still emerging) is already a daunting one. But the challenge must be taken up by SAGs if law is indeed to be recaptured for people. Only then can it become a reality that they who have less in life shall have more in law.

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A Critical Analysis of Legal Services for the Rural Poor and Other Disadvantaged Groups

by
*Hector D. Soliman**

Introduction

We are all gathered here in Jakarta in a common desire to express our solidarity with the poor and deprived people of our respective countries, and the countries of Southeast Asia, and to find common means of using our time and talent in helping them obtain for themselves a better quality of life, in an atmosphere of freedom and community.

In this spirit, I shall attempt to analyze the various legal activities being undertaken by different actors in the region with the hope of understanding the underlying assumptions and the expected impact of such work on the lives of the rural poor.

By doing so, we would be able to contextualize the work we are doing in the panoply of legal activities being carried out in the region. Hopefully, we could also examine the interconnectedness of the work and chart new directions for our own groups.

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Rural Southeast Asia

Rural Southeast Asia remains a poor and severely depressed area of the world today. Its inhabitants are often crippled by perennial hunger and malnutrition and unable to collectively improve their lot, yet they keep struggling in the face of indomitable odds.

The countries of Southeast Asia (except Thailand) share a common thread of colonialism, and their economies have been developed to serve the needs of their colonizers, rather than the basic needs of their own citizens. This pattern continues to a greater or lesser extent. The coffee, sugar and rubber plantations are all testimony to the toil of the rural workers, who have remained on the periphery of their societies for all these years.

Diversity of culture and religion is another hallmark of Southeast Asia. The Chinese, Malays, Thais, Indians, and the Javanese intermingle, and they bring with them their various cultural practices. The region is host to various religions, as evidenced by the predominantly Christian Filipinos, Buddhist Thais, Moslem Indonesians and Malays, and a host of other beliefs.

The dominant cultures are varied in themselves, and more so the different minority and indigenous cultures which brighten up even more the fabric of the Southeast Asian tapestry. The indigenous populations serve as a repository of a culture that is fast being eroded by Occidental values and practices. Along with this culture have survived the customary rules and laws which provide the wellspring of indigenous modes of conflict resolution and restoration of social harmony.

The rural areas of Southeast Asia increasingly find themselves at the margins of the development process. They produce the food, the clothing and the other materials needed for the upkeep of the lifestyle of the people living in the urban centres, while the farmers, the fishermen and the tribals, (the sources of the grains, the fish and the minerals) find themselves getting less and less of the benefits of the production process.

Politically, the region is still characterized by elite rule, where the people in the countrysides have little or no say in the centres of decision-making. Various experiments in democratic processes, even the liberal democratic regime of Mrs. Aquino in the Philippines, have yet to move substantially to alter this arrangement. The region is fairly familiar with authoritarian rule, and this type of politics further aggravates the elitist tendencies of the governments as we find them today.

The legal system

The dominant legal systems of the Southeast Asian countries were necessary tools of colonialism, through which the colonizers could enforce their brand of peace and order, taxation, and the maintenance of commerce and industry. Law was necessary to set the parameters for property ownership, the levers of decision-making, the granting of mining and timber rights, and the functioning of the civil bureaucracy.

A tragic consequence of this imposition of foreign legal models was the conflict it produced with more indigenous modes of conflict resolution, and the customary rules which people have practised for centuries. The problem of the adaptability of a foreign legal subculture to the holism of the people's culture is more and more being acknowledged and steps are being taken to remedy the situation.

The legal systems now being enforced in our countries follow the typical pattern of urban-based development – emanating from the centre, rarely understood in the periphery, applied, enforced and interpreted only by the people who understand them, leaving the poor people utterly mystified and dependent in the process.

The poor generally distrust the legal system because it has been used time and again to deprive them, rather than to defend them. They are dispossessed of the land by legal title, thrown in jail by virtue of arrest orders, and hoodwinked by lawyers who promise to take them off the hook only after exacting a fat fee. The legal system is definitely something alien which they would rather ignore than be bothered with.

Basic tools of analysis

After painting such a grim picture of the legal system, one begins to wonder whether there are any shining examples in the legal profession. Indeed there are, and quite a number of them, and we would like to relish these examples as gems in a profession dominated by deceit and doubletalk. Before we go into those, let me bare the assumptions through which I examine and typify the different legal services for the rural poor. One cannot undertake an analysis without having a basic framework, and in the spirit of intellectual honesty, this framework should form part and parcel of the presentation.

The first assumption is that law is never neutral. Law, in the sense of positive law, or that set of rules of behaviour enunciated by the state to govern

the affairs of the people, promotes a point of view, a perspective, a philosophy, to the exclusion of another. It reflects the current concept of an ideal set of social relationships as seen by those who hold the reins of power.

The concept of the rule of law should therefore not be construed to mean that if one sticks to the law, then justice shall be done. Indeed, a healthy irreverence for the rule of law is necessary, especially in our context, in order to critically assess whether the law meets the ends of justice or not.

The second assumption is that law should be at the service of social justice, at the service of the movement that seeks to reduce the political, cultural and economic inequalities of our society. In other words, on the side of the poor and the oppressed. We can no longer hide behind the cloak of the "common good", "public interest", "national interest", or other such statements if the net effect is to perpetuate a situation of poverty or inequality.

I do not propose that we condone theft or rape, just because the offender happens to be poor. What I'm trying to say is that the law should be directed towards the elimination of the conditions that drove this poor person to steal or rape in the first place.

The third assumption is that legal activities are not the exclusive domain of judges and lawyers, but are also the legitimate interest of other people and groups, especially with regards to policies, legislation or legal cases that affect them.

Typology of legal oriented support groups

The first statement that could be made about legal services to the rural poor is that they are scarce. Few are the legal aid societies that make an effort to reach out to the rural poor, and fewer still are the concerned lawyers who make an effort to handle sensitive cases like summary executions, or disappearances of the rural folk.

Having said that, I would like to discuss what I consider the key actors in the field:

A. Traditional legal aid groups

Traditional legal aid assumes that there is nothing basically wrong with the legal system; it's just that the body of rules and procedures have grown so complex over the years that the "experts" have to render free service to those who cannot afford it, so that these clients would not be deprived of their day

in court. So this type of legal aid is a necessary part of the public service that the members of the bar have to offer.[1]

Moreover, traditional legal aid usually concentrates on "private disputes, like child support, tenancy sharing, usury, common crimes, and the like. These services are not, of course to be scoffed at. For the abandoned mother, the tenant cheated of his share of the crop, the man, woman or child wrongly charged with crime, legal aid can spell the difference between life and death, freedom and slavery. But where the law itself violates human rights, traditional legal aid can do little."[2]

A third characteristic of traditional legal aid is its principal reliance on the lawyer to know the problem and prescribe the solution for it. This comes as a natural consequence of the theory that "counsel knows best" and therefore "leave everything to me". In the process, the client knows very little of the nature of the problem, the legal strategy to be employed by his lawyer and how he can participate in the process.

Whenever legal aid is mentioned in the Constitution or in the statutes, the connotation is usually that of traditional legal aid. For example, the 1973 Philippine Constitution states: "Free access to the courts shall not be denied to any person by reason of poverty." This provision only serves to emphasize the court and access orientation of legal aid.

Oftentimes, we have to understand that traditional legal aid is the only type of legal assistance which the political situation in a given country will allow. To talk of human rights, or structural change will already raise eyebrows, and might be construed as subversive or seditious. And so, traditional legal aid provides an excellent opportunity for the redress of grievances within a legal therefore socially acceptable framework.

The legal aid of most government agencies, bar councils, and law faculties usually fall into this category, although of late, there has been an increasing trend for law faculties and bar councils to include non-traditional legal aid activities within their mandate, like community legal education, legal awareness seminars and the advocacy of collective rights.

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B. *Developmental/structural legal aid groups*[3]

The underlying premise of this type of legal aid is that there are grave structural problems in society that have to be addressed, which traditional legal aid is inadequate to address. For example, if leaders of farmers organizations are continuously being detained by the military for short periods of time without charges, then released, the issue of freedom of association could very well be at stake.

