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DEVELOPMENT AND LEGAL SERVICES IN AFRICA

REPORT OF A SEMINAR ON DEVELOPMENT AND
LEGAL SERVICES IN AFRICA
DAKAR—SENEGAL, APRIL 1983

Organized by

**THE COUNCIL FOR THE DEVELOPMENT OF ECONOMIC AND
SOCIAL RESEARCH IN AFRICA (CODESRIA)**

AND

THE INTERNATIONAL COMMISSION OF JURISTS (I.C.J.)

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P R E F A C E

Colonialism is an odious system whereby one nation subjugates another nation politically, it exploits it economically, and imposes on the colonized, the colonial nation's social and cultural institutions and values. The 1884 Berlin Conference, merely formalized the long process of colonization of all the African nations by seven European nations. Before the formal colonization and after, the struggle of the African people was focused on regaining national independence and dignity. The struggle for "human rights" in the strictly western definition of this phrase was thus submerged to and was part of the general struggle for national independence.

During the seminal period of the early 60s when most African countries achieved their national independence, the focus of the struggle narrowed or concentrated on human rights. Between 1961 and 1981 when the OAU adopted the African Charter on Human and People's Rights, (see Annex I) not less than 13 meetings of different types took place in the preparation and refinement of the OAU Charter. These preparatory meetings were of many different types, involving different disciplines - with Jurists/Lawyers playing the leading role, and Dakar, Senegal, being the most important venue.¹

¹ *At the OAU 1981 summit of Heads of State in Nairobi, it was President Leopold Senghor of Senegal who introduced and proposed the African Charter on Human and People's Rights, which was adopted.*

Indeed the Governments themselves, through the OAU, passed the Monrovia Resolution in 1978 and held a preparatory meeting of experts in 1979, before the OAU adoption of the Charter. The founding in 1980 of both the Inter-African Union of Lawyers and the African Institute of Human Rights (both based in Dakar) was a significant point in this twenty years process.

After the OAU adopted the Charter in 1981, the focus of the campaign has now changed to making sure that African governments sign and ratify the Charter. In this process the Union of African Lawyers, the African Bar Association, the African Institute of Human Rights (there are two in Senegal, one in Nigeria) the OAU, some leading Heads of State, and many other organizations are all involved in this process. Indeed the joint seminar of the Interafrican Union of Lawyers and the African Institute of Human Rights in Dakar in 1982 set this process going. Eighteen countries have now already signed the Charter. Guinee was the first African country to ratify the Charter. Following Guinee, eight¹ other countries have since ratified the Charter, and ten other countries are in the process of ratifying it. It is expected that twenty African countries will have ratified the Charter before the next summit meeting to be held in Conakry in 1984. For the Charter to be enforced twenty six countries must ratify it.

¹ These are: Tunisia, Mali, Senegal, Nigeria, Togo, Congo, Gambia and Liberia.

The implementation of all the provisions of the Charter is of course going to be the focus of the next phase of the campaign and it is ultimately what is desired by the African people. One significant assertion of the Charter is that the African People have the *right to development*. Since "development" is the goal of all African governments, in principle, there should be no conflict between the assertion of the Charter and the goals and efforts of African governments. However, as is well known all African governments are facing serious obstacles in overcoming underdevelopment. These obstacles can be divided into those of external origins and those of internal origins. The most fundamental obstacle to development emanating from the "external environment" (as the World Bank calls it) is the present International Economic Order. Efforts towards changing this situation through the long process of the North-South dialogue to bring about a New International Economic Order, have so far failed to bring any results. On the other hand the obstacles of internal origins are many and complex. For example, some of the most intractable development problems in Africa are in the rural areas, where between 80% to 90% of the people live. The peasant in particular is daily confronted with important practical problems - from simple administrative procedures to the most complex laws on land tenure, cooperatives, marketing boards, pricing-system, etc. The laws and administrative procedures are made in urban areas by urban based elected representatives with the advice of urban based "experts", jurists and

administrators. Influential, educated and wealthy groups (both urban and rural based) are often able to make use of law and administrative institutions for their own narrow group or individual gains. The poor peasant has no chance of knowing and disentangling his legal rights in order to assert them. Even if the peasants are well informed, they often have no means and resources to pursue their rights. In practice, therefore, the right to development cannot, under these circumstances, have very much practical meaning to the peasants.

We therefore believe that the extension of the legal services to the rural poor and their ability to use such services to identify and assert their rights is extremely important. One way of doing this is to have well motivated lawyers and trained "foot-lawyers" or paralegals to help the peasant identify and gain his rights. There are of course other ways. Whatever methods are eventually used, we chose this topic for the seminar because of its relevance and significance.

CODESRIA and ICJ in collaboration with the Interafrican Union of Lawyers and the African Bar Association, assembled in April 1983 in Dakar thirty four (34) distinguished Jurists and Social Scientists from all over the continent to discuss the above issues. This seminar had two commissioned working documents by Professor Boubacar LY of the University of Dakar, and Mr Clarence Dias of the International Center for

Law and Development. These papers were extensively discussed culminating with a summary of the discussion prepared by a committee elected at the seminar. These three documents constitute the proceeding of the seminar.

The seminar was particularly appreciative of the comparative input of the ICJ concerning similar seminars it sponsored in Asia and Latin America, of the experience of the on-going projects in those two continents and of its desire to see similar projects in Africa. The experience of Mr. Dias in these projects was also helpful.

The discussions at the seminar were rich in analyses, information and positive conclusion. We hope that they should now lead to concrete action through research and application on the ground. We attach great importance to this report and hope that it will provoke initiatives which may lead to practical programmes in various sub-regions of Africa.

Finally, on behalf of CODESRIA and the ICJ we would like to take this opportunity to thank SAREC, FORD

FOUNDATION, IDRC, CIDA and the NORWEGIAN Government for their financial support to both the seminar and this publication.

Signed:

Abdalla S. Bujra
Executive Secretary of
CODESRIA

Niall MacDermot
Secretary General
of ICJ

OPENING SPEECH DELIVERED ON APRIL 18, 1983

by

Mr. Doudou NDOYE

Minister of Justice of Senegal

CODESRIA's COLLOQUIUM - Dakar

- Mr. President of the Council for the Development of Economic and Social Research in Africa,
- Mr. Executive Secretary,
- Ladies and Gentlemen members of the Committee and of the Executive Secretary's Office,
- Ladies, Gentlemen.

Allow me to express, on behalf of His Excellency the President of the Republic, of the Prime Minister and of the Government, my great pleasure in presiding, at your request, the opening session of your colloquium ; a colloquium during which we shall consider the relation between development and legal services.

His Excellency, Mr. Abdou DIOUF, President of the Republic of Senegal has insisted, as you have just pointed

out, on a continuous support of your organization because the basic options of our country include concepts which are held by the President of the Republic as being essential. These are : equality before the Law, solidarity and justice.

As stated by the President on December 10, 1982 at the Socialist Party regular Conference, these three principles constitute :

"The ethical basis of our social life which we intend to be brotherly and whose morality will be gauged by our determination to fight corruption, the deterioration of morals, unlawful money-making, the exploitation of a group of people by another one... we should bear in mind that our socialism is not a product imported through conventional forms..."

Your Council which was founded on February 1st, 1973 in Dakar has never stopped making progress towards the achievement of its goals which are :

- to encourage every form of research
- to gear this research specifically towards the multiple aspects of the development of our countries.

The fact that ten years after your creation you are bringing together researchers and specialists from

various countries in the Third World, show how determined you are to work for the development of the Third World as a whole, and for the development of Africa by Africans particularly, on the basis of the cultures inherent in their own societies.

Nobody should therefore remain unaware of the significance of the topic you are about to discuss.

