

Third World Legal Studies

Volume 4

Article 2

1-2-1985

Developing Legal Resources for Participatory Organizations of the Rural Poor

Clarence J. Dias

James C.N. Paul

Follow this and additional works at: <http://scholar.valpo.edu/twls>

Recommended Citation

Dias, Clarence J. and Paul, James C.N. (1985) "Developing Legal Resources for Participatory Organizations of the Rural Poor," *Third World Legal Studies*: Vol. 4, Article 2.

Available at: <http://scholar.valpo.edu/twls/vol4/iss1/2>

This Article is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Third World Legal Studies by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

DEVELOPING LEGAL RESOURCES FOR PARTICIPATORY ORGANIZATIONS OF THE RURAL POOR*

Clarence J. Dias**
and
James C.N. Paul***

I. Introduction

The purposes of this paper are to examine the importance of *legal resources in strategies for the rural poor*, and to discuss methods for developing them.

By *strategies for the rural poor* we mean those which emphasize their self-reliant participation in efforts to change the conditions of poverty in which they live. Ordinarily, this kind of people-centered development can only occur when people work together to secure those changes in their physical and social environments which they understand and want, and for which they are willing to take risks. Of course, help and resources must be provided from outside a community if "development" is to take place within it. But this aid must be provided through processes which respond to local needs and which lead to self-reliance and participation as well as other, more material goals. Thus strategies for the rural poor seem to require formation of endogenous popular organizations which help people to gain:

- knowledge, skills, confidence and a willingness to innovate and undertake new, shared risks;
- power, realized through collective action, enabling them to demand essential resources and to challenge and change impoverishing social relations; and
- capacities to develop new kinds of group economic activities, and

* A paper presented at the Windsor, Ontario Symposium on Developing Legal Resources for Alternative Strategies of Rural Development, March 1983.

** Director, International Center for Law in Development (ICLD), New York.

*** Professor of Law, Rutgers University.

to act collectively in other ways to advance and defend other shared interests.

By *legal resources* we mean the functional knowledge and skills which enable people, working collectively and with other groups, to understand law and use it effectively to promote these objectives. Thus legal resources are simply *part* of an aggregate of knowledge and skills which create or enhance incentives and capacities to act collectively to promote or defend shared interests. Legal resources for self-reliant development may include knowledge of:

- how various laws are used (or abused) by dominant groups (including public agencies) to exploit or repress communities, or a particular disadvantaged group within a community (e.g., women);
- how law in its various forms (e.g., not only legislative or constitutional provisions, but “customary law” and endogenous groups-made law, and international norms such as human rights declared by conventions to be “universal”) may be used to assert claims to resources and other entitlements; and
- how these various kinds of law may be used to help legitimate popular organizations, protect them from repression and help them to develop new kinds of economic group enterprises.

In succeeding sections of this paper we will try to show:

1. Why the development of self-reliant, participatory organizations of the rural poor is critical to the realization of “development.”
2. How legal resources contribute to the formation and effectiveness of these organizations.
3. How legal resources for organizations of the rural poor can be developed.

Each of these subjects is obviously complex enough to deserve an extensive treatment; our discussion here can only be suggestive, indicative of work to be done. At best, we can only help to establish a framework for discussion of some concepts, approaches, and issues which must be considered in the different countries and settings by those jurists and development specialists who seek to address the concerns and needs of impoverished rural people—and who seek to help develop law as a resource for *their* development.

II. The Importance of Participatory Organizations of the Rural Poor

Relevant concepts and approaches to development are grounded in two basic sets of concerns.

The first is that development must be concerned with people. A recent report by the Secretary General of the UN Commission of Human Rights

declares that “a general consensus exists as to the need for the following elements to be part of the concept of development”:

1. The realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development.
2. The human person should be regarded as the active subject and not the passive object of the development process.
3. Development requires the satisfaction of both material and non-material basic needs.
4. Respect for human rights, and principles calling for redress of historic discriminations, are fundamental to the development process.
5. People must be able to participate fully in shaping their social and physical environments.
6. The achievement of individual and collective self-reliance must be an integral part of the process.¹

The second set of concerns is that efforts to produce development must, as a first priority, address the man-made conditions which deprive people of any meaningful opportunity to realize the aspirations described above.

We focus on social relations which produce impoverishment, impotence, and degradation of people in rural areas. Two kinds of deprivation join to produce these conditions.

In the first place, people are deprived of essential material resources. The conditions and settings of deprivation vary, of course. Peasants may lack access to land or the resources to farm it productively. Rural workers may be deprived of adequate wages and other conditions of employment enabling a level of existence which makes human development possible. In many settings, people lack access to credit, knowledge, and technologies, and to basic health care services, potable water, and other necessities. All too often, women are particular victims of these man-made deprivations: they may be denied rights to control or own land, or of access to credit; they may be especially exploited as agricultural laborers; they particularly bear the burdens of lack of household water supply or lack of basic community services.

Deprivation of material resources is a product of lack of power in social relations. These may be “private,” exploitative relations imposed

1. Report of the Secretary-General, UN Commission on Human Rights, *Question of the Realization in all Countries*, U.N. Doc E/CN.4/1334/1979.

by employers, creditors or landlords. Usually, however, they are accompanied by lack of peoples' power in their relations with agencies of government.