Practitioners of this type of assistance are not content with strictly applying the law, but questioning it when it contravenes some basic human rights. In other words, what is sought is not only a remedy for an offence, but a solution to the very system, structure or practice that could perpetuate the commission of similar types of offences. "Developmental legal aid seeks to use law to redistribute power and change social structures."[4]

"Developmental legal aid lawyers have evolved a two part strategy. One part is to confront the regime with the detrimental effects on people of its policies and programmes, with the inconsistencies between its policies and actuations, on the one hand, and the aims or principles it professes or standards that are internationally accepted, on the other, and in appropriate cases, even with its own legitimacy. The second part of the strategy is to help the poor, as members of the communities or social sectors, become aware of the causes of their situation and organize and mobilize themselves to overcome these causes."[5] In other words, a "main objective of structural legal aid is 'conscientization' as a means to gradually change the unjust social structures."[6]

So, clearly, this type of legal aid focuses not only on court-related solutions to problems, but also on educative and organizational endeavours, that seek to correct political imbalances between the powerful and the powerless.

Among the activities included in developmental legal aid are the defence of political prisoners, habeas corpus petitions for victims of arbitrary detention, paralegal seminars, defence of urban poor communities from unjustified eviction and others. Some of the proponents of this approach would be the Indonesian Legal Aid Foundation, the Free Legal Assistance Group (Philip-

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3. Most of the ideas stated in this section were culled from the above cited work and Nasution, Buyung, "The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept", in Scoble, Harry M. and Wiseberg, Laurie S. (eds.), *Access to Justice: Human Rights Struggles in Southeast Asia*, London: Zed Books, Ltd, 1985, pp. 31-39.
4. Diokno, Jose W., *op. cit.*, p. 187.
5. *Ibid.*, pp. 181-182.
6. Nasution, Buyung, *op. cit.*, p. 37.

pines), the Union of Civil Liberties (Thailand) and other new groups like the Structural Alternative Legal Assistance for Grassroots or SALAG and the Filipina Legal Resource Center (a legal assistance centre for women) in the Philippines.

C. *Community centred legal resource groups*

A variation of the developmental legal aid approach are the different emergent community-centred legal resource groups like the Center for People's Law (Philippines), PROCESS (Philippines) and the Para-Legal Training and Services Center (PTSC) also in the Philippines. Included in this list would be the Legal Resource Centre of the Consumers Association of Penang (Malaysia).

The basic assumption is that a necessary component of genuine development are strong people's organizations, and part of the growth of these groups is a high degree of awareness of law and human rights. Such an awareness is important not only for organizational strength, but also to thwart any threats of arrests, harassment or other such impediments.

And so these legal support groups provide a range of services designed to make full use of the law as an empowerment tool – legal counselling, paralegal training, litigation (or referral to lawyers), assistance in the registration of community or sectoral organizations, legal rights awareness seminars, and the like. These support groups are usually linked to different service agencies that do organizing work at the village level, or by themselves also do organizing work.

D. *Human rights monitoring and advocacy groups*

The starting point of these groups is not strictly the law, but the moral force of human rights as an internationally accepted standard in the defence of people against abuse of state power. In a situation of severe repression, they bring to light different cases of human rights violations like prisoners of conscience, extrajudicial executions, arbitrary detention, forced evacuations and others. Whenever they are linked with extensive networks like the Catholic Church in the Philippines, their role in bringing to the court of public opinion cases of human rights violations in remote rural areas is highly valuable.

I have included them in my typology because, although they do not strictly belong to the hard-core legal aid groups, they impinge on the legal

system in two important levels:

1. They are able to document at first hand possible violations of human rights which serve oftentimes as the evidentiary basis for the prosecution of offenders in the courts of law and
2. Because of their intimate knowledge of how human rights are violated, they are in a very good position to propose safeguards against such violations, like the awarding of damages to victims of torture, the abolition of safehouses, and others, and this in turn becomes the basis for alternative legislation.

A few examples of these groups would be Justice and Peace Hotline (Thailand), Task Force Detainees (Philippines) and the Ecumenical Movement for Justice and Peace (Philippines).

E. People's organizations and non-governmental organizations

The listing would be incomplete without mentioning the critical role that peoples' organizations and non-governmental organizations (NGOs), like farmers associations, environmentalists, tribal community support groups, fishermen's organizations, play in putting forward their legislative agenda, especially in a situation where the political space allows a certain degree of participation from these groups. These groups could focus on specific issues, like the Center of Concern for Child Labor (Thailand), the Environmental Protection Society (Malaysia), or the Sabah Women's Resource Group, or could be multi-sectoral political movements which could tackle different issues. This important role was felt very much in the drafting of the new Philippine constitution, which was ratified in a plebiscite last February, 1987.

Whereas the net effect of traditional and, to a certain extent, developmental legal aid is to maintain the existing legal system or to work within it, the agenda of these groups is to change it. And therefore, we have come full circle in our analysis of legal services to the rural poor.

Interrelationship of groups involved in legal services

Traditional legal aid groups, by their very nature, tend to relate with their clients insofar only as a particular case is concerned. Once the case is finished, then the relationship is terminated. Services have been rendered, and "justice" has been done.

Developmental legal aid groups, however, realize that their service is only part and parcel of a whole range of activities, legal and non-legal, which will hopefully result in the objective of structural transformation. Very often, these lawyers will have to link up with the non-governmental, human rights and people's organizations and other such groups so that together they can determine what would be the best combination of legal and non-legal means for achieving a certain goal.

Practitioners of developmental legal aid are realizing more and more that without the necessary linkage at the community level, then all their legal efforts could come to naught. For example, if people already know their rights, how are they to defend them? Lawyers are not trained as organizers, or community facilitators, who could help build strong local organizations. This is where the local support groups come in, to assist the people in building strong organizations.

This is precisely why groups such as the Indonesian Legal Aid Society (MBH) are being conceptualized in order to act as a support mechanism for the strictly legal aid activities, in terms of legal education work, continuing liaison with client groups, and others. In the Philippines, the different legal aid groups currently relate with a lot of support NGOs and people's organizations. The structure of the Center for People's Law (BATAS) is indicative, its members being mostly support NGOs and people's organizations. This is to facilitate the access of legal services and to maintain the continuity and follow-up of whatever developmental legal aid activities have been initiated thus far.

Conclusion

This analysis by no means intends to categorize the groups mentioned into just one line of activity. The reality reveals a much more complex state of flux where different activities could be undertaken by the same organization simultaneously. Neither do I claim to be exhaustive in my list of organizations that work along these lines. I have just attempted to typify certain groups in order to illustrate a working framework so that we could deepen our understanding of the work being done in the field of law in the service of the poor and the deprived.

A great task lies ahead of us. Let us learn from each other's experience and draw strength from each other's resolve, so that we may not be dying embers in the profession, but a fiery glow that shall warm the hearts of deprived rural folk everywhere.

An Integrated Approach in Providing Legal Services to the Rural Poor and Other Disadvantaged Groups: SALAG (Structural Alternative Legal Assistance for Grassroots)

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The Philippines, like any developing nation in Asia, is characterized by alarming conditions of impoverishment and the growing powerlessness of its marginalized sectors, especially in the rural areas. Despite the February revolution, the fact remains that these intolerable trends prevail and continue to exist.

There exists in the Philippines a substantial number of social and legal action groups working with the victim groups in a continuous struggle to effect social change. Different approaches, tactics and strategies are being employed but much has yet to be done in providing an integrated approach to tackling the cyclical problems of poverty and impoverishment.

Legal aid programmes

During the past decade the Philippines has witnessed an ambitious and comprehensive legal aid delivery programme in Asia. This arose out of the worsening socio-economic conditions and the resulting legal needs of the disadvantaged. Thus, four types of legal aid programmes have evolved in the Philippines:

(a) the court-assigned de-officio;
(b) the voluntary private legal aid associations;
(c) the public attorney; and
(d) the university-based programmes.

Initially these were apolitical, with the primary concern of enforcing individual legal rights within the framework of the existing legal system. By the mid-1970s, however, the trend of legal aid was the advocacy of civil and political rights, as well as structural political reformation.