It is no chance that eminent Senegalese experts, researchers and scientists contributed to the drafting of the African Charter of Human rights and Peoples' rights and that Senegal is one of the first states that ratified it.

The special emphasis laid in the Charter on the Concept of the Right to Development is, as we all know, as far as this concept is concerned, the fortunate conclusion of a long-term process during which well intentioned people fought with courage for the recognition of the right to development by the International Community ; a right which is, in my view, the result of North-South, South-South dialogues and of all the various demands made by developing countries.

But, as you grasped it so well, without serious efforts to set up, in the meantime, the structures under which this right should be exercised, its mere proclamation would only amount to a petition in principle.

With regard to this, your colloquium stresses at the right time the significance of legal services in the development process of Third World countries.

The many international agreements on matters which are as numerous as they are varied - the Law of the sea and the delimitation of territorial waters, the exploitation of the continental shelf and of fish resources ; international agreements on various transportation systems etc... and within the African Continent, all the extra-national agreements concerning the various aspects of economic and social life - should be more closely examined when drafting the legislative or regulatory texts and the deeds from which they are drafted.

Here the legal services may become very helpful in basic research as well as in its application.

This very concern has, in fact, led Senegalese members of the Constituent Assembly to grant the Supreme Court, the Courts and Tribunals, the status of constitutional institutions next to the President of the Republic, the Government and the National Assembly.

Beyond its merely jurisdictional function, the Supreme Court also acts as a permanent advisory body contributing to the achievement of our programme of economic and social development which cannot be kept apart from a simple, efficient legislation.

It is to be hoped that your colloquium will start a long-term process whereby legal structures of development will gain more value in the Third World and that self-reliant development will become an African reality.

I declare open the Seminar of the Council for the Development of Economic and Social Research in Africa.

THE RIGHT TO DEVELOPMENT AND RURAL
COMMUNITIES IN AFRICA SOUTH OF THE SAHARA

By

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PART ONE: AFRICAN RURAL COMMUNITIES

In Africa, where about 70% of the population lives on agricultural activities, the right to development primarily concerns the rural communities.

The universal Declaration of Human Rights was extended in general by the affirmation of the right to development. This right introduced a new dimension. From this perspective, man is taken as a total being, having not only civil and political rights, but also economic, social and cultural rights. The African Charter of Human and Peoples' Rights, places the question in an African perspective and thus affirms the right of Africans to development. However, it is difficult to put into actual practice.

The implementation of the right to development for Africans, especially those in rural areas, raises certain problems which should be partially listed out in order to determine how assistance may be provided. The context in which the right to development is to be defined is first to be established by examining general problems common to the African rural world. Secondly, the living conditions of the rural inhabitants will be discussed. This process which will, incidently, allow for identifying certain problems in the promotion of the right to development, will be followed in conclusion, by an examination, from two different perspectives, of the relationship between rights and communities: the obstacles to the exercise of the right to development, and the factors which, in order to ensure success, must be

taken into account in providing legal assistance to development actions.

The scope of this analysis will cover only some of the more important problems and exclude others. This text has been prepared as a synthesis of the issues, proposing only a minimum (basic) platform.

I - RURAL CIVILIZATION

Traditional African societies are closely attached to the land. They can be described as *Agrarian Civilizations*. It would perhaps be more appropriate to qualify them as *rural civilizations*, for, although in the African countryside farmers are in majority, there are nonetheless other populations engaged in functions such as: livestock raising, fishing, arts and crafts, etc... Whatever the case, all rural peoples are, in one way or the other, linked to the land.

- THE NON-FARMERS

There are several categories of non-farmers. Their work generally involves directly employing natural products. Some practice gathering and hunting, and others engage in fishing in the surrounding rivers and lakes. The latter activity is carried out by specialized groups, very active along the sea coasts, which, through the use of canoes and fishing nets, are able to make relatively substantial catches.

The herders are also divided into several categories. Some of them roam the bush and the savanna zones with their herds, in search of areas where there are active water sources, near temporary camping sites. The other raisers of livestock are either nomadic, or live sedentary lives, in villages situated in the most favorable climatic and ecological zones. Some herders are also farmers, concentrating more on agriculture, than on livestock rearing.

- THE FARMERS

.The natural environment

Agricultural activities take place in selected areas ranging from arid to forest zones. They are often undertaken in function of the rainfall. In most parts of Africa, farming is seasonal, primarily being done during the brief rainy season. As a result, activities are concentrated in one area, thereby not encouraging agricultural diversification or extension. The products are stored in shelters for use throughout the year. There are sometimes difficulties in obtaining provisions for storage and in collecting and stocking produce. During the dry season, agricultural activities slow down to almost a standstill. In areas of heavy rainfall, agricultural activities continue throughout the year and there are therefore fewer problems in ensuring the availability of provisions.

.Techniques

The efficiency of traditional agricultural techniques is reduced because of the limited quality

and variety of these techniques. They basically employ the hoe, the cutting blade, the cutlass, and different types of knives, etc...

.Types of Crops and Production Methods

The shifting form of cultivation is one which is frequently used in Africa. It involves selecting a suitable corner of the bush, clearing it of the undergrowth and unwanted trees, leaving it to dry, and then burning it. This method ensures that by the time the rains arrive, the field would have been already fertilized by the ashes.

Following this process, the farmer can grow different crops, combining both the main and secondary products. Care is generally taken to rotate crops in order to avoid exhausting the soil. Each year, there is a change in the principal crops grown. This goes on for many years until the soil becomes infertile, when it is then abandoned for several years.

The more common farming method involves using cultivated village fields. African communities adopting this method do not engage in "disorganized" farming but employ specific methods and permanent village lots.

The most popular form of this type of cultivation consists of preparing the farms which begin from the very edge of the village compounds, and go right up to the farthest ends of the village borders. In the village, around the huts, are gardens which are

are generally taken care of by the women who simply dung from domestic animals and household refuse as fertilizers.

Major crop planting is done in the field located in the immediate vicinity of the village and which are often shaded by trees. The humus from these trees, and manure from the small livestock and animals which are kept there, serve to fertilize these fields. The bush located behind them are also employed, but through the use of slash and burn farming methods.

The concern to conserve the fertility of the soil is more visible in the careful preparation of the land in certain types of farm areas. Here, the farmers seek not only to organize, but also to develop fields in areas that may not be readily conducive to farming. These efforts call for highly specialized, and indeed sophisticated methods, in that, they necessitate the use of refined techniques based on the knowledge of, and experience with, the various soils and plants.

THE FARM PRODUCE

African agricultural products vary depending on the region. Referring only to staple crops, it may be said that in the savanna region, where farming is done mainly during the rainy season, the main products are cereals such as: millet, sorghum and fonio. Also grown are crops such as corn, yam, cassava, groundnuts, etc... In the forest regions and the equatorial zones

where farming is carried out year round, the agricultural products are mainly tubers such as yams, cassava, taro, bananas etc... Added to these are vegetables, spices, oil producing plants, etc.

THE TRADITIONAL SOCIAL SYSTEMS

The rural communities, each with its own territory, are organized on the basis of the latter. In a way, the social structure is determined by the land.

The division of land is usually aligned with the type of African cultural organization practiced in the community. Each social unit corresponds to a certain manner of structuring space. The African macro-sociological groupings are varied. Historically some communities had kinships: vast social groups having extensive, centralized and complex political structures. The kinships encompassed a considerable number of peoples and territories. The sovereign powers were usually the "masters" to whom, in theory, all land belonged. The kinships were made up of tribes and sometimes it was difficult to differentiate one from the other. Many African communities, in their political structure, adopted only *tribal forms of organization*. On the territorial level, the *tribe* brings together a group of individuals, clearly identifiable, who believe that they descended from the same ancestors and have a collective name known and used by their neighbours. Contrary to the kinships where the relationship of members from different groups were seen in the poli-

tical terms of a common dependency on a monarch, the tribe operated on the principle of kinship. Its members lived on a common land from which strangers could be excluded. They were ruled by a chief who was assisted by a Council, generally made up of the heads of clans.

