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Generating and Sharing Knowledge of Law for People-Centered Development

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GENERATING AND SHARING KNOWLEDGE OF LAW FOR PEOPLE-CENTERED DEVELOPMENT*

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INTRODUCTION

Alternative development focuses attention on the "victims" of development as well as underdevelopment. Millions of people living in differing social and physical environments fit into "victim" categories; for example: city dwellers doomed by urban development to squatter settlements; rural people doomed by new technologies and modes of production or crop displacement to landlessness or unemployment. Some are the victims of less visible events, such as official discrimination in the allocation of essential goods or services, or in the enforcement of laws designed to prevent exploitative relations of land tenure, employment, borrowing, etc. An increasing number are the victims of "development" programs designed to bring widely-heralded benefits to some sectors of society, but at heavy costs, too seldom calculated, to others. Most of these various victims are also the victims of political and legal exclusion: lack of effective access to forums of decision-making where power and resources are allocated.

Alternative development challenges assumptions, both normative and empirical, which produce and condone these kinds of victimization in the name of development. It focuses attention on the organized, self-reliant efforts of victims to identify, confront and change practices which produce victims— and growing deprivation, impoverishment and impotence. Since

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these practices are so often rooted in power relations, the focus must often turn toward law governing power relations—relations between particular victim groups and those who seek to control terms of landholding, employment, marketing or access to other resources which critically affect the welfare of these groups. The assumption of alternative development is that impoverishing relations can only be changed through the organized, self-help efforts of victims and groups working with them, and that these efforts can, and should, induce many more people to take human rights more seriously and to challenge values and goals which presently inform concepts of development.

Since law must be developed to sustain these efforts, it becomes important to focus on ways by which victims—and, particularly important, other organizations and individuals, working with and for victim groups—can generate and share knowledge of those kinds of law needed by victims. These needs differ widely and they are constantly changing, and so, as we hope to show, many different kinds of law may be implicated in these struggles. But the processes whereby this knowledge of law is developed and spread must be processes which help groups working for alternatives to:

- become more self-reliant (e.g., through an understanding of their rights), and,
- become more empowered (e.g. through development of their capacities to assert rights through collective action) and which help these groups to
- use law to challenge value premises (and unexamined assumptions) which contribute to, or condone, "victimization."

This paper examines some strategies and methods to promote these ends. Emphasized is the fact that these endeavors call for efforts from many different kinds of groups and actors, to develop and combine many different kinds of knowledge—and to disseminate it in many different sectors of society.

In what follows we set forth, in rather summary form:

1. two cases which illustrate some of the wrongs done to increasing numbers of victims of development schemes;
2. observations on strategies to respond to these wrongs;
3. observations on strategies to generate and share needed knowledge of law to develop these strategies; and
4. observations on some broader implications of these cases.

Perhaps it should be emphasized that the material presented here is meant to be suggestive, not prescriptive. It is hoped that it may help

direct attention to needs for alternative systems of education, notably education in and about law.

TWO CASES

1. *The Narmada Project in India.* The government of the State of Gujarat (acting through various ministries) in collaboration with agencies of the government of India, and agencies of the World Bank and other international assistance agencies, has decided to build a number of dams in the Narmada Valley to generate power for various urban industrial centers and to develop irrigated farming. Some of the dam sites, and the great lakes they will produce, will destroy many square miles of forest areas, parts of which are inhabited by many thousands of tribal people who have lived in (and in harmony with) forest environments for centuries: these environments are the source of their culture and way of life, as well as their subsistence.

Obviously these people, and many others as well, are opposed to the dam. Their many reasons for opposing the project raise difficult issues. They believe the dam will prove to be (as others in India have) a technological disaster which will produce other disasters: the river and the ecology of the region will produce silting which will fill up the dam basin, causing further flooding and ultimate failure of the project. They believe the project will destroy more of India's deteriorating forest lands, a heritage which can never be replaced and so must now be protected, not further destroyed. They believe that while the dam will bring benefits to some—e.g., trees for industries, irrigation for large-scale farmers and power for urban consumers who can afford it—the project will inflict costs on many others which far outweigh the benefits predicted by planners. Moreover, they believe it is wrong to resolve these issues through convoluted processes of decision making which exclude participation of the people most directly affected (e.g., the tribal people); and therefore the government has no legal authority to proceed with the project. They believe, as one spokesman for the thousands threatened has written: "The case of the Narmada project is not an isolated extreme example: it is but part of a pattern [of development] which is very rapidly stabilizing itself in our country and perhaps others where the rulers are by and large not accountable to the people at large."