The new political space in 1986 provided fertile ground for the redirecting of legal aid thrusts and innovations in the delivery of legal assistance to the poor. However, the fact remains that the legal aid service is tragically viewed as having its traditional patronizing connotation. Concretely, most legal action groups are characterized by the following:

(a) adherence to traditional methods of advocacy;
(b) individualistic concept to legal aid, resulting in short-term remedies;
(c) extreme professionalization of legal services; and
(d) non-involvement of the legal services in social transformation of the community and the society as a whole.

Adherence to traditional lawyering in legal service refers to dogmatic reliance on established legal methods prior to and during litigation. More often, these methods result in protracted hearings and undue delays which work against the early and just resolution of cases. Further, this breeds distrust towards the legal system which the majority of the poor perceive as not being responsive to their legal needs.

The individualistic concept of legal aid is directed towards the protection of individuals in specific cases and the enforcement of individual rights which may not have a social impact. It also involves short-term remedies arising out

of traditionally inclined lawyers and end-result orientation. Usually the legal service ends when the client's rights are successfully asserted in the court following which neither the lawyer nor the court takes any steps to prevent the same wrong from being committed against other members of the community.

Extreme professionalization of legal services refers to the lawyers' monopoly of information and knowledge of the law. The law, which is supposed to be a living concept, is very remote from the experience and understanding of the poor and sometimes the only moment when they have experience and understanding of the law and legal processes is when powerful individuals and groups deprive them of their resources or they are being oppressed and exploited. Thus, we see simple legal problems being referred immediately to lawyers. This, in effect, produces an attitude of dependency and exclusion insofar as the law and delivery of legal services are concerned.

Non-involvement of legal services in social transformation refers to the fact that legal services have always ignored the need for the restructuring of unjust and oppressive social institutions. The corollary to this is the fact that all legal aid programmes are intended to defend the poor and the oppressed but no effort is made to encourage the formulation and the effective enforcement of laws for the poor and the oppressed.

There is, therefore, a need for an integrated approach in rendering legal services which goes beyond the proffered traditional legal assistance. There is a need for new thrusts in legal assistance so that law becomes an effective resource in the empowerment of the impoverished.

SALAG – Structural Alternative Legal Assistance for Grassroots

SALAG is a public-interest socio-legal action group in the Philippines. The word SALAG was adopted from a Tagalog word with two meanings: a "shield" and a "nest". As a shield, it aims toprotect the marginalized sectors against power-wielders who makes use of the law as a tool of repression and manipulation. As a nest, it aims to nurture the powerless, disadvantaged groups by making them realize that the use of the law can be a resource for their own empowerment. For this purpose, SALAG hopes to impart a legal resources approach where the clientele will be equipped with functional legal knowledge and skills which will make them active participants and dynamic agents of change in their respective communities and eventually will lead towards social transformation. In effect, it attempts to release them from

traditional dependency on lawyers.

As a litigation group, SALAG proffers a *legal assistance* programme. As part of this, resort is made to judicial and administrative remedies to provide urgent relief in legal disputes. SALAG's legal assistance programmes include but are not necessarily limited to, legal consultations, fact-finding missions, ocular inspections, strategy formulation and implementation and developing of other legal self-help mechanisms designed to promote local initiatives in settling legal disputes. This is intended to depolarize the already monopolised legal profession.

SALAG, however, realizes that traditional legal assistance although it is a valuable function in itself, is not sufficient to meet the basic legal needs of specific target groups. To augment SALAG's legal assistance programme and achieve optimum benefits for the target groups, SALAG implements a *non-formal legal education programme.* This programme aims at generating and enhancing the level of rights' consciousness among the grassroots people, equipping them with the legal knowledge and skills as well as developing their capability to effectively apply meta-legal methods in resolving disputes. Here, instructional materials on meta-legal and para-legal tactics are given to the target groups through both written and non-written media so that basic and working knowledge of law relevant to and affecting a target group is made known to its members for their practical application in problems affecting them. Non-formal legal education to be effective, however, must be continuous. Thus, there is a need to evolve an "alternative law curriculum" to help grassroots people build legal self-reliance in certain aspects and stages of solving their own legal problems.

Experience has shown, however, that effective service to target groups can be further facilitated if the very law which adversely affects a target group is rendered void, inapplicable, and unconstitutional. Thus, through *law* reform initiatives programmes, SALAG aims at facilitating the passage, modification or repeal of laws, policies, rules and regulations and procedures that affect the poor. In other words, relief in the enforcement of a harmful law is given and simultaneously action is taken to strike down the root cause of the problem, namely, the unjust law itself.

Efficacious delivery of legal services, however, cannot be done by SALAG alone. Hence, the assistance of other organisations is needed if only to maximise SALAG's efforts for optimum legal services. In this connection, linkage programmes with peoples' organisations (POs), non-governmental organisations (NGOs) and governmental organisations (GOs) have been undertaken by SALAG for a more coordinated approach in assisting the disadvantaged. In the linkage programme, SALAG establishes an efficient

working relationship with and among different groups for a more coordinated effort in dealing with community-based problems resulting, therefore, in an integrated approach.

Finally, knowing full well that the proselytization of legal services to those who need them should begin at an early stage, SALAG conceived of an *apprenticeship programme* in which law students are exposed to the problem of disadvantaged groups and they assist in the resolution of legal disputes either as researchers or as resource persons. Apart from this, services of volunteer lawyers are sought from different law schools and private as well as public legal institutions in order that they can assist in the effective delivery of legal assistance programmes as legal consultants and/or public interest advocates. In other words, SALAG envisages itself as a grouping of alternative lawyers providing an expanded legal assistance programme to the marginalised sectors of Philippine society.

SALAG and disadvantaged groups

SALAG renders legal services as a public interest law firm, which is crucial to ensure that specialized legal expertise is developed on issues of importance to the rural and urban poor. Specialized legal expertise abounds for affluent groups in Philippine society. SALAG strives to ensure that high quality, specialized legal expertise will also exist and be made accessible to the disadvantaged and less affluent groups in society.

In the pursuit of its programme thrusts and in the delivery of an effective legal programme, SALAG selected target groups with focus on the following clientele: farmers, fishermen, tribal groups, informal sectors – specifically ambulant vendors, rural and urban settlers. The reason for this is that experience has shown that these groups have been the object of several inadequate pieces of legislation and they constitute the majority of the marginalized sectors in Philippine society. These groups are also the least likely to benefit from institutions which were created primarily to serve them. Thus, it became a necessity to concentrate efforts on these target groups because otherwise their helplessness would make them more hapless victims of oppression and poverty.

SALAG's experience in rendering legal assistance to the grassroots in the Philippines has shown that the latter's struggle to change their conditions in life usually begins with local issues common to all. Later on, if their efforts continue, their encounter with the law and the state may involve legal issues

where they eventually have to seek resolutions in existing judicial and administrative structures. A specific problem affecting the disadvantaged is usually a mobilizing reason for them to get together as a group in order to resolve their problems.

A case in point is that of the fishermen-farmers living in the area of Laguna de Bay. Laguna de Bay is a lake that has a surface area of around 90,000 hectares; about 15,000 small-scale fishermen live here. These subsistence fishermen-farmers belong to a people's organisation called KASAMA. They are mobilised because a private enterprise was conducting what they perceived to be illegal sand-quarrying activities in the shoreline adjacent to their area of habitation. They realised this activity was illegal because it was resulting in the submersion of their vegetable farms, damage to their residences, and the drowning of several children. The community leader consequently sought SALAG's assistance.

Of major interest was the concern expressed by the members and their willingness to actively participate in the resolution of their community problem. It became apparent from the outset that the sand quarrying activity was illegal. The people's problem was to find a law which would support their beliefs, and to address the matter to the proper authorities. Immediately, a letter of complaint was sent by the group and SALAG sent a supporting letter citing the laws relevant to the problem. An order was issued leading to a temporary stoppage of the quarrying activities.