The tribe was made up of a certain number of *clans* which are groups formed by individuals descending from a common distant ancestor, real or imaginary. Its members feel that they jointly belong to a group founded on kinship. This grouping, found in all African societies, is itself divided into *lineages*. The lineage is made up of those who, over several generations, have descended in a direct line (paternal or maternal) from a common, close, and known ancestor. In the rural society, the lineage, the dominant social structure, divides up when it comes to land ownership. It then takes the form of the *extended family*, simple or polynuclear, regrouping numerous blood or social relatives. The clanic, tribal and royal socio-political systems are based on the land. The village, as the basic spatial unit, encompasses the lineages and families.

Indeed, the village is the springboard for the humanization of space. It is responsible for turning a territory, after long and structured occupation, into a homestead. It is, consequently, the fundamental structure of rural life.

THE AFRICAN VILLAGE

The African village is normally inhabited by descendants of the founder, who sometimes maintain ties with the village of the founder's clan. It would thus be homogeneous. However, in general, added to these first inhabitants, are others who, arriving much later, settled in with the consent of their predecessors; the village thus develops clanic, ethnical or special (immigration of non-rural elements) sections. The village territory is the eminent property of the village group which manages and divides it into plots allocated to members of the group, or to foreigners, through the village chiefs who are assisted by their councils, composed of the heads of lineage. The kinship groupings have exclusive possession of the lands given to them, and do not simply have a right of use, which is, generally, the case in the village. The extended families who live in the concessions which are large dwelling units, form the basic economic structures. Production is undertaken on the basis of kinship group. It often has a collective orientation in that the families help one another in production efforts. This solidarity is based in fact on reciprocity. The product jointly obtained is not intended for the entire village community, but is instead made available by one part of the community, to another part, to meet the principle of social exchange. There exist, however, other concerns and activities which more closely, reflect shared interests and efforts in organizing communal life.

The villages generally establish differentiations based on occupation, often structured on distinctive features of clan or ethnic groups, and which facilitate internal economic exchanges and occasional external economic exchanges.

Exchanges with the exterior take the form of trade. Rural African communities began interacting with each other through trade, but this had customarily occurred within a limited scope and according to forms particular to Africa and the other non-industrial societies. African contact with Europe first started with trade, evolving into colonization, which integrated the rural societies into a world-wide mercantile system that was to change them and establish new institutions, new behavioural patterns and values, overlying a foundation of traditional civilization.

II - CHANGES

Rural African societies which, because of internal factors, had began evolving in a particular direction, undertook a new form of change, alien to their previous orientation, upon contact with the West.

- THE ROLE OF THE WEST

Within the African continent, internal readjustments had started to take place which, at the outcome, would have brought about significant changes; however, these initiatives were neutralized and re-

directed by the European intervention which induced another type of change.

The African rural communities experienced their first disruptions during the period of the *Atlantic Trade*, particularly with the development of the slave trade. The search for slaves entailed a number of consequences such as: the aggravation of internal conflicts, insecurity, disappearance of traditional kingdoms, the appearance of commercial kingdoms, expansion of Islam, displacement of the populations and a general decline in the African population. All these facts brought out a great change in the rural traditional economy, which became even more drastic as of the 19th Century, when *Colonization* began. Colonization introduced the rural communities into the mercantile economy which, as a system, had serious repercussions on the entire African social structure.

- RURAL COMMUNITIES DURING COLONIZATION

African rural communities, particularly the agricultural ones, all became involved in the mercantile economy with the decision of the colonizing authorities to tailor their different economies to the production of tropical raw materials. Unlike the pattern developed in other regions, (with the exception of a few countries) the European colonists did not themselves extensively settle in Sub-Saharan Africa. Rather, the African farmers were generally

compelled by the colonial authorities to grow crops for exportation, using traditional systems of farming. The crops to be exported were selected on the basis of climatic and ecological considerations, and thus varied according to whether savanna or forest regions were involved. In the *savanna region*, the main industrial crop was groundnuts. It was extensively grown in association with food crops such as millet; however, its production tended to be far greater, creating thereby an imbalance between the two types of crops. This made it impossible for the farmers to have enough food crops to sustain themselves throughout the whole year. Efforts were also made to produce cotton, although the low yield proved contrary to the anticipated results. The seasonal nature of these different food crops facilitated their integration into the traditional farming system. The farmers were able to sell their products during the official *Trade Season*.

The *Trade Season*, designating not only the actual selling period, but the agricultural trade operations and the consequences linked to them, provided the opportunity for abusive practices which made life even more difficult for the farmers. They were indeed in direct contact with the major European companies, through their rural branches, which bought the farmers' products at low prices, but sold them a variety of goods at significantly higher prices. These companies, monopolising the importa-

tion sectors, were represented in their rural offices by European agents, foreign petty traders or, very rarely, by Africans. This system of trading encouraged the practice of usury as the farmers were granted loans by the traders before the planting season, which had to be repaid after the harvest season, at considerably high interest rates.

The Forest Region

The forest region was the area suitable for planting. Plantations were for the most part owned by European companies and colonists though there were also African planters. Most of the produce exported came from the small plantations owned by African farmers, on which they grew crops such as coffee, cocoa, and palm trees on small plots, using traditional methods. The African planters in this region also tended to neglect planting food crops. It reached the point where they became no longer able to provide food for themselves throughout the year, even though conditions were more favourable here than in the savanna region.

In view of the fact that the rural African communities continued to produce the crops for exportation through the use of traditional agricultural techniques, the colonial authorities continuously sought to develop ways of improving the yields and organizational methods. Attempts were made to supervise the farmers and to protect them against the

consequences of the trade; but these often failed. The "Sociétés de Prévoyance de l'Afrique de l'Ouest" (companies to promote the welfare of the farmers) were typical examples of these efforts. They sought, among other objectives, to protect the farmers against famine, usury and inadequate technical know-how, by constituting security and seed stocks, in addition to other actions. These mutual aid companies failed because they were basically managed by colonial administrative services which later sought to give them a cooperative orientation. This evolution of mutual aid groups into cooperatives was to continue in the independent African communities.

- CHANGES IN AFRICAN RURAL COMMUNITIES
AFTER INDEPENDENCE

The achievement of independence in the African States did not exactly introduce radical changes in the situation of the rural areas.

The concern of the leaders was first of all to promote modernization. To attain this objective, they sought to transplant the European models into their countries. At the economic level, development programmes were designed to align African economies with the international system. The search for rapid growth led them to transform the agricultural sector by modifying the structures and farming methods.

.Rationalization of Farming Methods.

Alongside the planting of food crops, the export crops which were likely to procure the vital foreign exchange needed for development, were maintained and improved through a process of rationalization. At the same time, efforts were made to control their harmful effects on the society. The methods and procedures traditionally used for raising food - and cash crops were on the whole maintained, though improvements were often made. In fact, most of the agronomic research centers created during the colonial period, served to provide assistance in increasing production and productivity. The various techniques and methods they developed were widely spread. New kinds of seeds and plants were supplied to farmers, and animal-drawn agriculture, the use of fertilization, the different forms of crop rotation and the control of predators became widespread. In the field of livestock rearing, projects involving developing suitable breeds, vaccination and improved grass for feed, were all implemented. Ensuring the popularization of these different techniques and procedures is one of the fundamental concerns of the agricultural policies developed by the countries.