There is growing agreement that reversal of current trends towards increasing impoverishment requires significant changes in the design and administration of government programs of agricultural and rural development: for example, changes in programs concerned with protection of agrarian workers or women; changes in programs concerned with credit, extension, research (e.g., the development of better seeds or inputs for basic food crops), the development of infrastructure (e.g., transport, storage and marketing, particularly of food crops) and encouragement of local self-managed, group-economic enterprises. There is also general agreement that, for a variety of reasons, it is difficult to change the thrust and impact of these programs because it is difficult to change the structures through which programs are designed and administered. This involves changes in characteristics of the institutions and key actors who wield power over resources and the processes by which allocative decisions are made.

Historically, the rural poor through the Third World have lacked effective access to, influence within, and accountability over, institutions which dispose of essential resources. This is so whether the institution be a national planning body, a unit of local administration, or a cooperative. These conditions of exclusion may, of course, be the product of many factors, ranging from colonial legacies to the kinds of social stratification which exist in rural areas and the influence of dominant groups who, by dint of affluence, social connections, and intermediaries, enjoy superior access to agencies of government, the courts, political leaders, and others in seats of power. Similarly, lack of access and influence is a product of lack of knowledge: the rural poor may lack information about their entitlements under state law and about ways to realize those entitlements to their advantage. For example, laws establishing governmental programs over different kinds of essential resources provide the discretion—sometimes the mandate, frequently the gloss of policy directives—to administer powers delegated so that the poor be reached and served. Thus the legal power (if not the will to use it) may exist to devise new kinds of programs (in health care, extension, credit) which will be geared to the needs of the poor by securing their participation in both design (which is essential if programs are to respond to local needs) and administration (which is essential if programs are to be efficient in terms of costs and effective in terms of reaching intended beneficiaries).

The rhetoric of government plans and political executives often calls for programs responsive to the needs of the poor; but a combination of factors—the historic social biases, inertia and pathologies of bureaucracies, organizational defects, and lack of internal structures (and outside monitoring groups) to impose accountability—may frustrate these aspirations. The authors of the Indian Development Plan of 1978 discussed one answer to these problems in terms which probably apply to many other countries as well:

Critical for the success of all redistributive laws, policies and programs is that the poor be organized and made conscious of the benefits intended for them. . . . The general lesson of the experience so far is that because of leakages in delivery systems and ineffective administration, rural programs fail to improve the distribution of income. The Planning Commission is proposing a massive shift of resources in favor of rural areas with an in-built redistributive character in almost every program. But whether these [programs] . . . will have the desired equalizing effect will depend on the extent to which the organized pressure of the beneficiaries counteracts the weaknesses of the administration and the opposition of vested interests.

The Indian Plan illustrates an increasing recognition in official circles of the potential importance of popular organizations in development programs aimed at the needs of the poor. In other circles, too, there has been growing appreciation of the various roles of participatory organizations and the benefits they bring to people who have historically been deprived, excluded, and often suppressed. A growing number of national and international Nongovernmental Organizations (NGO) are actively working with grass-roots organizations—developing support roles which are often vital to the processes of mobilization and sustained collective action at grass-roots levels. The International Center for Law in Development (ICLD) has collaborated with the Rural Policies Section of the International Labour Organization (ILO) in studying the experiences of a number of endogenous, grass-roots, rural organizations—notably in India, Sri Lanka and the Philippines. We report briefly, here, on some lessons suggested.

The experiences studied suggest a number of reasons why popular organizations are crucial components of strategies for the rural poor. They create essential underlying conditions which enable people to:

- gain the knowledge and skills which are a prerequisite to undertaking self-help measures;
- press for essential resources from state agencies which produce or distribute them;

- press for redress of grievances against officials or agencies which have abused power or used it corruptly;
- work with official agencies to devise new ways of administering rural development through devolution of powers to manage and allocate their sources to local participatory groups of intended beneficiaries;
- initiate new group-managed, income-generating activities; and
- join with other organizations (local and regional) to press shared demands of the rural poor in national and international forums.

Organizations which are truly participatory can become powerful vehicles, not only for disseminating knowledge provided from the outside, but also for *generating knowledge within communities*—knowledge which enables people to analyze shared problems, initiate new efforts to address them, and in turn learn from that experience. This knowledge may relate to the use of technologies (e.g., leading to development of household water resources for a community); or to business opportunities (e.g., leading to formation of a marketing cooperative); or to more abstract matters.

Often knowledge of law is a vital element in the processes which lead to collective self-help. Md. Anisur Rahman of the ILO has studied grass-roots organizations in many, varied, Third World settings through participatory “research” techniques. He describes the impact of knowledge of law on landless workers in Asia:

As these people engaged in social analysis and investigation, they progressively acquired greater knowledge of their legal rights and thereby *the perception of deprivation from them*. Sharing this perception among themselves stimulated the people into action—transforming a state of alienation rooted in ignorance, first into awareness that the power (right) was theirs by virtue of law, and then into an act of exercising that power.