However, quarrying operations continued under the protection of the Mayor. Compounding this was the claim to the foreshoreland occupied by the farmers of an alleged owner who, incidentally, is the same person conducting the sand quarrying operation. The community again acted upon legal advice from SALAG and sent letters of petition to the Mayor, to the Bureau of Mines, and to the Minister of Natural Resources. Besides this, mass actions of civil disobedience were carried out by the people against the quarrying operator, the Mayor and the quarrying premises. The activities were highly publicised, such that the MNR eventually ordered a complete stoppage of the quarrying operations. During this time, SALAG provided a basic and working knowledge of the laws which were to be used by the people during their mass action programmes. This implied mass action within the limits of the law where both client and lawyer coordinated their efforts and proved extremely useful in voicing the grievances of a particular community.

An interesting factor in this incident was the fact that the entire event brought the attention of the MNR to illegal quarrying activities being conducted in the area, as well as other areas surrounding the Laguna de Bay area. This led to the MNR issuing a directive absolutely prohibiting similar activi-

ties in the Laguna de Bay area.

The entire dispute gave SALAG an opportunity of continuing the process of the legal empowering of the farmers-fishermen of the area.

In the case of the ambulant vendors of the province, the local authorities of Sta. Cruz, Laguna required that they purchase market stalls for the purpose of raising revenue for the municipality and to transfer to another site where they could conduct their business. Community leaders met with SALAG lawyers and together they formulated strategies to be applied in the case. Initially, the vendors, with the legal support of SALAG, drafted and sent a letter to the Vice-President of the country who responded by sending a communication to the local authorities of Sta. Cruz requesting that the directive against the vendors be deferred. However, the Mayor refused to heed the request.

The vendors requested a dialogue with the Mayor in order to work out a possible compromise. As a result, the Mayor agreed not to make the purchase of the market stalls mandatory and not to transfer the vendors to another site. This was embodied in a compromise agreement signed by the Mayor, the vendor's representative and SALAG lawyers.

The Mayor, however, later reneged on the compromise to such an extent that he even filed a fabricated criminal case against one of the active leaders of the vendors for an alleged violation of a Municipal ordinance. This was a tactic to weaken and discourage the vendors from resisting the Mayor's plans. The vendors posted bail for the leader's immediate release, not knowing that the arrest itself was illegal. SALAG argued the case in the court and eventually the criminal case was dismissed. The arrest prompted popular action against the Mayor – this time with a modified strategy. The vendors gained the cooperation of other sectors of Sta. Cruz, namely farmers, tricycle drivers, fishermen, etc. Thus, the ambulant vendors were able to mobilise the support of different action groups and sectors in an effort to protect their common interest. For the first time, a multi-sectoral grouping was rallied to protect and vindicate the cause of another group in the area.

As a result of this popular mass action, the Governor of Sta. Cruz intervened and eventually the Mayor acceded to the demands of the vendors. A compromise was worked out under which the purchase of the market stalls was optional, and if ever a purchase was to be made, it should be paid by instalments. Further, the Mayor agreed that any transfer of vendors to another site would only be temporary.

As SALAG is not an 'end result' oriented law group, from time to time members of SALAG have revisited the ambulant vendors and carried out paralegal education on laws which are relevant to the vendors. In other works, legal

empowerment does not end with the settlement of a case but is rather a continuous programme of training and education for legal self-help and independence.

The case of the sugar tenants

In Balayan, Batangas, a group of sugar tenants, through their people's organisation, sought the help of SALAG following the refusal of their landlord to account for three consecutive years for the sugar cane milled. This was compounded by the fact that the tenants' shares could not be distributed because the corresponding sugar quedan, or warehouse receipt, can only be issued in the name of the landowner.

SALAG and the tenant's group worked out a strategy so as to effect the release of the sugar quedans by having them issued in the farmers' names. But this was not normal practice because traditionally the quedans are issued in the landlord's name. The tenants' group, however, suggested the possibility of the quedans being issued in both their names in order to expedite the liquidation of shares. SALAG explored this possibility and eventually filed a complaint in court for the remedy suggested by the tenants. Further, to augment the results, SALAG included not only the previous years' produce, but also that of the present year. Fortunately, the court granted the tenants' request that the quedans be issued both in the name of the tenants and the landlord which ultimately set a precedent in Balayan, Batangas for other tenants' groups faced with the same legal problem.

The Balayan experience indicates that disadvantaged groups are capable of suggesting solutions to their problems based on their experience and endogenous knowledge. The problem, however, was their inability to make representations to the appropriate judicial and administrative bodies. SALAG's function, therefore, was to merely provide support in terms of equipping the people with basic legal concepts and laws. In other words, the legal assistance proffered by SALAG to its clients in Balayan was merely supportive. SALAG therefore merely complemented the active participation and concerted action undertaken by the tenants.

Indeed, the sugar tenants' case in Balayan introduced an integrated approach to the solution of a community-based problem; the coordinated and complementing efforts of an endogenous group and the legal advice and supportive role of a lawyers' group.

This again demonstrated that legal assistance can be effectively deliv-

ered to a community-based problem if the community members themselves are given an opportunity to develop initiatives and allowed to exploit their capabilities to the fullest, with the legal assistance playing a supportive role.

The case of the subsistence fishermen

A subsistence fishermen's group called Biyayang Handog ng Dagat (BIHADA) in Infanta, Quezon, was faced with a problem regarding Presidential Decree 704. Under this Decree, the "highest bidder policy" was used to award a concession to catch bangus fry. They perceived that this policy would affect subsistence fishermen in the area because of "big capitalists", in view of their capital resources, taking control of the concession. The bangus fry catchers of BIHADA mobilised themselves as a group and requested that the Municipal ordinance governing the concession for bangus fry catching be suspended in order that they be awarded an exclusive contract to catch bangus fry. The request was granted and the concession awarded to the fishermen's group which, in effect, disregarded the "highest bidder policy". However, later on the municipal government granted a permit to a private individual to buy and sell bangus fry. This person, instead of buying bangus fry from BIDAHA, went directly to other individual bangus fry catchers. This resulted in a ruinous and unnecessary competition between the BIHADA and the person concerned. The Mayor, in order to placate the contending parties, revoked the BIHADA contract and the business permit so as to stop the controversy. BIHADA pursued the case to the Ministry of Agriculture and SALAG played a supportive role by providing legal arguments in favour of their case. But, despite the order by the Ministry honouring the concession previously granted to the fishermen's group, the Mayor went ahead and adopted the earlier highest bidder policy in which the BIDAHA refused to participate. As a result, they have demanded that PD 704 specifically on the highest bidder policy be reformed.

The case of the coconut farm workers

In Laguna, a group of urban settlers who are also coconut farmworkers, occupied a parcel of land with the permission of the landowner, on the agreement that this latter could evict them by giving notice. On receiving such notice, the settlers retained the services of SALAG because the landlord also

filed proceedings in court. In this case, SALAG was left with no option but to pursue the litigation, while at the same time, looking for ways and means by which the case could be settled amicably in a manner beneficial to both parties in the dispute.

Thus, while the court hearings were being conducted, the settlers, together with SALAG lawyers, explored the possibilities by which the settlers could be allowed to occupy the land in question without unduly burdening the landlord. Eventually, a plan was agreed upon by both parties under which the settlers were relocated to similar fertile lands and in a suitable location. Alternatively, those who opted to stay on the present land could purchase the lots they occupied at reasonable prices.

This experience concretely demonstrated how the traditional role of lawyers could be complemented by continued efforts for a peaceful settlement of the dispute.

Similarly, in Taguig, a group of squatters consulted SALAG in order to protect them from being ejected by the local authorities. Under Philippine law, squatters' settlements are subject to summary demolition and relocation.

SALAG and some representatives of the squatters' group later attempted to effect an immediate but favourable proposition with the landowner in question. The dialogue was successful and the ejection case which was about to be filed was permanently deferred and the case settled.

Eventually, with the supportive role of SALAG, the squatters and the landowner came to an agreement whereby the ejection would no longer be pursued. In addition, the landowner agreed to allow the squatters to purchase the piece of land that they were presently occupying, and this at a reasonable price, to the extent that the squatters were allowed to purchase the lands with the titles in their names.