Realizing that technical advancement resulting in increased production was not the only condition for development, the governments, then turned their attention to resolving problems involving human populations and the use of land.

Agricultural land reform

Land ownership reforms were initiated by the various African states practically at the same time and they were usually aimed at social, economic and politico-legal objectives changes. Attempts at reaching the social objective-which is to lessen land-based inequalities-were not as systematic as in the case of the other two objectives, for, generally-speaking, land has never been extensively capitalized although in traditional Africa it represented a means of subsistence.

On the politico-legislative level, African legislators tried to integrate the various customary rights and types of land tenure. This often resulted in the establishment of national laws classifying the various kinds of lands and in declaring certain areas as "national estates" governed by specific regulations as to right of ownership and use by groups or individuals. It was particularly in the economic sector that the agricultural land ownership reforms introduced significant changes.

In fact, the desire to promote economic growth and ensure profits from resources, which is inherent to development ideologies in general, has led the States to take control of nationalestates. This action has facilitated the development fo uncultivated land, the distribution of land to those certain to made effective

use of it and the modernization of the agricultural sector, entailing production increases and the introduction of new cultivation and organizational methods.

Human problems in rural development

The desire to accelerate production had never been an urgent priority in African communities. This is why there is a need for "education", in its broadest sense. The farmers have to be encouraged to become concerned about development in order to avoid limiting their production to simply meeting the immediate needs of their family groups, as this would be incompatible with the aims of modernization. The farmers have to be motivated to ameliorate the quality and quantity of their output, working within production-oriented social groups founded on more than just kinship ties. The African agricultural sector must be able to produce for exportation if it is to obtain the foreign exchange reserves needed for development. More importantly, however, it must meet the needs of an economy which faces such problems as higher expenses and steady population growth. Re-organizing the agricultural economy offers, moreover, the advantage of ending established trade practices and eliminating the farmers dependence on the parasitic groups perpetuating the cycle of abusive loan practices.

The numerous attempts made to achieve this, all commonly revealed that unity was the key to organizing the rural communities. These actions focused

on three elements: co-operation, information and training, marketing. All actions undertaken sought, in one way or another, to get the farmers to work together, to become more motivated to increase production, to train them and help them sell their produce. The government's permanent involvement in this area, consisted of using in the different cases, varying combinations of these elements in development programmes. They were sometimes all used simultaneously, and at other times in pairs, or individually. The actual formats varied, but the principles remained unchanged.

Cooperation

In terms of fostering cooperation, many countries regrouped their rural areas into associations which were in fact co-operatives, even if they were not designated as such. The African cooperatives were often established on the basis of either practical considerations - the desire to increase productivity through more effective techniques, or on ideological considerations (promoting African socialism, etc...).

Rural people of all sorts farmers in the savanna regions, planters and those specializing in particular productive activities (herders, fishermen, craftsmen) found themselves incorporated into cooperative associations for undertaking production, distribution, and mutual aid activities.

The Cooperative: The role of the cooperative is to bring together all the members of a rural community, made up of one or more villages, with a view to participating as a unified force in the economic process.

The functions of the cooperative are varied: it determines the allocation of land, organizes the work to be undertaken, oversees efforts to improve/^{systems} and techniques, directs group interests, handles the marketing of produce, undertakes group purchases, establishes a credit fund, protects the fields, co-ordinates mutual aid efforts, oversees the improvement of homes and hygienic conditions, and organizes cultural and artistic events. There have been some reforms in certain countries designed to make village associations become autonomous and self-reliant. However, to a large extent, they have been set up to function as only relays for government action. It is for this reason that they are not true cooperatives. They are run by government officials.

Though there have been improvements, the cooperative movement in some countries is, in reality, only a form of government intervention in development efforts.

Cooperative associations are usually supervised, that is, managed and administered, by regional government bodies which are run by civil servants, assigned the tasks of carrying out required technical, agricultural actions and obtaining the financial assistance necessary for these associations from banks or other appropriate sources.

"RURAL ANIMATION"

Activities in this area involving government participation, often presuppose parallel action by a particular category of villagers. Indeed, the concern of the authorities in all countries has been to ensure that the rural communities can participate in, and assume responsibility for, their own development. It was from this perspective that actions were taken to develop, from within the communities themselves, an elite likely to promote the advancement of the rural world. These rural extension workers, selected from village communities, are given special training and then put in charge of promoting the modernization of agricultural practices. They continue to work at their regular occupations and serve their communities as volunteers, since they are not civil servants.

These agents, who are true 'sons of the soil', primarily fulfil a socio-psychological role in that they maintain daily contact with their fellow villagers with whom they share a common lifestyle. They are trained to serve as models and advisers in modernization actions in various areas: agricultural techniques and procedures, cooperation, hygiene, etc...

The government directly participates in the process to ensure the evolution of the rural world, through regional bodies regrouping the heads of different agencies active in various areas of rural life: herding, rural public works, forestry, agriculture,

health, arts and crafts, cooperation, education, etc... The work of these "animation" centres (which essentially perform a psychological role) is generally entrusted to multi-vocational agricultural agents (work monitors and instructors) and covers a number of areas basically centering on the popularising of new farming methods and techniques. They also fulfil an educational and organisational role in the villages, conducting for example literacy, first aid or basic hygiene programmes. They provide women and young people with learning opportunities (youth centres, home economics training for women).

The African agricultural sector thus organized, participates in the international trade economy. As in colonial times, it sells products for exportation and imports consumer goods. The sale of rural products and the purchase of manufactured goods is organized throughout the continent.

The marketing of products

Following independence, the African States modified their systems of marketing. The principal motivation was the desire to break the trade monopoly of the large European firms and to end the dependency of the rural farmers on foreign establishment and their local representatives. Government actions were directed at revamping the system of marketing and reducing the difficulties linked to the instability of world prices, the sale of products and the fluctuations in prices paid to the farmers. The governments took

action to eliminate the groups and practices abusive to the farmers.

The actions involved varied, but they all basically focused on ensuring: stabilisation, effective marketing and nationalisation.

Stabilisation: The objective was to limit price fluctuations by guaranteeing minimum prices to the farmers, regardless of the changes on the world market. Premiums were granted for exceeding certain quantities.

Marketing changes were introduced when the State turned over the distribution of products to government boards which were generally granted a monopoly in agricultural exportation and large-scale commercialisation. Private companies though, were sometimes given franchises. The government's monopoly of the export sector theoretically removed the possibility of exploitation by private firms in the local market. The marketing boards buy, directly or as intermediaries, agricultural products at official prices. They are also involved in the importation and the distribution of agricultural products.

Nationalisation, through governments firms, established the exclusive control of the State on agricultural marketing systems, locally and internationally.

Regardless of the formula employed, or the combinations developed, these reforms in the trade system were closely linked to those in the agricultural sector. They sought to eliminate the dependency of the farmers on the traders and to stabilise the price of agricultural products, offering premiums for surpluses produced because of favourable conditions. Such were the major reforms introduced into the rural systems by the African governments. They brought about social changes and therefore had to overcome certain obstacles.

SOCIAL CHANGES

The African rural world underwent a certain number of social transformations of which the most characteristic involved:

The resistance of the traditional society and the re-interpretation of new structures. The following outline presents some of the rural communities opposed the changes introduced by the cooperatives: Due to the *grouping of different ethnic villages* which had no traditional social bonds (kinship, intermarriage, loan of fields) the co-operative members considered themselves as representing uniquely their own communities. This co-operation was, therefore, not voluntary and did not develop from the free will of the partners.

- The absence of a redefinition of traditional social roles and status, while continuing to establish new structures in the rural communities.