Law and legal knowledge which they acquired, thus constituted strategic elements of conscientisation and mobilisation of the people. This gave them *concrete issues* around which participatory, collective activity could be focused.²

Thus, knowledge of one’s legal entitlements helps to replace feelings of alienation, resignation and dependency with a new awareness of one’s dignity and rights—a crucial condition for self-reliance. Similarly, this

2. Rahman, *The Roles of the Significance of Participatory Organizations of the Rural Poor in Alternative Strategies of Development*, to be published in PARTICIPATORY ORGANIZATIONS OF THE RURAL POOR AS VEHICLES FOR PEOPLE-CENTERED DEVELOPMENT (ICLD 1986).

knowledge can stimulate collective action aimed either at realizing rights to an equitable allocation of state-controlled resources or at remedying abuses of power. Of course, groups have used this kind of legal knowledge in a variety of ways—sometimes by recourse to the courts, more often by sending deputations to present demands to relevant government offices, by publicizing contradictions and grievances and by other tactics designed to move targeted officials into action.

The formation of a cohesive, participatory, grass-roots organization often makes it possible to administer a government program more effectively—indeed, sometimes such organizations provide the only effective means to assure efficient and equitable distribution of resources. For example, there is considerable experience from South Asia which suggests that participatory associations of water users (rather than bureaucracies) must administer local irrigation projects—if equitable distribution and efficiency in maintenance operations are to be secured. Bureaucracies and the bureaucratic style are simply ill-equipped to manage these operations. Similarly, the efficient management of primary health care facilities seems to require devolution of power and resources to a participatory, communal organization. These lessons may be particularly interesting for poorer countries because they suggest possibilities for reducing costs (in terms of money and manpower) of administering rural development projects as well as the prospects of enhancing goals of equity and self-reliance within communities.

The experience of working together to analyze and address shared problems often leads groups to initiate new economic enterprises which, in turn, help to change impoverishing relationships. In Sri Lanka, small-holder producers of betel and coir yarn came together, investigated their socio-economic situation, and discovered the extent to which they were being exploited by the middlemen: traders to whom they sold their crops. Their solution was to form new, group-designed, marketing cooperatives—collective arrangements governed by their own, endogenous law—to circumvent the middlemen. These marketing groups, in turn, gradually federated into larger associations, further strengthening the bargaining power of producers.

Of course, these experiences in “micro development” cannot change relations of power at national and international levels. But perhaps they can, over time, create conditions which are important if poor, rural producers are ever to wield more power at national and international levels. By becoming organized and self-reliant, people become more aware of the potential of collective struggle, more prepared to attempt to exercise political power in national arenas. This has begun to happen in parts of India and Bangladesh. Thus the Bhoomi Sena movement of oppressed

tribal people in Maharashtra has become a recognized center of power in that State. Bhoomi Sena is now working with other organizations of historically oppressed or exploited people—for example, with over a dozen organizations of forest-based poor people, to develop positions and strategies to prevent despoilation of forested areas in India by commercial firms—a process which could quickly destroy existing forest ecologies and thousands of families whose lives, culture and welfare are tied to those environments.

The development of community-based organizations of the rural poor—and broader movements embodying aggregations of these—requires support from the outside: organizations of more advantaged people who are committed to the basic values underlying strategies for the rural poor. The importance of these support groups seems clear from the experiences we have studied. First, they can often provide indispensable “organizational resources” e.g., community organizers, information and assistance to the processes of community education): the needed catalyst for mobilization and formation of organizations. Second, as the rural poor become organized they may often need more access to technical knowledge of various sorts—agricultural information, basic business skills, more detailed knowledge of the content of laws governing various kinds of programs and transactions. Third, as grass-roots groups broaden and extend their efforts, they often need advocates in regional or national capitals—indeed, sometimes in international agencies. This kind of assistance must usually come from the outside. But it must come through processes which assure—and indeed enhance—capacities of self-reliance and self-determination at the local levels, which help to empower organizations of the poor rather than make them dependent, in terms of both guidance and aid, on outside elites. Thus the concept and roles of outside groups—as vehicles for support and interest group advocacy—are, perhaps, somewhat new to many Third World settings. Indeed, the problems of developing these groups deserve extensive treatment, for many different kinds of resources and skills may have to be marshalled to make them effective. In this paper we treat only with the problems of mobilizing legal resources through support groups; but hopefully that discussion is suggestive of some of the challenges confronting those advantaged by education and relative wealth who seek ways to aid the rural poor.

III. Legal Resources and Participatory Organizations of the Rural Poor

Surveys of rural communities regularly reveal the aversion of the poor to their state’s law, courts, legal processes and personnel. There is a

widely-shared perception, often justified, that these structures are used (or manipulated) by those with the status and power to legitimize exploitative and oppressive transactions. An attitude of legal nihilism is an understandable response to this situation. But it is also a luxury the poor can ill afford. If they are to attempt to change relations of impoverishment and oppression, they must come to terms with law and take considered decisions on whether and how to use it.

Indeed, the experience of many organizations of the rural poor shows that law can be used—and often developed imaginatively—as one resource (among many) used in efforts to gain power and initiate new, group-managed economic activities. The *legal resources approach*, sketched below represents a response to this realization. It is founded on these basic propositions.

1. *The concept of law, in this approach, means more than rules promulgated by organs of the state.* The sources of law relevant to the needs of the poor go beyond the terms of official legislation and “rules” laid down by court decisions. These sources include: the constitution, and the ideology and doctrines which inform it; principles of natural law—such as the premise that all people are endowed with the same basic rights; other jurisprudential concepts—such as the idea of rule of law and doctrines such as “*ultra vires*,” “*natural justice*,” “*nulla poena*” and “*ubi jus*” which give it more explicit content; principles of endogenous law—such as deeply entrenched customs which emphasize decision making by consensus when the interests of the community are deeply affected; international bills of rights (such as the Universal Declaration of Human Rights) and other norms which have been declared to be “universal” and which one’s government has promised to observe (such as conventions of the ILO).