The Taguig case ultimately indicates the importance of exhausting every possible means so that both parties could be brought together in order to prevent tedious adversarial litigation. Further, it emphasises the importance of the supportive role of lawyers in bringing forth a settlement. Finally, it demonstrates that the traditional lawyer-client relationship should be one in which the client actively participates in the pursuit of his case. The vindication of a right and the protection of an interest should be a mutual and concerted effort between the advocate and his client so as to facilitate settlement of a problem.

As can be seen from these experiences, the legal response of SALAG varies depending on the case to be settled, but what is important is the process of developing the capacity of groups to articulate their demands and grievances and to utilise the law as a resource to their advantage.

However, the concerted efforts of Salag in coordination with different GOs, POs and NGOs towards legal empowerment of marginalised target groups are often faced with many obstacles.

Obstacles and difficulties encountered by disadvantaged groups

The activities previously mentioned demonstrated the *lack of a functional knowledge* on the part of victim groups of existing laws and the corresponding specific rights of the community members under such laws. In other words, there is a need for an effective government and non-government machinery to make the existence of laws known to specific communities, as well as to explain the effects of such laws to the community members. Thus, we have here an anomalous situation where the government penalises the citizen for his ignorance of the law, but fails to deliver the knowledge essential for an awareness of the law's existence and its effects on community members. The lack of knowledge of the disadvantaged in turn perpetuates oppression and injustice as well as distrust in the legal system.

The attitude of victim groups also poses problems. Most of the community members exhibit a passive mentality or fatalism, reflecting their resignation to their helplessness. This is compounded by their over-dependence on lawyers for even simple legal controversies. This perhaps can be traced to their ignorance of the law and the inability of organisations to develop devices to reverse the situation. Further, their fear of reprisals from "those who have" aggravates the pursuit of cases in judicial and administrative bodies. And, they become disillusioned with the legal process because they feel that no matter how meritorious a cause they have, eventually the scales of justice will tilt to their disadvantage. This maybe explains why many marginalised groups distrust the system of justice dispensed by the authorities.

Another obstacle is the rampant graft and corrupt practices of the local authorities which ultimately defeat the cause of the underprivileged. Even SALAG is not spared because it becomes difficult to explain to a client-group that the case was not resolved meritoriously in their favour because of a dishonest judge, public prosecutor or officer of an administrative body.

The bureaucratic process also creates problems. Government procedures are too dilatory, particularly in urgent cases and even in simple matters like registration. In other words, legal empowerment cannot be facilitated if red tape takes precedence over judicious and expeditious resolution of a legal

dispute or even the enforcement of a particular right. Hence, if only government and government agencies could formulate simplified procedures to accommodate disadvantaged groups, then perhaps this would accelerate the empowerment process of the latter.

Moreover, government agencies, in the execution of a particular administrative and/or local directive, create confusions because departments cannot come up with consistent and non-conflicting interpretations. In other words, training of officers is inadequate.

Another difficulty is the inadequacy of social legislation or laws for marginalised sectors. The government should develop a keener sense of awareness of the plight of the needy and enact responsive legislation to meet the underprivileged's needs.

The judicial process itself adds burdens and sometimes serves as an obstacle. Justice is too slow, court dockets are clogged and, despite the recent organisation of the judiciary, the fact still remains that many cases which need immediate attention are not given the concern they deserve.

Added to this, traditional and conventional lawyering is too professionalised with a monopoly over legal knowledge and skills. Often, lawyers are too selfish to make their services available to the marginalised sectors and even if they do, they may not apply themselves fully to their problems.

Obstacles faced by SALAG and other groups

Ideally, when marginalised groups are confronted with a legal problem, they often desire an immediate solution. In some cases, the difficulty lies in the fact that immediate relief cannot always be ensured. For example, in one case involving a tribal group in Paitan, Mindoro, lengthy legal proceedings were necessary. In this case, a large part of land was declared a reservation site for the "Mangyan tribe". Later on, the Bureau of Forestry declared a portion of the reservation site as alienable and disposable as public land. Thereafter, a number of Mangyans discovered that they were being displaced from the reservation area. Despite the desire of SALAG and other groups working with the tribals for the land to be returned to them, the problem continues because it involves the relocation and possible displacement of the Christian community which would also be adversely affected.

Another complex field of socio-legal issues is in regard to the "genuine land reform" for farmers. This issue cannot be resolved, much less implemented, over night or by immediate relief. In other words, the land reform

issue cannot be given immediate relief simply because it is complex and requires careful examination of the facts, existing laws and the adoption of new laws and social legislation that will address the fundamental problem of land reform.

Another problem encountered is the lack of coordination and sometimes the unwillingness of some socio-legal action groups to pool their efforts together for an effective support of the underprivileged. This is compounded sometimes by the competitive nature of these social and legal action groups.

Ideological differences can also be an obstacle. For example, some believe in a participatory-democratic approach where people participate as active subjects of development while others adhere to a different ideology.

SALAG, as a new group, specifically encounters difficulties in its inability at this early stage to develop an outreach programme to serve more isolated communities who are in dire need of legal services. Moreover, SALAG admits that it alone cannot shoulder the tremendous need for an effective legal assistance service. SALAG has experienced the need for coordination with other similar legal service groups. In addition, a re-orientation and redirection of the thrust for legal services and empowerment of the helpless must be considered for a genuine programme of upliftment and amelioration. Finally, manpower considerations also play a vital factor in hampering legal empowerment.

Law school curricula also add problems because law students' training is concentrated on traditional lawyering and often on corporate law practice. Little attention, if any, is given to enabling the students to acquire an attitude of sensitivity and concern for the legal needs of the poor and disadvantaged. Further, there is too much law for those who can afford it and not enough for those who cannot. If only a system could be devised so that law schools would encourage a sense of purpose and mission to their students to ensure that even marginalised groups are provided an opportunity of being given effective legal assistance.

Conclusion

Based on the experiences of SALAG, there is a need to redirect the legal aid programmes already in existence as well as those which are intended to be implemented towards structural reform in the major social, economic, political and legal rubrics of society. For it has been clearly shown that unless these structures are changed to ensure delivery of government services, the power-

lessness of the weak will only continue. Further, the entrenchment of poverty is basically founded on these unjust structures requiring their immediate reform. It appears, therefore, that the problem of poverty can only be resolved and alleviated if major concern on the part of legal action groups is concentrated in the creation of mechanisms which would do away with if not modify these structures.

The strategy of any legal aid programme to be effective must first of all be coordinated with similar social action groups so as to effect a united approach to the resolution of a particular socio-economic political and legal dispute. Second, it must have the support of government and its implementing agencies to ensure success in both micro and macro-levels. Third, the structures which perpetuate oppression should be modified and/or altered so that service and not oppression and injustice will be the theme of the time. Fourth, legal institutions should cooperate and sensitise their students to generate awareness and commitment on the true mission of legal service. Finally, the legal system must accommodate the increasing need for reform in terms of traditional procedures and entertain suggestions and, if possible, implement such ideas so that justice is not compromised for the sake of procedures.

With this, the current legal situation in Philippine society and probably in Asia as well, can best be restated in the following: *There is too much law for those who can afford it and too little for those who cannot.*

The challenge should be directed towards shattering this tragic but real malady.

Seminar on Legal Services For the Rural Poor and other Disadvantaged Groups

Jakarta, 11-16 January 1987

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Seminar on Legal Services for the Rural Poor and Other Disadvantaged Groups in South-Asia

Rajpipla
27–31 December 1987

Introductory Statement

by
D.J. Ravindran – Legal Officer for Asia

The International Commission of Jurists, in the late 1970s and at the beginning of the 1980s, organised a series of seminars in Asia, Africa and Latin America on "Rural Development and Human Rights". A common conclusion of these seminars including the South-Asian seminar held in Lucknow in 1982 has been that the participation of the rural poor and the disadvantaged in planning, implementing and monitoring development programmes is essential for meaningful development to take place. One way of ensuring their participation is to help them asset as well as to protect their rights. Lawyers and legal aid organisations can play an important role in this process.