- The function assigned each cooperative member did not match his skills or aptitudes, but corresponded to his status of birth, position in the traditional hierarchy, family grouping, age group, or traditional political structures.

. *Manipulation of the cooperatives* by the former holders of social power, through the use of factors such as: kinship, family bonds, marriages, economic activities, landownership, political hierarchies, age-groups, ancestor worship etc.

Real power is wielded and real life carried on outside the bound of the cooperatives which have not become sufficiently integrated into the rural world. They are viewed as concrete entities only in terms of the facilities they provide for the sale and purchase of commodities. Rural inhabitants who are unable to relate to the other principles of cooperative organizations, continue to live in, and for, their villages. The cooperatives are not an innate part of the *life of the rural world*. *The modernization of farming techniques* has also given rise to re-interpretation. Very often indeed, the new techniques introduced (i.e. harness cultivation) have served in the traditional prestige economy by being monopolized and employed for lucrative profits by the traditional village leaders.

This distortion of the objective of providing equipment for all the farmers, has led to perpetuating the injustices favouring the social promotion of the rich and the transformation of the poor into hired labourers.

- Inequalities and the Rural Exodus.

Within the rural world, unequal social status tended to foster class discrimination. Today, there are new stratifications which, for the most part, regroup the former divisions. They are formulated around the land. Without going into extensive details, it may be said that there are three categories of peasant farmers: *those who own land, those who borrow land and those without any at all.* Rural life, as a whole, is regulated by these three situations. They determine the particular conditions affecting the individual life of each farmer. There are numerous conflicts between those who own the land and those actually working it, in spite of established land legislation which the owners have managed to circumvent. Landless rural dwellers are increasingly tending to become agricultural labourers.

On the whole, rural societies are becoming more and more stratified, with a growing tendency to develop different social ranks within the peasant farming class. These inequalities, coupled with other factors linked to the nature of rural work (poor yields), are at the root of the large scale *migration* of rural dwellers to the urban centres. If the mobility of rural populations has always been evident, it has nevertheless been gaining

in intensity. The migration of rural dwellers towards cities, or areas of high employment opportunities (mines, plantations), has become a widespread reality in Africa today. It occurs in different forms: from temporary to permanent migration. The end result is that the rural world is losing its vitality. The migrants are, for most part, young. Only women and elders may be found in the villages. Conditions such as these compromise the successful implementation of rural development policies.

African rural populations are becoming increasingly convinced that their situation is an intolerable one. This why they seek to improve their way of life elsewhere than in their original environment.

III. CONDITIONS IN THE RURAL AREAS

African farmers have a way of life which, in its day-to-day presentation, may be described as a *rural culture* which is in itself a form of the culture of the poor. The plight of African rural dwellers, though distinguished by particular elements, reflects the universal condition of the poor.

- A DIFFICULT ENVIRONMENT

African rural populations generally have to cope with extreme physical conditions and hostile environments in the areas where they live. Africa, situated above and below the equator, is clearly a tropical continent. The climate accentuates the harshness of the

environment, delineating natural regions by an excess of heat, dryness or humidity, which may at times attain extreme limits. It is in this environment, rendered hostile and exacting by climatic factors, that African rural populations have to live, confronted with considerable natural obstacles.

- THE LACK OF WATER

The major problem facing rural dwellers is the need of water. Water is an important element of life in Africa, creating from all angles, a problem by either its absence, and the ensuing upsurge in value, or by its overabundance and the different set of difficulties which that entails. The lack of water in all its aspects (whether for humans or crops) is the basic problem to be resolved by most African rural communities. It has become a daily reality, affecting all their activities, be they agricultural, social or cultural.

The drought experienced in recent years has only served to amplify its gravity. It has become a permanent reality, a fluctuating cycle which has at times attained optimum levels. It has consequently aggravated the threat of famine in the rural areas and the outbreak of endemic diseases to which, because of the nature of the environment, the rural farmers are permanently vulnerable.

THE ORDEAL OF DISEASES

African rural dwellers are constantly threatened by the specter of disease. All kinds of diseases

are present in the rural areas. There are, first of all, the *illnesses induced by malnutrition and hunger*. Rural inhabitants, often eating poorly or improperly, suffer from a variety of nutritional ailments because of their poorly balanced, vitamin-deficient, diets. Children represent the age group most greatly affected because once weaned, they no longer receive the necessary nutrients and often develop Kwashiorkor, a very serious illness.

The rate of infant mortality in its various forms is very high in the rural areas: pregnancies (miscarriages, stillbirths) post-natal mortality (during the first few weeks after birth) and infant mortality per se (during the first year) have turned the infant death rate in African into a real *crisis*, in spite of recent advances in rural health care. The leading cause is the *overexertion of the mothers*, reflecting thereby, an aspect of the condition of women in the rural areas. Rural women still have to work extremely hard, even when pregnant. Added to this are the factors of poor diets and infectious diseases, particularly malaria and measles, both extremely detrimental to infants, and infectious diarrhea (gastro-enteritis), etc.

African rural dwellers are furthermore afflicted by at least *twenty endemic diseases*. The most common *paludism or malaria*, easily fatal to children, is constantly present in the rural zones. It has become such a fact of life that adults take into account the constant threat of its unpredictable attacks when organizing their daily work. Also common are *trypanosomia-*

sis or sleeping sickness, *leprosy*, *intestinal diseases* (typhoid, amoebiasis, worms, etc...) *eye diseases* such as *onchocercosis*, capable of rendering an entire village blind, *trachoma*, etc. In addition to all these tropical endemic diseases, rural populations are also susceptible to other illnesses not limited to Africa.

Inadequate sanitary conditions in the rural areas, due to the difficult environment, malnutrition, the lack of proper hygiene practices and sanitary equipment, entail economic and social consequences. The cultivators, continually subjected to attacks by certain endemic diseases such as malaria (to name only a minor one) and anemia, and disabled by fever, cannot believe themselves capable of attaining the expected levels of production. The problem of rural health, like that of morbidity, is thus a hindrance to development. This is equally true of the rate of mortality. The high rural mortality rate, characteristic of Africa, by the very number of individuals it eliminates, sustains the conditions of underdevelopment by blocking the expansion of its human resources. Inadequate human resources is one of the obstacles to the development of agriculture. There are others arising from the nature of the African environment.

- IGNORANCE

The isolation of rural population in a hostile environment encourages ignorance. Educational infrastructures in the rural areas are inadequate. Africa, up till the present, is still characterized

as a continent of high illiteracy. Attempts have been made to increase the number of schools available, but the rural areas as a whole have remained basically untouched. Many villagers, lacking the motivation or nearby schools, prefer to keep their children at home and teach them rural work. The result, because of the population growth, is an "expanded" reproduction of the rural condition. *The illiterate* smallhold farmer, lacking a minimum of modern culture, despite significant efforts by the media in recent years, remains deprived of basic knowledge, dominated by superstitious fears and an attitude of dependency. The ignorance of rural farmers prevents them from fully benefitting from, and mastering, modern techniques for increasing agricultural production. Were they able to do so, they could overcome certain natural obstacles by avoiding the errors caused by inadequate knowledge of soil conservation.

- IMPOVERISHED SOILS

The African "bush", in its different varieties, is characterized by a lack of fertility brought about by ecological processes, of which the most common are erosion and laterisation. Nearly everywhere, the livelihood of rural farmers is endangered by natural processes, some of which are provoked by their own farming habits. As a result, they find themselves in a *position* of alienation in which actions detrimental to their long term interests are taken in favour of short-term gains. The use of

bush fires destroys the ecological balance of the soil, impoverishing it even further. The *cutting of wood* (for fuel), extensive deforestation, failure to plan long fallow periods, and increases in the length of time devoted to growing cash crops, all induce the same effect. Thus, in the end, the results of their labour are very limited.