At this point hopes for halting the project altogether are dim; but a second set of concerns relates to the failure of those responsible for financing and implementing the project to provide compensatory justice to the many who will be seriously injured by it. The many deeply-felt

grievances of many people led to a rally of 3000 victims at the dam site headquarters—an event "unprecedented" in this region.

Underlying the protests were demands for assurances—*law*—which would enable families ousted from their historic homelands:

- to secure fair compensation for lands expropriated from them;
- to secure (through purchase, at affordable prices, and not coerced exchange) at least five acres per family of similar forest land for resettlement—and to secure stable titles to these new lands;
- to secure protection from outside land speculators who are already trying to exploit the prospect of landless people seeking new home sites;
- to secure *fair* compensation for other costs inevitably inflicted on each ousted family as it seeks to move to and resettle in a new environment;
- to secure recognition of formulas which will enable calculation with some certainty (for each family) of all of these costs, and thus formulas which will generate adequate budget allocations in advance to meet these costs.

(At the time of this report only 250 million rupees have been appropriated for rehabilitation of all of the potential victims (and the total number of them has never, apparently, been officially estimated). By way of contrast, 450 million rupees have been appropriated for the housing of several hundred staff at the dam site headquarters.)

These are only some grievances. Underlying them is a deeper concern. *There is no law* — at least none yet known to the Narmada victims and those helping them—which is explicitly recognized by the agencies building the dam and *which addresses the concerns of the victims.* Nor are there any known (i.e., publicised) processes for making such legal guarantees and applying them with the efficiency and fairness necessary to prevent countless other hardships to those who must bear the heaviest cost of the project.

In response to their grievances these victims (like countless others in similar situations) have received *verbal* assurances by various high-ranking officials (e.g., Gujarat's Minister of Irrigation) that their claims (or many of them) will be met, justice will be done. Any lawyer worth his/her salt could readily know that none of these officials have the jurisdiction to make, let alone deliver on these promises—assuming the officials will still be around when that time comes.

2. *Palm Oil Plantations in Mindanao.* Two Philippines state corporations have developed large plantations to produce palm oil in Mindanao. These

corporations were in turn created by a consortium of companies: the National Development Company (NDC), a Philippines parastatal; the Guthrie Company, a British multinational and Guthrie Overseas Ltd., a subsidiary of Guthrie most of whose stock is now owned by a Malaysian parastatal. More recently, the Commonwealth Development Corporation (CDC), a British parastatal created by Parliament to serve as an agency to fund development projects through soft loans, has made big loans to NDC/Guthrie on the theory that the palm oil projects will bring "development" to Mindanao.

Many people and "grassroots" groups voiced complaints about the plantations, and ultimately these came to the attention of the British Parliamentary Human Rights Group. Two MP members of the Parliamentary Human Rights Group (a quasi-official body) investigated, and their report—revealing a rather shocking history of the project—provides, in itself, provocative reading for lawyers and others concerned with human rights and alternative development.

This report, and other evidence, reveals that many people in the region concerned are unalterably opposed to *plantationizing* and *transnationalizing* their homelands. These groups claim the plantations are, in effect, expropriating the lands of hundred of small farmers, notably tribal people living on ancestral lands; that they are creating a new class of landless wage workers (allegedly underpaid) who are now dependent on foreign actors (notably Guthrie and NDC) for their future economic security; that the long-term future of palm oil production as a basis for development is bleak because chemical substitutes will, perhaps soon, displace already competitive markets for the product; and that in any event, the major profits from the enterprises are going to foreign investors who have no long-term interest in Mindanao, or more notably, in its people. It is further claimed that the plantations are destroying valuble lands used for food production necessary to support local populations and that this monoculture will eventually destroy the productivity of the land consumed by it. Finally, these victim groups claim that the consortium has used unlawful means to exercise lawless powers; and, further, the projects must be stopped because the people victimized by them presently have no basis for participating in the design, management and accountability of these development projects. The present structuring of the enterprise means that no one need even entertain, let alone be held accountable to, the grievances of affected people.