To quote from the Lucknow seminar, "the contribution which lawyers and legal aid organisations can make is to apply their skills to:

- study the way in which the rural poor are being cheated and oppressed and otherwise learn about their true situation;
- help them to mobilise and organise themselves so as to develop a countervailing power to combat their impoverishment;
- inform them of their legal rights, including rights under national programmes of rural development, and of the ways in which the law can be a resource to enable them to secure these rights;
- give them legal aid and advice;
- protect them from those who misuse the law to harass and oppress them; and

– undertake critical appraisal of existing or proposed policies, legislation and administrative actions which impinge on their human rights."

Since the Lucknow seminar, the provision of legal aid and legal resources to the rural poor and the disadvantaged has been widely accepted and many new ideas and experiences have emerged in the region.

According to Dr. U. Baxi, India has witnessed its first real upsurge of legal activism, which has included justices of the Supreme Court. We are honoured by the presence of former Chief Justice of India, Justice P.N. Bhagwati who has contributed so much to judicial activism in India. The presence of Justice Shetty of the Supreme Court of India who has kindly agreed to inaugurate this seminar assures us that the Supreme Court would continue to provide leadership in the field of legal aid for the rural poor and other disadvantaged groups.

We are glad that we are able to hold this seminar in India in collaboration with the Rajpipla Social Service Society which is known for its creative use of law as a resource for the poor and the disadvantaged. We are grateful to Fr. Joseph for agreeing to cosponsor the seminar and for helping to organise it. We are greatly honoured by the Chief Minister's agreeing to speak today; his presence as a special guest this morning shows the State government's commitment to encouraging legal aid programmes.

The upsurge of legal activism is not confined to India alone. In varying degrees and forms it is taking place in all the countries of the South Asian region.

The purpose of this seminar is to facilitate the sharing of experience by groups in the region so as to look into the positive and negative developments that have taken place since the Lucknow seminar in the field of legal aid to the poor.

The participants will examine and compare the working of existing organisations in the region engaged in educating the rural poor about their rights and making legal services available to them. This would include discussing the obstacles faced by the groups and how to overcome them; and evolving strategies to make their work more effective as well as to stimulate new groups.

The proceedings of the seminar will be published and widely disseminated in the region. We very much hope and are confident that the conclusions and recommendations of this seminar will contribute further to the strengthening of legal aid and legal resource programmes in the region. This is the challenge before us.

Extracts from the Chairman' Address

by
Justice P.N. Bhagwati,
Former Chief Justice, Supreme Court of India

I feel deeply privileged to have been invited here to preside over the inaugural session of the workshop on "Legal Resources for the Rural Poor and other disadvantaged groups in South Asia". We in South Asia all belong to developing countries where society is marked by large-scale poverty and ignorance and extreme social and economic inequalities; the subject chosen for discussion is, therefore, of particular significance to all of us. I am happy to find that assembled here are not only lawyers but also representatives of social action groups from the different countries of South Asia. I am convinced that if we want to bring about change in the social and economic structures that are responsible for poverty and ignorance, it is absolutely essential to operate through social action groups and participatory organisations of rural poor. The traditional legal service programme which consists of providing legal assistance to the poor seeking judicial redress from legal injury caused to them is totally inadequate to meet the specific needs and the particular problems of the poor in our developing countries. The success of the traditional legal service programme would depend upon two factors, namely:

1) the person affected should be able to realise that the problem he faces is a legal problem capable of legal redress and
2) he must have the capacity to assert his legal right by adopting appropriate legal remedies.

Unfortunately, both these factors are markedly absent in our developing countries and this renders the traditional legal service programme ineffectual and deprives it of all utility.

There are also psychological and sociological barriers between the poor and the lawyers, who tend to share middle-class approaches and attitudes, with the result that the poor find lawyers rather remote. Even if a poor man is aware of his rights and is assertive, he may still be afraid of social and economic reprisals from his opponent who usually comes from the powerful section of the community. This is especially true of rural society where community life is still traditional, where paternalism and not egalitarianism is the dominant attitude, where a poor man is either your dependent or your enemy but never an independent and assertive individual. Moreover, the traditional legal service programme would almost inevitably suffer, as pointed out frankly in the national report from Pakistan, from lack of enthusiastic cooperation from lawyers. Furthermore, the traditional legal service programme can function effectively only if there is legal equality but unfortunately in our countries, legal equality is to a large extent only formal because of extreme social and economic inequalities. In addition, the traditional legal service programme is actor-oriented and not structure-oriented. It assumes that the law is just and that injustice results from violation of the law. It fails to realise that the violation of the human rights of the poor is caused mostly by unjust social and economic structures. The result is that the legal aid lawyer sees his function simply as indicating and upholding the law and not changing the law or the social and economic institutions. The traditional legal aid programme cannot therefore attack the problem of poverty and bring about developmental change...

The poor are unable, on account of their poverty, to participate effectively in the political process at various levels and the direct consequence of this is that we often have laws that are inadequate and ineffective...

The judiciary can also be indifferent to the problems of the poor, sometimes out of ignorance and sometimes out of lack of sensitivity...

It is therefore necessary to set up a dynamic legal services programme which would provide an effective answer to these problems and difficulties encountered by the poor and the social action groups helping the poor. The legal service programme must be bold and militant in its approach, ambitious in its design and radical in its strategy.

Extracts from the Inaugural Speech

by
Justice K. Jagannatha Shetty,
Judge, Supreme Court of India

I am most grateful to the International Commission of Jurists and the Rajpipla Social Service Society for giving me this opportunity to inaugurate the South Asian Seminar on "Legal Services for the Rural Poor and other Disadvantaged Groups". It is fitting that we are meeting in this tiny town with a rural background where we can personally see the problems and living conditions of persons for whose benefit this seminar has been arranged.

The scenario given in each of the papers from the participating representatives is similar: the rural poor and other disadvantaged groups have been subjected to centuries of oppression; they have been denied rights; they have been exploited; they remain in ignorance; and they have no legal awareness. These things will have to be borne in mind when we think of legal service to the rural poor.

In all developing countries, the poor as a class suffer injustice not necessarily due to lack of social legislation or to governmental inaction, but through the actions of the affluent and unscrupulous. Sometimes they also suffer from discriminatory treatment meted out by the administrative apparatus. It has been found everywhere that the poor are less legally competent, less knowledgeable, less skilled and less confident in relation to the law. So much so that they are more likely to become victims of injustice. Experience has shown that the poor or disadvantaged sections of society often fail to take the initiative in matters capable of legal resolution because they are intimidated by

the institutions usually associated with the law, such as the police, the prison system and the courts. They also fear that if they take legal action, their employer, master, landlord or the department may retaliate. They thus consider the process of law and litigation with trepidation.

The Indian Constitution by Directive Principles of State Policy envisages a great scheme for social and economic regeneration. The provisions contained therein, though not enforceable in any Court of law, are nevertheless fundamental in the governance of the country and it is the duty of the State to apply those principles in making laws.

These Directive Principles, if properly implemented, would go a long way to help the rural or urban poor. But how to achieve this? The existing State machinery is hardly sufficient for the purpose. We have not enough courts, constables and lawyers. This appears to be uniformly so in all developing countries.

The legal system, pervasive in urban areas, is only slenderly present in rural areas. The low visibility of the legal system, and its slender presence renders official law (its values and processes) inaccessible and even irrelevant for the people. Other factors (such as the language of law, which is alien to about 95% of the people) compound the distance between the State's law and people.

The ineffective presence of the legal system coupled with illiteracy of the vast majority of the rural poor is the main cause for their backwardness. The people do not know the laws enacted for their benefit. Many laws exist only in the statutes book and are not enforced by the state machinery. Most of the laws which are intended to benefit the weaker sections of society are not taken advantage of. Most often their benefits do not reach the poor. Take for example the legislation intended to benefit unorganised labour, small peasants, agricultural workers, landless labourers, artisans, etc. They do not know the laws relieving them of their indebtedness. They do not know the laws securing for them the lands granted or held by them on lease. There are laws prescribing minimum wages for agricultural workers. There are laws against child labour. Yet, if we go to the rural areas, we may find everybody is acting contrary to these laws. If the laws which are meant for the benefit of the poor and disadvantaged are strictly enforced and if the benefits of the laws reach the deserving, there is no doubt that there will be social and economic regeneration of the rural poor.