- TASKING WORK WITH VERY POOR RESULTS

The work of rural farmers is undeniably tasking and is not compensated by equally appreciable results. Lacking then the adequate motivation for increasing production, the smallholders make just enough effort to produce the quantities necessary to meet only their household needs. Despite efforts at community organization, the inadequate resources available reduce the already limited effectiveness of their labour.. There has been little improvement in the standard of living in the rural areas, especially in view of the tendency to *concentrate on producing cash crops, to the detriment of food crops*. Despite their efforts, rural communities regularly face the threat of *famine*. During a major part of the year, *food is no longer available in the countryside*. In addition to this problem, the purchasing power of rural populations has been constantly declining.

- DECREASE IN THE PURCHASING POWER

The *purchasing power* of rural populations has been continually declining because of the deterioration of the "terms of exchange", unfavourable to Africa.

Although the production of agricultural raw materials has regularly increased in the past years, the prices at which they may be sold have tended to decrease, while those of imported industrial products have constantly risen. The result has been that in spite of the stabilizing of sale prices by the different government agencies created for this purpose, rural farmers, for the same quantities of produce sold, increasingly find themselves able to purchase less. This situation is beyond the control of Africa. It is due to the world economic situation in general, but has essentially contributed to simultaneously worsening the condition of the rural populations, while limiting the efforts of actions aimed at more efficiently organizing marketing systems in particular, and development efforts as a whole.

- THE CUMBERSOME NATURE OF RURAL SUPERVISORY
STRUCTURES

From a certain point of view, the structures for organizing and assisting the rural areas are burdensome to the rural populations. This has been the underlying reason for the low success rate of different rural promotion and co-operation projects. African rural communities have been unable to fully develop within the frameworks created for this purpose. Emphasis is often laid on the fact that the "socialistic" principles promoted in the communal regroupings are in fact based on African collectivist principles. In reality, however, the co-operatives do not correspond to traditional African structures and do not enable these

groups to assume full control of their own development. They are neither extensions of traditional collective structures, nor are they true co-operatives. They fall somewhere in-between the two. A true co-operative would enable the rural farmers to be conscious of their responsibilities in managing their own affairs and working towards common goals. As the present co-operatives lack this orientation and impact, rural farmers employ them, *accepting the visible degree of exploitation by the State*, as circuits only for their sales and purchases, with minimal ties to their real lives. In addition, in view of the fact that the leaders of the co-operatives, who receive only minimal training, are very often non-members of the community and that expert personnel, not the villagers themselves, are often responsible for the actual implementation of projects, rural communities do not feel a part of these actions. They prefer to lead their lives according to longstanding values applied, as need be, to modern situations. In sum, the structures for co-operation, for the most part, interfere with the habits of rural world and additionally impose certain obligations. They become even more burdensome when they are associated with other structures with even greater disruptive impact.

- OBSTACLES CREATED BY THE "PARTY" AND
THE GOVERNMENT

There is one dimension of life in the rural areas which has not yet been touched upon and which could have been introduced in the discussion on rural organizational structures: the role of the government

in general and that of the party in particular. In most African countries, rural communities have to cope with not only developmental agencies, but also general government services and the "party". These three sectors are interlinked and can only be separated for the sake of analysis. Their efforts, as a whole are, directed towards the rural communities,

Modern states have, in general, *de facto* and *de jure*, one-party systems within civil or military political frameworks. The single-ruling party in Africa is promoted as a party of the "people" and thus institutes a structure which allows it to be present at all levels of the society, but particularly at the rural level, where it is represented through village committees, district committees, etc. The party is present even in the tiniest communities, assigning itself the role of ensuring political leadership and the development of the masses. Similar to structures providing technical assistance, it has a political role of providing training for development and preparation for modern life through consciousness-raising actions. It seeks to do so by promoting an *ideology*. The *ideology*, still viewed as the most effective means of motivating the masses, is presented through different socialistic forms which all stress co-operation, guided by fundamental African values, as a mode of effective organization.

The parties, as such, not having satisfactorily attained their goals of supervising mass organizations in spite of their own structures, were created to reach the different categories of the population. Thus, in addition to the other organizations set up (for women, youths), the rural populations in particular have been provided with structures for encouraging group activities which, nearly everywhere, have become politicised. Indeed, government agencies working in these areas often reinforce the actions of the party to promote the development of the masses. This is easier to achieve, in that, the party directly controls these agencies, and the civil servants assigned to run them are often active party members or officials. Rural community workers or "animators", are thus often also party officials. The creation of rural structures to function parallel to the actions of the party offers ^{both} the advantage of remedying the inadequate implantation of the party in the rural areas and of compensating the limitations of often inflexible administrative policies.

Conventional administrative or supervisory structures are also of value in the organization of the rural areas in that the socialistically-oriented policies adopted, grant the State an extensive role in national activities in general, and in rural activities in particular. The existence of a single-party and its presence at all levels of the society, has given a political hue and orientation to the civil servants are generally, in one way or another, linked to the party. Grassroots collectivities in the rural

areas and local government agencies, are often controlled by the party and headed by officials or civil servants who are not always representative in terms of either their relationship with the community or their qualifications.

The end result is that people see themselves administered, manipulated and co-opted (as defined by Durkheim) by different institutions, which under close scrutiny, reveal themselves to be appendages of the party. This dependency of the rural populations may be described as follows:

.Obligation to join the party;

The villagers are obliged to buy the *membership card of the party*, viewed as a supplementary form of taxation, but nevertheless do so for fear of appearing to oppose the party.

Refusal to comply would serve as a modern-day justification for ostracism, entailing serious social and economic consequences.

Purchase of the card sometimes includes the obligations to attend numerous meetings at which participation is not allowed in the discussions or decisions. Issues discussed, may not even be understood because of illiteracy in the official language.

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Obligatory participation in all the events or ceremonies organized by the party: traditional ceremonies, communal gatherings to listen to radio broadcasts, parades, receptions for visiting dignitaries, etc...

- . Participation in collective manual labour, qualified as human investment actions, but readily viewed as the perpetuation of the colonial era.
- . Various forms of harassment or victimisation by different governmental agencies or party members.
- . The need to ensure the goodwill of the local representatives of the party and the government, especially if they are not from the region.

- Ethnic Problems

The harassment to which rural communities are subjected are at times further aggravated by ethnic conflicts. In Africa, power is often linked to ethnic considerations. By observing the trend displayed in certain democracies, it may be said that, at times, *various ethnic groups succeed each other in government.* In such cases, the political or governmental power is essentially controlled by a dominant ethnic group or groups, whose solidarity is evidenced by nepotistic tendencies. A situation such as this may encourage local officials to govern those under their jurisdiction with contempt or unnecessary antagonism.

At times, the ethnic composition of the country is reflected at all levels, from the national government down to the local agencies. In this case, the ethnic variable is used in the reversed sense. Officials in their administrative districts tend to favour people in their ethnic group to the detriment of all the others. Rural populations are the principal victims of such attitudes.

These are then the different dimensions of the conditions in the rural areas and the historical, political, economic, social and cultural context in which they operate. They are elements necessary to the examination and analysis of the problem of the right to development within the rural communities.

SECOND PART: RURAL COMMUNITIES AND RIGHTS

The application of the principle of the right to development presupposes knowledge of the milieu. This is why the major characteristics of African rural areas have been briefly sketched. Previous knowledge is indispensable for grasping how the problems linked to the right to development *must* be presented within the African context in order to effectively identify the means and *forms of implementation*.

IV THE NATURE OF THE RIGHT TO AFRICAN DEVELOPMENT

The various Human Rights Declarations and the Right to Development which followed, have been articulated from the perspective of the *individual* or the human person. The human being is at the apex of all creation, it is his development, in its totality, which is of primary value.