2. *Law is a potential resource for the rural poor.* Depending on the need at hand, all of these sources of law can, in theory, be used by them for various purposes—for example:

- to claim entitlements provided by the terms of state law but denied in practice;
- to expose contradictions between prevailing exploitative or repressive practices and existing principles of law;
- to denounce corrupt, oppressive or lawless administration;
- to secure redress against abuses of power by those charged with administering justice, notably local police and judges;
- to articulate claims for recognition of rights (e.g., rights to equal treatment, rights to be heard and to participate in governmental decision making;

—to embarrass—and harass—those who use law for palpably unjust and oppressive purposes; and

—to press demands for substantive and procedural legal reforms.

Of course invocation of law provides no assurance that officials, landlords or other targets of complaints will respond with sincerity, let alone conform. They may in fact retaliate with force. However, as already noted, knowledge of law helps the victims of illegal dealings understand that they are wronged, that they are right to demand a remedy, and this kind of knowledge, by itself, helps to inspire efforts to seek some basis of power to control the conduct of the wrongdoer.

3. *The importance of collective action, if law is to be used as a resource, should be readily apparent.* Individually—or even operating through small groups—the poor lack material means, and often the staying power, to endure drawn-out litigation or other proceedings entailing recourse to law. Larger groups can, however, aggregate financial resources and provide greater confidence and security against the threats of retaliation—often a real danger in many settings. Moreover, by seeking to enforce their legal rights through group action, people are more likely to gain more legal information and to develop the capacity to use it instrumentally.

4. *The development of effective organizations of the poor is in itself a process which usually requires use of law and therefore legal resources.* Our studies of endogenous rural groups have suggested several categories of activities which frequently call for legal resources.

(a) *Mobilization.* Crucial to the mobilization of several of the groups we studied was popular appreciation of the fact that there were, indeed, laws which could be used to redress popular grievances: labor welfare laws, land reform legislation, rural debt-relief laws, etc. This knowledge often helped groups to mobilize and, through group direct action, seek enforcement of laws which had not been implemented. Often groups have devised ingenious (albeit extra-legal) methods of community enforcement of these laws. Once people become aware of the legal righteousness of their demands, they begin to develop innovative methods of enforcing such demands. They begin to use law to question abuse of authority, to file complaints against corrupt officials, and to overcome bureaucratic inertia by such actions as assembling convincing exposures of inexcusable inaction.

(b) *Organization.* Legal resources also seem important to the formation and maintenance of groups. The endogenous, internal law which

gives structure to an organization is very important in enabling group decisions to be reached through genuine participation, in enabling the resolution of disruptive disputes within the group in ways which reinforce shared interests in cohesion. Similarly, knowledge of external law governing the organization is important, both for securing the legal personality needed for access to credit and other services provided by bureaucracy and for guarding against efforts to denounce the group and its activities as illegal.

(c) *Conduct of Group Activities.* The more active an organization becomes in undertaking group income-generating projects, education or health care activities, the greater its contact with the "outside" world (private or bureaucratic) and the greater the need for contractual and other obligations to replace what, for purely intra-group activities, could be governed by more informal practices.

(d) *Resistance of Efforts to Suppress.* The struggle for participatory self-development will inevitably involve confrontation with the power structure. Self-help efforts of the rural poor, in a wide variety of settings, have provoked local officials and hostile private groups to attempt to immobilize or co-opt the organization. Unlawful violence, abuse of powers by local police, harassment through the unjustifiable application of penal or regulatory law are but a few of the forms that efforts to suppress organizations might take. Knowledge that the attempted hostile action is itself illegal can considerably strengthen group response to such action.

Our studies suggest that group needs for legal resources are basic needs: a core part of the knowledge and skills which create self-reliance and the ability to develop participatory organizations through which other basic needs can be fulfilled. Moreover, there is a close *complementarity between developing participatory organizations and developing capacities among the rural poor to meet their legal needs themselves*. Individually, the rural poor cannot usually secure the legal resources needed to press claims for other resources essential to their needs; only through organizations can they gain the necessary knowledge, aggregate claims, and amass the numbers to press the claims. In turn, the process of developing organizations in the face of resistance from vested interests requires organizational capacity to use law and legal resources to defend the group.

5. *The needs of organizations of the rural poor for legal resources cannot be met through conventional legal aid schemes, nor by legal services programs controlled by professionals.* Impoverished groups cannot expect simply to turn to the legal profession to have their needs met. In most countries, the demographic distribution of lawyers is such that very few

lawyers are to be found in the rural areas, and those who are there, more often than not, belong to the rural elites. Moreover, the legal profession in most developing countries is generally lacking the orientation, motivation and expertise to provide professional services which, by themselves, can effectively address the legal needs of the rural poor: most lawyers simply do not understand those needs.