That issue—lack of participation—takes on even more color when the history of the project is revealed. The British MPs (in their report) were

shocked to find that the plantations had condoned the use of criminal methods (and crimes) to secure many of their present estates. The managers had contracted with a para-military force of ex-policemen (called "The Lost Command") to provide security against their allegedly hostile small farmer neighbors. The Lost Command had in turn killed, tortured or intimidated many people who protested the plantation; they had systematically intimidated farmers to sell their lands to "dummies" who in turn sold (at a profit) to the companies. Further, the companies collaborated in a "nominee" system of employment: by contract it empowered various local figures to "nominate" others to become plantation workers—a process which enabled the nominators, in turn, to demand a share of the nominees' wages. The companies had refused to recognize the workers' union claims, and The Lost Command had killed union and other organizers. These were some of the findings of the MPs after several weeks' investigation in Mindanao. Their remedy? A stern admonition to CDC to do something to prevent such "grave errors in judgment" in the future, and to urge the plantation companies to live in greater harmony with their host communities and their workers.

RESPONSES TO VICTIM GROUPS AND THEIR SUPPORTERS

As indicated, most of the primary victims of these projects—people facing eviction and the curse of landless existence and many other tangible harms—are staunchly independent, tribal people or small subsistence farmers. They lack formal education (e.g., knowledge of the language which officials use to explain the projects). They (and their well-educated supporters) also lack access to information, and processes for participation; they lack confidence in law, because law is perceived as a means whereby officials express and exercise official commands and (sometimes) whereby they explain and excuse the injustices which these mandates produce.

However, as indicated, these people do feel deeply wronged. They have begun to mobilize; and, with indispensable help from committed support groups, they have identified various strategies to protect their shared interests. These strategies include:

(1) *Mobilizing* other victim peoples, potential and actual, and other support groups. The tasks, here, include not only efforts to identify and reach these groups, but to mobilize concerted action on their part (including supportive action) around specific grievances and demands which are not only understood and endorsed, but which are used to catalyze energies, commitment and sacrifices.

(2) *Stopping the projects.* Even if this goal seems unlikely, it is felt that efforts to pursue and justify it will help concerned people to pursue other alternative groups and, in that way, force changes.

(3) *Redressing wrongs done and preventing future wrongs.* If the dams are to be built, the Narmada victims know that they will be ruined to the extent that fair standards and efficient procedures for full compensation are lacking when they are forced off their land. Some palm oil plantation victims have already suffered grievous wrongs: the killing of men (and physical abuse of women) who have resisted; intimidation and unconscionable agreements wherein they sold their land. Many workers want a union in order to consider terms of employment and (some say) terms of participation in the management of the enterprises.

(4) *Renegotiating the projects.* Assuming these projects cannot be stopped, all of the concerned groups perceive the absolute necessity of securing, now, many kinds of written guarantees relating to redress of past wrongs and prevention of future harms. In effect they want to impose a new rule of law, reached through participation on those responsible for the enterprises.

(5) *Identifying and reaching appropriate targets.* All of the concerned groups sense the difficulty in targeting these strategies. Who are the specific actors (in each of these projects) who can make and enforce decisions and rules to protect rights and interests which the victims seek to secure? Who can hold these actors accountable if they fail thereafter to meet obligations which they assumed? These are difficult questions, again illustrating the consequence which can ensue when "soulless" corporations and government agencies operate in a lawless context. The victim groups and their few supporters understand that they may win nothing unless they can reach and move many targets: in the dam case these targets include the governments of Gujarat and India and particular ministers and other officials, the World Bank and other donors (and appropriate officials in these vast agencies). They know, too, that their strategies require efforts to reach other targets—the media, organizations and actors (including international non-govermental organizations (NGOs) and elites) who can supply help, and other potential victim groups. Similar challenges—indeed a greater diversity of targets—confront those groups now challenging the Guthrie/NDC/CDC-sponsored palm oil plantations.

GENERATING AND SHARING KNOWLEDGE OF LAW TO SUPPORT THESE STRATEGIES

The strategies sketched above may depend, in part (but significantly) on the capacity of victims and their supporters to use law. Law provides

bases for rallying collective action, for pinpointing both wrongs and demands for relief, for holding particular power wielders accountable to particular standards and duties, for developing protections against future abuses, for gaining recognition of basic human rights and making them enforceable, for incorporating new values into rules governing power relations. For these purposes victim groups—and particularly those helping them—need to *develop* law from a variety of sources to meet many needs.