- THE INDIVIDUAL AND SOCIETY IN AFRICA

The emphasis placed on the *individual* reflects a form of evolution particular to Western society. Industrial development and the resulting rationalisation, led to the dominating *emergence of the individual and the articulation of the entire social system around his being*. Law followed and organized the status of the individual, taking on value in the form of the person, in his relationships with others. In Africa where, as has been stated, the basic structures were not founded on

the individual, but on domestic groups, lineages, clans, tribes and ethnic groups, the individual is not a social reality. For the present, it is as a group that Africans accede to the modernism governed by a new economic and social rationality. They adapt to it through what has been defined as "individualité à plusieurs" (communally-oriented individuality). Contrary to what is widely affirmed, in the rural areas (though this may be true of the urban areas) modernisation by "hooking up" to the world economic system does not lead to the process of pure "individuation". What is observable is that this process tends to occur through domestic family groupings, distinguishing themselves from other groups. The individualism of basic family groups has become a permanent sociological reality. Contrary to the theories often advanced, traditional collectivism in its original form no longer exists, and, furthermore, the individual as such is not yet an established entity. The dominating tendency is towards family individualism. *The African always has a group of relatives behind him* and his existence and significance can only be defined through his relationship with them. In rural communities, the individual is integrated into a complex network of social relationships simultaneously involving homogeneity, hierarchical factors and unity. *All his rights, ranging from his identity to his political status, and including his right to own land and to marry into certain classes, etc... are defined on the basis of the group to which he belongs.* The individual is identified according to his ancestry and his position in the different social networks comprised within the community: posi-

tion of his family group within a lineage, his age group, the village structure, etc...

The individual therefore cannot be taken in isolation in Africa. All attempts to reach him, with the objective of initiating action, cannot directly focus on him. *Legal action therefore has to be put forward in alignment with the complex social network conditioning his behaviour. The exercise of a right is dependent on the freedom to do so, and it is evident that in African societies, because of their particular evolution, individual freedom is still exercised through a group. As a result, in attempting to reach the individual, action must focus on the group.*

- THE RIGHT TO DEVELOPMENT: A GROUP
ENTITLEMENT

To these requirements, determined by the character of the domain in which the right to development is to be exercised in Africa, are to be added other considerations linked to the right to development in general and which, in their orientation, are similar to the preceeding ones. Development is a collective objective involving large, and generally, national groups. Within nations, efforts are undertaken in the interest of the groups of which they are composed. The defined objectives are thus socially oriented, with the ultimate goal being to raise the standard of living of the society as a whole. Likewise, actions involve and focus far more on communities, than

on individuals, in achieving this objective. Rural development concerns rural communities, which is why the right to development primarily concerns collectivities. There is thus a problem, arising moreover from the obstacles to legal assistance action in favour of development, which is linked to the collective nature of the undertaking. Any collective action almost automatically has political overtones ("Polis"), and therefore, is providing such *legal assistance not indeed a political undertaking, considering that it proposes to defend, and especially to make communities aware of their rights and, if need be, to help them defend them?* On the one hand, it appears to be a legal instrumental priming action, and on the other hand, an ideological legal action. In both cases, given the situation in Africa, it certainly "involves", and is influenced by, political considerations. Such actions should therefore reflect proper awareness of this fact, especially since political obstacles are not the least of the problems which will be encountered in the field.

V. OBSTACLES TO IMPLEMENTING THE RIGHT TO SELF-RELIANT DEVELOPMENT

There are numerous obstacles to the effective implementation of the right to development: some are due to external factors linked to the surrounding international system, while others are connected to internal factors.

- THE WORLD ECONOMIC SYSTEM

African societies, and consequently the groups composing them, find themselves integrated into an international system, the functioning of which has repercussions on their development strategies and their rural communities.-

African development policies are underscored and oriented by *development plans*; however, these designs are condemned to ineffectiveness because of the impossibility of controlling external variables. Factors determining economic *fluctuations in world prices* for raw materials are such that it is practically impossible to guarantee the economic stability necessary to development. The plans therefore appear to be composed more of desirable, rather than attainable, goals. Added to this, is the fact that development programmes are often dependent on foreign aid. Foreign private investments are relatively rare, highly selective and speculative. They are available only for projects guaranteeing high and rapid rates of return. Such prerequisites are thus generally incompatible with development actions. The same may be said of the *international public assistance* offered by international financial agencies. Due to its nature, terms and orientation, it is unlikely that this assistance would relieve the effects of underdevelopment. Paradoxically, in the industrialised nations, it has a tendency to accelerate and attract more investments. This association, though, calls into

question the economic, and by that, the political independence of the countries.

The state of things appears to suggest that, at the international level, the dominant reality perpetuates a division of labour which prevents the African States from advancing and confines them to a role of suppliers of raw materials—a role entailing significant consequences in terms of power relationships. It is indeed impossible, in such a context, to take charge of one's own development. The fact that Africans lack full control of some of the elements affecting their own economies calls into question the ability to ensure self-reliant development. *This realisation must be reflected in actions to provide legal assistance in promoting self-reliant development in Africa and in applying the principle of full autonomy based on freedom.*

There are also internal factors which thwart the exercise of freedom in the selection and implementation of autonomous forms of development.

- POLITICAL STRUCTURES

The tendency of African States to centralise authority results in stifling the personality and participation opportunities of the rural communities. This is equally true of the *personalisation of power and the institution of one-party systems*. Whether military or civil in format, they all share the common trait of being authoritarian and having the political system *organized*

around the personality of the *supreme holder of power and his party*. The power structure thus takes on patriarchal characteristics, rendering difficult the practice of democracy and influencing all actions involving the taking of initiatives, discussions and collective decision-making. These traits are equally visible in the structures developed to administer the rural areas. Participation being little encouraged in the overall framework, it is therefore not surprising to find it missing from the secondary structures.

An African Head of State has very broad constitutional powers and because of that, enjoys *real or calculated* prestige. He makes all decisions and the scope of his power encroaches on those of the other branches of government (legislative, judicial). It encompasses even those of the administrative services, to the extent that he makes the decisions involving even minor technical details. He is involved in everything. The party is an extension of himself and is *itself structured around personalities*. The rural masses, though enlisted into the ranks of the party, enjoy no real participatory role. Their illiteracy, like their under-development, prevents them from participating in the establishment of political programmes. Ensuring the requirements for their survival demands their full time attention, leaving little time for leisurely reflection. The formulation of policies, particularly those affecting the rural areas, is entrusted to a few officials. The party, as a result, often functions as a sort of highly patriarchally-

influenced machine, serving to transmit information, slogans, etc. Its local district committees therefore do not fulfil the role of organs for ensuring grass-root perspectives and political participation in resolving the problems linked to development.

In addition, there is the tendency of one-party governments to block or usurp all community-oriented initiatives not originating from within their ranks.

- CULTURAL SYSTEMS

African cultures, and African values in particular, constitute obstacles which should be taken into account. It is because these factors have been neglected that rural development policies have failed nearly everywhere. The government has failed to take them into account in such areas, as:

- The manner in which the cooperatives are distributed and in which the villages belonging to them are regrouped.
- The manner in which the cooperatives and their managing agencies are operated.

With regard to the regrouping of villages which are to form cooperatives, the preferences expressed by the villagers have not always been considered. Groups having no common bonds have been placed together, while others traditionally united by bonds of kinship, matrimonial exchanges, field exchange practices or by other links, have been

separated. The result is a reticence which has led the farmers to not fully commit themselves to the cooperatives and to consider them merely as facilitative structures for sales and purchases; this probably would not have happened if the farmers had chosen their own cooperative partners and if they had been educated about the need to consolidate all of the economic activities in the village.