Impoverished groups cannot expect to have their legal needs met by specially targeted legal aid programs. Legal aid programs designed and operated entirely by professional lawyers are often limited to the provision of a narrow range of largely court-centered services to individuals (rather than group and collective needs). These programs (created and managed *ex parte* by elites) usually “deliver” “legal aid” on a charitable, handout basis. Where legal services are controlled and allocated by legal professionals, programs to provide this help typically reflect “top-down” efforts, managed by elites, to help the poor for purposes and by means which are defined by the professionals—to meet needs prioritized by those who control the programs. The “legal aid” lawyers may tend to monopolize the task of articulating and advocating claims of “ignorant” clients, or to monopolize the task of identifying the underlying needs of the client and the strategies to address those concerns. While rural families may be individually helped in some ways by this kind of legal assistance, communities are still left dependent on professionals—and all too often people remain essentially ignorant of their legal rights and of different ways they can follow to assert and vindicate them. Moreover, crucial objectives of “people-centered” development—such as the generation of capacities for “participation” and “self-reliant” determination of the ends and means of collective action—are often subverted. Social relationships between the poor and those with whom they must contend may remain essentially unchanged; and new sources of power are seldom generated within communities. The legal aid approach may provide *access to law* but it seldom encourages people to seek *access to justice through law*. The legal resources approach encourages people to seek both, if necessary, by helping them to understand their existing rights under law and by helping them to devise their own strategies to bring about reform of unjust or inadequate laws.

The legal resources approach emphasizes concepts of *legal self-reliance*, *deprofessionalization* and *interest-group advocacy*. *Legal self-reliance* is to be achieved both through programs seeking to educate specific poverty communities about their rights and the laws and procedures relevant to their day-to-day activities so as to enable them to decide for themselves when and how to take recourse to law and when not to. *Deprofession-*

alization is to be pursued through an attempt to break the legal profession's monopoly over legal knowledge and skills by developing, wherever appropriate, community-based paralegals. *Interest-group advocacy* seeks to enhance countervailing power of organizations of the rural poor by advocacy of their interests in national centers of decision-making through specialized national and international organizations which work with local groups.

IV. Developing Legal Resources for Participatory Organizations of the Rural Poor

A. Obstacles to Be Overcome

The problems of finding ways to develop legal resources to meet the needs of the rural poor are formidable.

As we have already seen, one source of difficulty lies within the legal profession: e.g., the tendencies of lawyers to monopolize legal knowledge and the right to propound it; to deliver a narrow range of litigation-centered counseling and provide services on a "reactive" rather proactive basis; to dominate determinations of whether and how a problem can be converted to a "legal" problem. When these tendencies are coupled with a general ignorance of the shared needs of the poor and a lack of appreciation of the strategies of development stressed here—perhaps hostility to them—it may seem that there may be difficulties in recruiting lawyers equipped and prepared to help rural groups gain legal resources.

These problems may be aggravated by the social distance which separates the rural poor from lawyers. Discussions within communities frequently reveal attitudes of suspicion and hostility rooted in previous experiences and in the use of law against the poor by those with status and power. Experience suggests these attitudes are only changed when legal specialists participate in interactive efforts to help development of groups which are self-reliant in legal as well as other ways.

A third problem, then, turns on the need to develop outside groups which can recruit and provide legal specialists along with other organizational resources and backup services to communities of the rural poor (and to special groups within them, such as women) on terms which foster self-reliance.

Developing legal resources must, then, be perceived as a difficult uncertain task. However, in some countries there has been an increasing recognition, both within and outside government, of the urgent need to develop those kinds of human resources, both within and without communities, which help people gain the knowledge and skills they need to undertake self-managed development projects.

B. Community Legal Self-Reliance

The creation of group capacity to use law is, in itself, a participatory process which adds to a people's stock of knowledge, and to their collective capacities to undertake self-reliant measures. In this approach the legal specialists' task is to work with people to learn through shared efforts how law might be used by and for the community to achieve shared goals. In this approach people determine, for themselves, not only what their essential needs are, but whether, when and how law may be used to secure those needs. Developing this kind of legal self-reliance is essential, if one accepts the values and working premises of people-centered development.

The first step in developing legal resources may be directed towards bringing relevant information to communities and in a form readily comprehensible to them. A second step may be directed towards the training of community paralegals who will be able to meet many of those legal resource needs that arise at local level through interaction with, for example, the bureaucracy, local forest or revenue officials, police or private individuals. Obviously, such training programs must be developed in a manner that addresses the specific needs for legal resources of the particular community involved.

C. Interest-Group Advocacy

The concept of legal self-reliance hardly implies that a community must meet all its legal resource needs through members of the community. Experience shows that legal assistants who are working at the village community site must be backed up by well-organized support centers: offices which in turn have access to information found in scarce publications and access to informants only available in central government offices. Moreover, the assertion of group claims in local forums can sometimes be greatly aided if the same claims are simultaneously pressed—or at least explained—at upper levels of government.

Thus, support centers need to become activist groups themselves: to represent rural groups in planning bodies, ministries, parliaments, higher courts, and other bodies. This development seems crucial to any long-term strategy of rural development geared towards the needs of the poor. As noted, some social-action groups are beginning to function along these lines in some countries. But lawyers—the relatively few who are engaged—are only beginning to develop ways of working with and learning from organizers, community leaders, and specialists in other fields, to understand the wider dimensions of development strategies for the rural poor;

and there are scarcities of legal analyses of experiences and legal materials to aid those who do become engaged.