Legal aid in rural areas, in the first place, must ensure a sense of security to the poor. It is imperative as Ms. Nausheen Ahmad, the representative of Pakistan has stated in her paper, "that the poor must be made to overcome the sense of helplessness which they suffer because of their heritage of oppression

and to replace this with a sense of self-confidence." We must assist them in their mobilization; we must defend them against retaliation. We must protect them from exploitation.

Secondly, as O. Chinnappa Reddy, J. (who has recently retired as Judge of the Supreme Court of India), said, "we must propagate social welfare legislation and educate the people on their rights, to convince them about the uses to which the legal system may be put to their advantage and to convert apathy into enthusiasm, indifference into courage and finally to act as pressure groups to secure law reforms wherever they notice during the course of their activities that the existing system is working injustice to the economically disadvantaged."

Thirdly, legal aid must be a continuing service as appropriate to the community or class of persons. It should be extended with the ultimate aim of integrating the poor into the mainstream. We cannot doom them to remain hewers of wood and drawers of water. They should be afforded an added dignity, an added status and an added opportunity of a fuller and broader life.

This cannot be achieved by voluntary organisations alone, however honest and diligent they may be. The State must come forward with massive national programmes with an establishment of a State cadre of highly motivated, well-trained and dedicated social workers, or social investigators. They must go round the rural areas and investigate the legal requirements and the social and economic problems of the poor. They must acquaint them with and advise them of their legal rights. In coordination with the local or district authorities or legal service authority, they must take necessary steps to bring the much needed relief to the poor and the disadvantaged.

I wish you all every success in your deliberations.

Extracts from the Speech

by
Hon. Chief Minister of Gujarat,
Mr. Amarsing Chaudhary

I deem it my privilege to have been asked to be the Special Guest and to address this August gathering this morning.

The Constitution of India emphasises that the States have to promote with special care the educational and economic interests of the weaker sections of the people and in particular of scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation.

I am very happy to mention that the State of Gujarat has been the pioneer in many fields in the whole country. The State of Gujarat has, also, provided dynamic leadership in the realm of free Legal Services and Lok Adalats. Thus, long before the provision was made in Article 39A, in the Constitution of India, the experiment of free Legal Aid was evolved and formulated in Gujarat. The Government of Gujarat appointed a Committee under the Chairmanship of the then Chief Justice Shri P.N. Bhagwati, who is, fortunately, presiding this inaugural session on 'Legal Services for the rural poor and other disadvantaged groups'. After the Committee submitted its report, Legal Aid Rules and Legal Aid Advice Rules were framed in 1972 so as to provide free legal aid and advice to Adivasis, Harijans, landless labourers, and other economically and socially backward classes to help them in legal proceedings. At the initial stage, a pilot project was introduced in certain districts but subsequently, it was extended to the entire State of Gujarat. In the year 1982, the Government finalised its policy and constituted the Gujarat State Legal Aid and Advice

Board with a view to making Legal Aid and Advice available to persons with limited means and economically and socially backward sections in the community. Under the new scheme, we have a District Legal Aid Committee at all district headquarters and a Taluka Legal Aid Committee in each Taluka of the State.

The Legal Aid and Advice Board has adopted the following activities:

1) Free legal aid and advice
2) Lok Adalat
3) Public interest litigation
4) Legal literacy project
5) Jail reforms
6) Grievance cell.

I am also happy to mention that Gujarat is again the pioneer in the field of Lok Adalat programmes. Thus, the second important activity of the Board is to arrange Lok Adalat programmes. The concept of Lok Adalat is the living force of the day. The idea for the need of a Lok Adalat as a different forum for expeditious settlement of disputes is currently sweeping the nation. The contribution of Gujarat in evolving and implementing the concept of Lok Adalat is outstanding. Complexity of procedures, prohibitive cost of litigation and inordinate delay and monumental wastage of time, are the major drawbacks of the present judicial system. The accumulated frustration of the people desirous of quick decisions is the biggest single reason for the people having responded with hope, excitement and zeal to experiments in holding Lok Adalats – "for disputes ending, for disputes pending." I am very happy to mention that in Gujarat 160 Lok Adalat Camps have been so far organised by the Board, in which, in all, 42,107 cases were placed for settlement, out of which 26,014 cases were settled by compromise between the parties. The Board also gave legal aid in 1,995 cases till now.

It is needless to mention that the innovative and new strategy evolved by the Legal Aid Board in Gujarat has proved a grand success in providing speedy and cheap justice at the door-steps of the weaker and exploited class of people. It is in this context that the South Asian Seminar on 'Legal Services for the Rural Poor and other Disadvantaged Groups' assumes more significance. It is really very heartening to note that such a seminar is being organised on a very interesting and burning question in a backward area of Gujarat State like Rajpipla. I would like to congratulate the Rajpipla Social Service Society for its outstanding legal aid programmes in the four provinces of the State of Gujarat covering nearly 600 villages. I would also like to congratulate the Co-ordinator

of the Society, Fr. Joseph Idiakunnel, and the Office Bearers of the International Commission of Jurists. I also welcome the delegates coming from different parts of the country and the world for the Seminar and I wish them meaningful and successful deliberations and dialogues.

Problems and Challenges Faced By Legal Resource Groups In the South Asian Region

Working Paper by
Clarence J. Dias

Legal Activism in South Asia at the Crossroads?

The last decade has witnessed in South Asia a resurgence and maturing of the legal aid movement. The maturing is typified by a shift away from top-down, professional-client-based approaches to legal aid towards a service-oriented concept of "legal assistance" and a self-reliance-oriented concept of legal resources. The resurgence is evident from the proliferation of organisations providing legal support and legal services both in the governmental and non-governmental spheres. Many of these organisations adopt what in Indonesia has come to be described as a structural approach to legal services. Legal activism, in such an approach, is viewed as one (among several) means towards bringing about structural reform and social change in the societies of South Asia which are characterized by massive impoverishment and powerlessness and an intolerably skewed distribution of wealth, resources and power.

Legal resource groups in the region are thus aspiring towards helping to bring about profound social transformations and therein lies a dilemma for the law activist. She will have to move beyond the traditional palliative, ameliorative, incremental role that conventional legal activism offers. She will have

to help tear down unjust and exploitative structures rooted in the legal system and this may well mean the demise of several existing legal structures. Changing existing legal orders may not be a sufficient condition but is surely a necessary condition towards changing existing national and international economic and social orders.

In such an endeavour the law activist is forced into new, often confrontational relationships with government, with private power, and often with the prevailing leadership of the very legal profession itself. She is also forced into new collaborative relationships (based upon a notion of partnership between equals) with social action groups (SAG) and with victim groups who are being assisted. Many of the problems and challenges faced by legal resource groups in the region stem from these new relationships. The response of such groups to these challenges will soon determine whether the tribe of law persons will play a significant or a marginal role in the mass-based struggle for injustice that is currently underway in Asia.

Legal Resource Groups and Governments

The most serious problems that legal resource groups face are in their relationship to government. The attitude of governments ranges widely:

A. *Repression,* both through the use of draconian laws (relating, for example, to sedition, subversion) and through subtle use of detention (under laws of general preventive detention or under special laws such as those dealing with internal security or terrorism), torture or extra-judicial executions (sometimes euphemistically described as "disappearances" or "encounters"). By and large, legal resource groups in the region have stood firm against repression and responded to the challenge by constant recource to the law itself, not necessarily to secure relief and remedies but to expose the blatant use of power involved. Repression against a legal resource group has come to represent tacit admission by the powers that be, of the importance of the work of such a group. Repression has often tended to help rally groups together and has often proved counter-productive. The intimidatory aspects of repression seem to have been countered by legal resource groups and only governments willing to use law to institute a "reign of terror" can successfully use law to repress social action. For most governments of the region, law has tended to be a double-edged sword. It does, on the one hand, provide an effective tool for repression. But, on the other hand, it also provides the mechanism for holding governmental authorities accountable.