1. *Mobilization and generating support.* Knowledge that law is on their side has clearly helped the Narmada and Mindanao victim groups and their supporters to mobilize, identify grievances, articulate and justify claims. This knowledge has helped to liberate people from feelings that they are victims by decrees of either fate or impregnable power wielders. Thus, the kinds of legal knowledge suggested below must be generated by support people and shared among victim people in order to help them initiate organized struggles against the projects. Further, the processes of mobilization call for the formation of well-organized groups and of workable alliances with other groups and actors. For these purposes people need to make their own law, developed through consensus, to govern their group and intergroup relations and group leaders.

2. *Stopping the projects.* Both projects may be beyond the statutory or charter authority ("ultra vires") of some (or all) the various bodies who have combined to undertake them. Or these projects may be "ultra vires" because the agencies have pursued them using procedures and powers which are unauthorized and illegal for other reasons.

For example: It may be unclear that one or more of the agencies properly weighed the human costs against the benefits (to whom?) of the projects, and properly determined that valid "public purposes" would be served despite the "costs." Certainly it seems clear that all of the agencies violated basic notions of "due process" and "natural justice" and international conventions and resolutions guaranteeing rights of participation when they proceeded without affording meaningful opportunities to be heard on the part of people most directly and adversely affected by the undertaking. It seems clear, again, that these and other basic rights (e.g., rights to fair compensation, to protection of food sources and systems and to physical security) have been and will be violated in the future. It is quite possible that some of the agencies involved have developed internal rules which are addressed to some of these concerns. It seems unthinkable that, in any country purporting to follow the "rule of law," public agencies can be vested with legal authority to do business in the ways it was apparently done in these cases. At least an attempt to generate and share knowledge to support that position presents a significant challenge.

3. *Redressing and preventing wrongs.* It seems clear (from the British report) that the operators of the palm oil plantations may be liable for many serious torts inflicted by the "Lost Command" and by managers who condoned the "nominee" system.

Equitable-type relief to prevent future harms seems imperative. For example, both projects are proceeding to "expropriate" land without establishing clear formula for fair compensation, or fair procedures for determining who is entitled to compensation. Both may be (or will be) in violation of environmental laws. Both might be placed under obligations to assure that people removed from their lands have the opportunity (and funds) to purchase other lands capable of providing subsistence and meeting other basic needs of the families involved. Equitable relief might also look toward protection of victims from physical harassment by police and other forces, protection of community food supplies, and protection of the rights of workers to form unions.

4. *Renegotiating the projects.* All of the above suggests a need to act quickly to place each project under comprehensive regimes of clear law which will set out the human rights of victim groups and procedures for securing them, as well as other obligations to be imposed on project operators (e.g., environmental protection obligations) and on others in the consortium (e.g., undertakings by the government agencies, the World Bank or CDC to impose accountability on those managers).

But the victim groups may wish to go further in attempting to reallocate the benefits of the projects and restructure their management. If the dam or the palm oil plantations are to generate profits, who ought to be entitled to share in their enjoyment? In what ways can local people participate in the ongoing management of the projects so as to promote their value to "host" communities, so as to forestall expansions, changes or abandonments which will again "victimize" people?

While the objective of "imposing law" may seem valid, difficult questions may arise as to the form and source of that law. Should renegotiation take the form of a "contract" between the various parties? Or the form of regulations promulgated (after negotiation) by the relevant agencies, or the form of statutes geared to the needs of the parties?

5. *Finding targets* for different kinds of strategies may also present difficult problems. Each project reflects a consortium of agencies, some more readily accessible to the victim groups and their present supporters.

Needed may be an analysis to see what powers each of these agencies can exert over the project and what demands (grounded in law) can be presented to each. For example, the World Bank and perhaps CDC (and,

indeed, perhaps British human rights groups) may be crucial targets for victim groups because of the importance of their funding. The task then becomes one of generating both strategically located support groups and the requisite knowledge of law needed to formulate demands and persuade or embarrass them into responsive action.

In addition, of course, victim groups and their supporters need to think of strategies aimed as secondary "targets"—such as the media, professional groups and others who may provide important aid in one way or another.

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All of the above is meant to be suggestive. Imaginative lawyers (and persons with other skills) may well conceive of many other strategies and lines of action. Unhappily, however, these victim groups, like most others, lack the human resources to generate—and spread—much of the knowledge needed to support many of the strategies suggested here. All of which underscores the crucial importance of developing support groups (and support people) who will have the capacity of developing *knowledge to develop law* geared to the needs of the victims.