Perhaps action at international levels can help development of national centers for support and social action. International support groups may also have "action" roles to play. Some years ago, in its struggles to save the Tondo lands for the poor, a Philippine organization called ZOTO, invoked the aid of friends abroad and went directly to the World Bank—challenging the legality of its loans for a massive redevelopment project which had been planned with no participation by the thousands of poor urban families most severely affected by the undertaking. The challenge was grounded in international norms calling for "participation," and in the demand that the Bank follow its own declarations purporting to recognize that right. Much more might be done along these lines. The plea that only governments can speak for people in the negotiation of international transactions, whether they have to do with public aid or private concessions, deserves critical scrutiny. International projects of this kind almost inevitably have a differential impact on different sectors in society, and the idea that those adversely affected have no standing to speak for themselves is a negation of the basic notion of participation. Similarly, forums such as the UN Commission of Human Rights can be used much more aggressively to demand recognition of the rights of people to form and use groups.

D. Some Lines of Action

Several different kinds of activities must simultaneously be encouraged in order to develop legal resources adapted to the particular needs (e.g., needs for extension or credit) of particular communities (e.g., smallholder subsistence producers) and of particular groups within them (e.g., women). These activities include:

1. Developing an understanding and appreciation of the role of legal resources.

The importance of law in the struggles of the poor is a sadly neglected subject. The role of legal resources in conjunction with other kinds of capacities (e.g., to organize and manage group business activities; to develop new crop mixes and agricultural technologies) must be better understood by planners, development agencies, grass roots support organizations, the local community as well as lawyers. This kind of understanding can be developed through a number of activities (e.g., demonstration projects, workshops, research) in which participation of the rural poor would be a necessity.

2. Developing knowledge of the legal resource needs of particular communities.

A recent Sri Lanka study, undertaken in collaboration with the ILO, typifies this kind of activity. The study employed (among other methods) dialogues with grass roots communities to better appreciate the latter's own perspectives on legal resource needs. These kinds of studies can be replicated on a wider scale, focusing on particularly disadvantaged and vulnerable communities of the poor. The point to be stressed is that knowledge is of little value unless it is knowledge generated within communities responsive to the felt needs of groups and "internalized" by them, as well as those who seek to aid them.

3. Developing grass roots activities to generate legal resources.

Efforts to understand the *needs* of particular communities and groups for legal resources should be combined with efforts to help meet such needs. This means that steps must be taken to develop relevant legal information, as shared grievances and problems are articulated. Of course each social environment, each group, may pose particular informational needs. For example, in one community served by the "legal facilitators" of the Philippines "Sarilakas" Project (described in the appendix to this paper), these young lawyers (working to help processes of community organization) discovered that some key issues turned on rights of village fishermen to protect their waters from depredations by large-scale commercial operators. In another setting, a critical problem turned on the power of landlord-employers to withhold money from wages—allegedly to satisfy various "obligations." In still other settings, the problem may turn on deprivations imposed on women.

Prompt development of functional information responsive to these concerns is essential. While the help of legal specialists may be needed, other "specialists" may also be recruited to serve both as sources and as transmitters of the needed information. Thus teachers and local employees of agencies concerned with providing extension, health, conservation, and other services may provide invaluable aid—if they can be enlisted.

4. Developing institutions to provide support services and other kinds of legal resources for rural organizations.

There are three, closely interrelated tasks here: first, recruiting people who can work within communities to aid processes of organization, education and the training of community paralegals (as cadres within

groups); second, recruiting people capable of providing effective back-up services to community leaders and workers; third, recruiting lawyers and other specialists capable of helping those efforts *and* intellectually equipped to represent group interests (as directed) in national and international forums. In an ideal setting, human resources drawn from a variety of places need to be aggregated under some appropriate framework: e.g., progressive officials from service-providing ministries, so that access to technical information—such as legislation and regulation dealing with relevant programs—can be facilitated and local employees encouraged to help local groups; experienced community organizers; sympathetic mass media people; specialists in agricultural marketing and agronomy—and in law.

A variety of institutions might be encouraged to participate in these efforts:

- (a) *Law schools* might be encouraged to initiate service-outreach-clinical programs which place young, law-trained people in communities to work with other providers of technical assistance (e.g., community organizers, agriculturalists) to help provide needed legal knowledge.
- (b) *Rural development institutes and/or relevant government-service departments* might be encouraged to undertake similar programs—as well as programs to provide training to people in communities, i.e., to develop local “paraprofessionals” operating within and accountable to the particular groups they serve.
- (c) *Bar groups* might be encouraged to organize back-up groups to provide needed information to field workers, local leaders, etc., and to provide representation to rural groups when and as requested.
- (d) *A national center* to work with and for rural groups (through participatory methods) might be created to foster research, publication of needed materials (notably handbooks for local groups, designed to meet their particular needs for law-related information). The center could help coordinate—indeed catalyze—relevant activities.
- (e) *Ministries of Justice* might create a special unit charged with tasks of encouraging these activities.

These projects are simply suggestive. The tasks of developing legal resources are difficult and long term. All concerned must learn by experience—particularly the people who must be most involved, i.e., communities of the rural poor.

V. Developing a New Breed of Lawyers

The legal resources approach requires new kinds of law-trained people who may be:

- community workers* who help to organize and participate in collective efforts of people to identify their legal problems and appropriate strategies;
- advocates* of collective demands and group interests, both in courts and in administrative, legislative, and other institutions;
- community educators* helping to develop community knowledge of law and legal paraprofessionals within the community whose knowledge and skills are geared to community needs;
- critics* of proposed or existing legislation and administrative actions which impinge on the rights and interests of impoverished groups;
- law reformers* asserting the claims of rural communities for changes in legislation and state structures; and
- jurists* seeking to develop new jurisprudential concepts needed, for example, to articulate new rights which will help to empower the poor in their struggles against impoverishment.