B. *Covertness*. Most governments in the region use laws such as the Official Secrets Act to cloak their activities in utter secrecy. Information essential to social action is usually withheld from the public. Even inspection of court records in the rural areas of Maharashtra (as part of a study attempting to identify changing patterns of criminal deviance) required official permission from the protonotary of the Bombay High Court. The Bhopal tragedy poignantly demonstrates how pathological the bureaucrat's quest for secrecy has become. Legal resource groups have countered with demands for a new freedom of information law but one cannot be over-optimistic of such an approach. Difficult though it might be, legal resource groups will have to make creative use of the litigation process to compel disclosure and the judiciary will have to change its current attitude that seems to stem from a presumption of secrecy and non-disclosure.

C. *Governmental Lawlessness* is perhaps the single most important problem faced by legal resource groups. Upendra Baxi has detailed the various forms such governmental lawlessness takes in his pioneering book *The Crisis of the Indian Legal System*. Time and again, those involved in social action litigation in India have been frustrated when courtroom victories prove to be pyrrhic because governmental authorities flout, with impunity, the directions and orders of the court. Such authorities act as if they are above the law and too often get away with such conduct. In some contexts, legal resource groups have responded by mass community-based, rights-awareness campaigns to build up the public opinion needed to combat such governmental lawlessness through mass protests, demonstrations and direct action.

D. *Co-optation*. Where the stick has failed (or is unlikely to succeed), governments have been quick to offer the carrot. Social action groups have had to resist being co-opted by the very system they are challenging. Legal resource groups, in particular, have had to deal with efforts by government to retain control over legal services programmes by bringing them under government administration and government funding. Unlike repression, whose more blatant forms are well-known, the techniques of co-optation are much more subtle and could well be the subject of careful legal study and documentation.

Legal Resource groups and Private Power

In his farewell judgement as Chief Justice of the Indian Supreme Court, Justice P.N. Bhagwati drew attention to the grave problems posed by "centres

of economic power". Such centres of private power are even more immune from accountability than their public counterparts and often operate their own private "armies" and security forces. Moreover, they are in a dominant position vis-à-vis the legal profession. The economic base of the average lawyer's practice is often very much controlled by the private sector. Moreover, the experience with powerful multinational corporations shows that the line between private power and the state often cannot be clearly demarcated with local government officials often being little more than lackeys for a giant multinational. The impoverishment of a majority of the peoples of Asia has largely resulted from the feeding of transnational hungers:

A. Hunger for developing country ***natural resources***. Historically, this hunger was for the primary commodities and primary products of developing countries. Today the hunger is also for developing country lands on which transnational agri-business plantations are producing cheaply (for global markets), bananas and pineapples in the Philippines, strawberries in Mexico, horticultural products in Kenya, oil palm in Malaysia. More recently, there is a new hunger for developing country land as pollution havens for ultrahazard industry and even as dump sites for toxic wastes! Ruling elites in developing countries are willing accomplices in the feeding of such international hungers bargaining away long-term pauperization of the human and natural environment for short-term profits and wealth.

B. Hunger for developing country ***labour***. This hunger is both for cheap unskilled labour (in export processing zones or as "guest workers") and for skilled labour (creating a perpetual brain drain). All this takes place in the name of a so-called international division of labour. But the link between feeding international hungers for developing country labour and the pauperization of the human environment and degradation of the physical environment in developing countries is rarely made.

C. Hunger for developing country ***markets*** stems from their use, both as a dumping ground for surplus production as well as to sustain levels of economic growth in industrialized countries. The feeding of this international hunger also takes a heavy toll on the human and natural environment of developing countries.

D. Hunger for ways (including development projects) to ***recycle*** developed country ***capital surpluses*** can result in the export of debt and inflation to the developing countries with very real costs in terms of human suffering.

E. Hunger for superpower *spheres of influence* has led to the unfortunate militarization of the developing world with, once again, heavy costs to the human and natural environment.

These international hungers are not without their national counterparts, of course. For example, the growing incidence of bonded labour and slavery-like practices are the product of models of development which are primarily oriented to serving the needs of minorities or the urban-industrial population. There is, thus, a vested interest in keeping a large sector of the population unorganized and depoliticised, so that the poor can be availed of as a source of perennial, cheap and docile labour. Similarly, policies of rural development have tended to make only such inputs into the rural economy as are necessary to ensure outputs needed by the urban-industrial sector.

The feeding of these transnational hungers often takes the form of "development projects" in which our governments are willing collaborators with transnational actors in endeavours which bring benefits to a privileged few but impoverishment, starvation, exploitation to the many. Such projects include:

1. Industrialisation projects which unquestioningly embrace hazardous (so-called "high") technologies and sacrifice or imperil the lives of workers or communities.
2. Agricultural development projects which are intended to achieve "food self-sufficiency", or export earnings but which end up financing unequal urban development while causing rural hunger, exploitation, and impoverishment.
3. Large-scale infrastructure or dam-building projects which displace thousands and ruin the ecology to provide energy and water for a privileged few.

Legal resource groups have often been called upon to confront such projects. Working in collaboration with investigative journalists, they have called attention to the various acts of lawlessness that have occurred within such projects and indeed to the very lawlessness of some of these projects themselves. Increasingly, legal resource groups will have to turn to human rights law to confront and challenge abuses of private power. They will also need to try to bring in law to help in the mobilizing and organising of victim groups to fight back against powerful elites subjecting them to repeated victimization. The struggle to use law in this regard will not be an easy one since some laws may indeed be a product (and reflect the needs) of such

powerful elites. But some strides have been made (in India, for example, through social action litigation) to interpret provisions of the Constitution guaranteeing fundamental rights in a manner which casts upon the stage positive obligations to protect its people against the excesses and abuse of private power.

Legal Resource Groups and Other Social Action Groups

Legal activists have only recently been attempting to reach and serve victim groups located in remote rural settings. They have only recently been shifting from a reactive to a proactive approach. In such efforts to reach out to disadvantaged groups and communities, it has been essential that they work with and through other social action groups already in close contact with the grassroots level. Such relationships are fraught with difficulties. Most social action groups have strongly negative perceptions of lawyers, of law and of legal institutions. These perceptions are often well-founded and based on past experience. Legal resource groups need tact and understanding and patience to help overcome these perceptions. Moreover, they often need to change their own attitudes (which reflect all too often the adversarial world lawyers work in) and ability to relate to and communicate with social activists. There is also a need to help both legal and non-legal social action groups appreciate that, despite differences in working methods and approaches, they both share fundamental values and hopefully a shared vision of the direction in which they would like to see their societies go. For their part, social action groups will have to adjust their fiercely individual, "go it alone" working styles and learn to appreciate when and how to draw legal resource groups in as partners towards more effective social action campaigns.

Legal Resource Groups and Victim Groups

Many of the tensions that sometimes typify the relationship between legal resource groups and other social action groups also often typify the relationship between the former and disadvantaged groups and communities and organisations of the rural poor. Such community groups and organisations also have largely negative perceptions of lawyers and the law. Often they are cynical, having been hurt too often by the "helping hand". In some countries, their physical isolation is exacerbated by laws which isolate them

further (such as laws which require special permits to visit or work in "rural areas" or "sensitive areas"). Most of all, victim groups are often bemused by the appalling ignorance as to their plight, concerns, problems and priorities by those (including law persons) who seek to help them. As one rural community in the Philippines so aptly exhorts, legal action groups (and other social action groups) must "go to the people, live with the people, learn from the people". Legal resource groups motivated enough to want to help serve disadvantaged groups and communities must set out patiently to demonstrate that they can indeed be a help and not a hindrance. Working with communities to help implement strategies that the community itself has formulated is perhaps the most appropriate approach. After all, nothing succeeds like success. Moreover, even failures can become stepping stones to success if such failures have been dissected in a participatory fashion enabling the learning from one's mistakes. The challenge for legal resource groups is to restrain their natural tendency of attempting to "make decisions for clients" and instead to play the role of facilitator and resource person enabling victim groups and communities to regain control themselves over their own future.

Legal Services for the Rural Poor and Other Disadvantaged Groups

Rajpipla, India, 27-31 December, 1987

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