CONCLUDING OBSERVATIONS

The cases recounted here probably typify problems encountered by the rural victims of large-scale development projects (e.g., dams) and by the victims of transnationalization of small farmer communities. Other kinds of victim groups (e.g., small farmers and their families who are denied equitable access to essential goods and services) may have a somewhat different agenda, implicating different bodies of law and related knowledge. However, the case studies do illustrate some propositions which should generally apply to many efforts, in many settings, to generate knowledge of law for people-centered development.

1. *Developing self-reliance* seems to entail a number of requirements. For example:

(a) *A Dynamic Concept of Needs for Legal Knowledge.* The external threats and internal problems confronting many communities of the poor will often change over time. New demands for generating new packages of legal knowledge will regularly be imposed on support lawyers, as new technologies, or changes in politics or in the economy or in local environments, take place.

(b) *A Dynamic Concept of Law.* Victim groups need to know that law is not a static, known, immutable body of rules. Support lawyers must often be able to show them that law can (it is hoped) be developed

to meet their needs. For example, a government parastatal may be very generally empowered (by its organic statute or charter) to invest in and help develop palm oil plantations. But the enabling law may be devoid of limitations and standards governing exercise of that power. The lawyer's task may be to create these constraints by processes of interpretation and by recourse to other bodies of law (e.g., human rights law). Similarly, human rights may be expressed (in various legal sources) in very broad, general terms. The lawyer's task is to help develop persuasive theories which show how these rights (e.g., the "right to food"), properly construed, create entitlemenets protecting this group from practices (e.g., development projects) which threaten sources of food supply or distribution on which the group depends.

(c) *Many Kinds of Specialists*, e.g., "paralegals," professional specialists may be required to gain legal self-reliance. In the Narmada case, one of the problems facing the group is the difficulty faced by each family when it comes to proving that it enjoyed rights over some particular land area. This difficulty can easily be used by bureaucrats to refuse compensation. The need may be to develop methods by which the group can map and delinate landholdings—a procedure which may require both locally-trained specialists and lawyers (or others) with a sophisticated knowledge of land law. Other groups may require group technicians to help handle credit, or marketing and business problems, and so forth. Support groups, ideally, may need a network of specialists or specialist groups.

(d) *Access to Information*, notably official information, is often crucial to generating legal self-reliance (and empowerment). Restrictions on the availability and flow of information may present, in itself, an intolerable condition confronting victim groups. Development of rights to information (like other rights) may be another important area of need for legal knowledge and legal development.

2. *Developing empowerment* also requires development of many new group capacities. For example:

(a) *The Formation of Networks of Effective Groups* to engage in many different kinds of activities may call for the development of new kinds of legal knowledge, e.g., groups to represemt others in litigation (class suits), groups to raise money or to work with the media, groups to engage in picketing, groups to engage in economic activities. Similarly, supporters may need to examine the need to develop different models of support groups to engage in different activities: education, human rights

or environmental advocacy, agrarian law and agrarian issues. International NGOs must also be formed to support these networks and to support specific actions.

(b) *Developing Rights to Form Groups and Engage in Group Activity* is obviously of critical importance to empowerment, especially in countries where these rights are uncertain at best, and often abused. Support and victim groups may need to address these problems on a continuing basis—for example, by developing meetings and publicity (perhaps in league with international groups) to focus attention on those international rights' covenants and other UN resolutions which declare the right of the poor to form their own groups as vehicles of participation, and which declare the centrality of these rights to meaningful development.

3. *Developing values.* People-centered alternative approaches to "development" often constitute, at bottom, a direct challenge to prevailing normative assumptions about development, e.g., a challenge to the superior wisdom of elites, to the lifestyles and consumption patterns and materialistic aspirations which fuel demands for various kinds of development. People-centered development asks that we take suffering and human rights seriously, that people, but particularly "victims" and the disadvantaged, become the priority concern of development. The assumption is that the struggles and participation of these groups will generate alternative values.

Law is a carrier, and a reflector, of values. Law geared to the needs of victims will reflect very different value premises and concepts of human rights than law geared to the empowerment and nonaccountability of TNCs, government agencies and the World Bank. One of the challenges, therefore, is to use cases like the Narmada dam and the Mindanao palm oil plantations as vehicles to contrast differing perceptions of social justice and development. Knowledge to do this must also be generated and shared.