These tasks call for lawyers with an appreciation of the new roles which law and legal specialists can provide in the processes of alternative, people-centered development. Fortunately, recognition of these needs is emerging. The kinds of “development” strategies discussed here are being pressed in a growing number of international development agencies. Organizations such as the International Commission of Jurists have sponsored regional meetings focusing sharply on the interdependency of these development strategies with “human rights” and “legal resources” strategies. ICLD was recently invited to explain these approaches to the Commonwealth Law Minister’s conference.

Writing in a recent landmark decision of the Indian Supreme Court, Justice P. Bhagwati remarked:

The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. . . .

So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time

the portals of the court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate, and their cases are coming before the courts through public-interest litigation which has been made possible by the recent judgment delivered by this Court. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them.³

The Indian Supreme Court has now dramatically reformed court-made procedural and jurisdictional rules relating to *locus standi*, making it easier for national support groups to bring "public interest litigation" on behalf of organizations of the poor. This is a valuable and necessary legal development. But throwing open the portals of the court is not enough. The poor must have legal resources to enter the portals and effectively challenge structures that perpetuate their impoverishment. The Indian Court's decisions and rhetoric reflects a growing sympathy among the elites in the legal profession (especially among those active in the human rights field) regarding the plight of the rural poor. But if legal resources are to be adequately developed for the rural poor, then efforts must jointly be directed to developing community legal self-reliance and also to developing an effective vehicle through which such communities can secure interest-group advocacy.

3. Fertilizer Corporation Kamagar Union v. Union of India, 1981 A.I.R. (S.C.) 344.

APPENDIX

In this Appendix we provide a brief description of two efforts in Asia to develop legal resources for the rural poor which employ quite different approaches.

The first of these relates to Sri Lanka, where a team of lawyers and social scientists, who studied "Rural Mobilization and the Legal Needs of the Poor," made the following observations:

Our analysis reveals that the Government Legal Aid Scheme is constrained by several structural factors. Firstly, it is primarily directed towards legal representations of claims by individuals in disputes which are interpersonal in nature. The scheme does not have the capacity to direct itself towards the representation of group or class interests.

Secondly, even within the sphere of interpersonal disputes it is limited to the formal judicial arena. . . . The scheme similarly has not sought to aggregate individual claims into collective demands for formative and institutional change in social welfare programmes.

Thirdly, the modes of advocacy were normally limited to the preparation of legal pleadings and oral representation in the courts of original and appellate jurisdiction. Rarely have professional services taken the form of structuring of:

- (a) small-scale business transactions, or
- (b) counselling on the legal prerequisites to the establishment of a credit cooperative organisation, or
- (c) a tenants' association.

Similarly, group advocacy could take the form of drafting model legislation and administrative regulations which could enhance access of the underprivileged to social and economic benefits.

Fourthly, the existing scheme has proved to be reactive, i.e., it responds passively to the problems of those who may accidentally reach its office. A legal aid survey revealed that 87 percent of the respondents were unaware of the existence of the scheme. . . . The scheme should be proactive in that it would be decentralized and physically located in urban slums, fishing villages, and agricultural communities. The volunteers should acquire familiarity with the basic needs and grievances of the poor and seek to translate them into legal demands.

Fifthly. . . . It is a framework which discourages frank and open discussion of problems and the identification of underlying grievances. The social and cultural barriers to access of the underprivileged to legal/administrative processes are internalised within the government legal aid office.

The same group went on to propose establishment of a “new model” of legal assistance developed along these lines:

1. the emphasis on collective demands and group interests;
2. the establishment of clinics which are proactive in that they actively seek out the grievances of poverty groups and advocate their interests;
3. the expansion of the arenas of group advocacy to include administrative, legislative and other spheres of policy articulation and implementation;
4. multiplication of the types of assistance to include counseling, the structuring of transactions, and the formation of associations; and
5. the organization of the delivery system to include participatory involvement of potential beneficiaries. Such participation is to take the form of management of the legal aid scheme, dissemination of information about social welfare schemes and redistributive legislation, and an encouragement of self-help.

The Sri Lanka approach relies on lawyers as intermediaries to provide legal resources to the communities. However, it does emphasize very strongly the need for community direction and control of such intermediaries. The Sri Lanka approach shares this aspect with Project Sarilakas in the Philippines. However, Project Sarilakas differs from the Sri Lanka approach in two basic respects.

The Sri Lanka approach is purely a nongovernmental one. By contrast, in the Philippines, Project Sarilakas presents a rather different and interesting approach initiated by a governmental agency: the Bureau of Rural Workers which operates within the Philippine Ministry of Labour. Project Sarilakas sought to promote social, economic, and political justice through collective action and formation of self-reliant organizations of the rural poor. In selected project sites, teams of two community facilitators were assigned. These “external” agents were intended to live and integrate with the poor in the community and undertake motivational-catalytic-sensitizing work. Their aim was to help the poor people understand prevailing social, economic and political structures and to help them develop their capacity to form self-reliant participatory organizations through which they could develop the solidarity and the countervailing power needed to promote their common interests. In addition to the community facilitator, a legal facilitator was also assigned to each site.

Legal facilitators were recruited from newly-graduated law students who were fully qualified to practice as lawyers. They underwent an

orientation and training period during which emphasis was placed on developing knowledge and skills relevant to the legal resource needs at the project site. The legal facilitators were then immersed in the community at the project site for a period of three months. During this period he, adopting a participatory research method, sought to identify the legal resource needs of the community and of the community's rural workers' organization. During this period the flow of information was not one-sided and it was expected that, where appropriate, legal facilitators would also begin to share with the community information about relevant rights, procedures and remedies.

At the end of this three-month period, the entire Sarilakas Project staff (including the two legal facilitators) convened and developed a program of work (for the next 12 months) which was geared to strengthening the legal resource capabilities of the communities in the two project sites. During this 12-month period the legal facilitators' role would not be that of a lawyer for the community. Rather he was to concentrate on two tasks:

- helping build up legal resource capabilities within the rural organization at the project site; and
- helping the rural organization formulate its own tactics and strategies involving recourse to law.

Once the rural organization had decided upon a strategy of recourse to law, the legal facilitator's task was then to assist in implementing that strategy by helping the organization gain access to needed legal expertise whether local or in Manila. The emphasis here was on setting up a "delivery system" of legal knowledge and skills which would be founded upon the principle of participatory involvement of and control by the client group.

In order to back up the legal facilitators in their educational and other activities at the project site, a small core group of legal experts and legal researchers was convened when necessary, by the Sarilakas Project director in Manila. This core group undertook research on legal aspects of problems identified at the project sites and also developed community-oriented curriculum and materials for the legal facilitators to use at the project sites, and initiated, at the direction of the community, appropriate legal action (where needed) in Manila.

During the short history of Project Sarilakas, community facilitators, legal facilitators, and the Bureau of Rural Workers (BRW) have developed together into a very strong support center for the rural workers' organizations in the project site. BRW, in particular, as a government agency has been called upon to play several roles:

1. that of *facilitator*. Sarilakas Project workers have been very careful to play supportive, facilitative roles but to stop short of “prescribing” or “imposing” solutions. Thus, at one site, they made the affected fishing community aware of a law under which they could seek to have their fishing waters declared as a proscribed area for large-scale commercial fishing and left it for the community to decide what action it would take. At another site where tenant workers were involved in litigation against the landlord, the Sarilakas facilitators made the tenants aware of the extent of collusion between their own lawyer and local officials who were working on behalf of the landlord.

2. Another role BRW has played has been to help provide *access to government resources*. Thus, for example, BRW has helped farmers through the process of seeking a loan under a joint BRW/Land Bank of the Philippines Loan Guarantee Program, and then encouraged the farmers to seek to improve upon the rather onerous terms on which the credit was being provided.

3. Sarilakas Project workers, as part of a government agency, have also been called upon to play *intermediary roles between rural workers' organizations and the bureaucracy*. Thus, for example, Sarilakas workers have mediated with the Ministry of Agrarian Reform in efforts to get holdings shifted from tenancy to leasehold status. They have also intervened with the National Irrigation Authority to prevent an increase in the rate of fee charged for irrigation.

4. Sarilakas project workers have also found themselves forced, at times, to play an *advocacy* role, particularly with regard to pressing for more effective implementation or reform of existing labor legislation within the Ministry of Labour, to which their agency (BRW) itself belongs.

5. The Sarilakas project worker has also found himself playing a *law reform* role. They have, for example, pressed for reform of the law governing recruitment of migrant labor so as to provide better safeguards to the migrant laborer.

6. BRW has recently begun to assume the role of *negotiator* on behalf of rural workers. They have adopted this role in a subtle fashion by increasing their activity in relation to National Tripartite Conferences in the Sugar Industry that are convened periodically. At this Conference, representatives of governments, employers and workers come together to discuss problems. The topic for each conference is selected by tripartite representatives of employers, workers and government, and BRW has been the representative of the government. Each conference focuses on a particular problem in the sugar industry. The first conference focused on problems of landless workers. The second conference focused on wages,

pricing policies, and tenancy relationships in the sugar industry. BRW has had considerable influence over the selection of problems to be addressed. Thanks to the support provided by BRW, these conferences have increasingly become the forum not only for discussion but negotiated settlement of claims and problems.

But assumption by government agencies of any of the roles described above could easily degenerate into an unequal partnership perpetuating new dependency relationships. Project Sarilakas has avoided this danger by having its workers assume one more role which has perhaps been paramount: the role of learning from the community. This willingness to listen and learn from people is essential if a genuine partnership among equals is to be achieved. Sarilakas provides a striking example of the contribution that a governmental agency can make to developing legal resources for the rural poor.

The Sarilakas Project portrays an approach which stresses greater emphasis on the time and effort needed to discover, through dialogue, the potentialities of law as a resource to deal with shared but often inchoate grievances; greater emphasis on the role which legal resources can play in mobilization processes, in galvanizing determination to deal with problems through collective action, and greater emphasis on developing community legal self-reliance.

In many settings, the Sri Lanka approach and the Sarilakas approach could prove complementary to one another. What needs to be emphasized about both approaches is that they seek to maximize the utilization of very scarce human resources: legal experts whose interests and expertise are directed towards developing legal resources for the rural poor.