Moreover, the type of social relationships fostered by the cooperative is not easily accepted by the rural world, upon which it should not have been imposed as a first step. Cooperative organizations, in fact, function on two basic principles: solidarity and equality. The solidarity propounded by the cooperative is different from that to which the rural dweller is accustomed. For him, it must be practiced within special social contexts such as kinship, age groups, etc... Effective cooperation does not operate on kinship alone, but founding a structure on only practical considerations does not guarantee solidarity. As for the principle of equality, it contradicts the basic values of the African ethic based on hierarchies and the need to honour them. Thus the farmers have not participated in the meetings to the degree required, because, for them, it is difficult to interact with people with whom they have no traditional bonds. Moreover, through the use of *re-interpretation*, dependent-representatives are often sent in order to avoid involving the traditional "authorities" in the workings of the modern sector and in discussions which

could cause them to lose face. It is indeed unthinkable that because of the principle of equality in the cooperative, younger members may contradict their elders, who may in addition, be the traditional institutional authorities. Generally speaking, the "cooperators" regard as law only the opinion of their elders or the traditional authorities on which they depend. The view points adopted in the cooperative are basically those put forth by the authorities. Therefore, the cooperative cannot serve as a viable framework for discussion and participation.

TECHNO-BUREAUCRATIC CENTRALISM

The excessive centralism of development agencies (agriculture, cooperative, "animation") operates in the same manner. These agencies are dominated by a bureaucratic mentality and the tendency to conduct rural community affairs not through dialogue, but through red tape, with an obvious predilection for the written word, to the detriment of the spoken word, in societies of oral expression. The developmental agencies have been incapable of getting rural populations to effectively understand the different projects, and then fully take charge of their implementation.

Some examples of the authoritative methods employed by the officials of cooperation agencies are:

- 1- Constitution of cooperatives without consulting the future users;

- 2- Arbitrary convening of general meetings and directing bodies;
- 3- Applying pressure to ensure the appointment of their candidates to direct agencies (managers, controllers, weighers);
- 4- Taking inventories of the cooperatives' needs in supplies, fertilizers and foodstuffs, without consulting the cooperative members who are then simply informed of what will be sold to them;
- 5- Unilateral decision about the quantity of supplies and foodstuffs to be allocated to the co-operatives;
- 6- Distribution to the heads of cooperatives, but who in turn often redistribute goods according to one's influence and place in the village hierarchy;
- 7- Unilateral setting by the State of prices and discounts to be granted, and from which significant portions may be withheld.

The reaction of the farmers to these bureaucratic actions are:

- A feeling of being exploited;
- Absenteeism;
- Non-participation in meetings by not taking part in discussions;
- Consideration of the cooperative as an administrative agency that is only useful for

selling products and obtaining credit on purchases.

Lack of preparation to assume a role in the cooperative, whose aims are not fully understood.

ILLITERACY AND INADEQUATE TRAINING

Another obstacle - and by no means a minor one - concerns the illiteracy of the rural dwellers. *Since national languages are not the official languages of the government, difficulties and misunderstandings arise between the administrative services and the populations.* For this reason, the participation of the rural dwellers is limited. They lack access to the written word and are unable to understand certain problems. Training and "animation" actions which should have served to educate the rural communities about development problems, have not been sufficiently thorough because of the lack of personnel, but even more, because of bureaucratic practices. Cooperative education, in particular, has essentially consisted of handing down orders with inadequate explanations. Cooperation agents, generally notenthusiastic about providing the necessary education, have adopted bureaucratic mentalities and made numerous mistakes. The most characteristic ones are the:

- Lack of information on the ultimate objectives of cooperative development efforts;

- Tendency to consider themselves as urbanised technicians and therefore not a part of the rural world;
- Ignorance of, and lack of consideration for, the values of the rural world;
- Lack of confidence in the capacity of the rural inhabitants to take control of their own problem, etc;
- Corruption and manipulation because of the ignorance of the rural inhabitants.

In short, these technical agents do not sufficiently integrate themselves into the different social layers that make up the villages. Doing so would provide them with deeper knowledge of, and respect for, rural societies, which would lead them to become more committed and to serve them more faithfully. Lacking such an attitude, they have not been accepted, or their advice heeded. The rural dwellers have thus remained uneducated about development issues. This lack of education is one dimension which must be taken into consideration when identifying the obstacles to establishing the right to self-reliant development.

VI. FACTORS TO BE TAKEN INTO CONSIDERATION WITH REGARD TO LEGAL ASSISTANCE IN DE- VELOPMENT.

Examination of the main characteristics of African societies and the special difficulties found in exercising the right to self-reliant development

allows the establishment of a general outline for providing legal assistance to development and for determining certain factors which must be considered in order for the exercise of that right to be implemented and *effective*.

Its ultimate objectives must consist of contributing to the establishment of the *frameworks in which these freedoms are to operate*:

- Making the rural population aware of their right to development;
- Exercising this right through:
 - participation - having those concerned take charge of the process of solving their problems, and which would lead to;
 - the establishment of social tools of cooperation, viable frameworks for social interaction in organising the factors of production, marketing, health, instruction, elementary education, culture and leisure, etc...
 - independence, responsibility and a spirit of initiative;
 - analysis, discussion and the exchange of opinions, collective decision-making, evaluation;
 - elimination of inequalities.

The indispensable legal resources to be employed must be determined by jurists and developed on the basis of a:

- Commitment of the rural populations

The best, if not the only, means in Africa of getting a message across is not only to speak the right language, i.e., the one that conveys one's aspirations, but also to become a part of the daily life and integrated into the networks of social relationships. This is the price to be paid for acquiring an audience and true credibility. African ethnic systems, founded essentially on real or imaginary kinships, leave little room for abstract rational relationships. Direct and emotional "man to man" relationships are preferred. An African likes to be "noticed", that is, to have people take note of him, of his status, which is a way of giving and obtaining respect. In that regard, the use of traditional forms of politeness is fundamental. The problem presented here is one of *participation and communication*.

Identifying the most effective means of diffusing the message.

In African societies, individuals are not equal and do not carry the same social weight. Their statuses are different, defined according to established hierarchies. *This poses the problem of identifying the network, the social circuit to be used in disseminating the message designed to make people aware of their right to development.* In view of the present situation, and since real social revolutions like those which have occurred on other continents have not uprooted local, social structures to the point of completely destroying them, this

factor must be taken into account. *In the present state of affairs*, any action that changes the social structures, the values and mentalities they convey, is obliged to do so from the inside, by designing strategies for bringing about successive changes. In reality, traditional rural societies and values have experienced a certain stability by the sustained use of re-interpretation. As a result, it is impossible not to take the traditional authorities into consideration. They must be involved in the process of change, and it is a mistake to think that the adhesion of youths or elements viewed as "marginal" by the village, are by themselves sufficient. Their dependency is such that they are not the only ones capable of initiating change. *The action aimed at consciousness-raising about the right to development, must be based on dynamic elements, qualified as such by their biological and social status, but it must also consider the position of the traditional authorities in village hierarchies. The total reversal of the power relationship in favor of dynamic elements, to the detriment of traditional hierarchy, can be achieved only within a general political context challenging traditional social structures in every aspect, and this has happened only rarely in Africa.*

- *Taking the group into consideration rather than the individual.*
- *The prevailing reality being the group, and not the individual, action must be taken in that direction. It is an error to believe that in order to change behaviour, one must speak directly to the individuals. Given*

the predominance of inflexible status and traditional role within these groups, it is difficult to reach the individual directly, for he still acts in conformity with customary social models and under the constraints of tradition. It is through the group that the individual members must be changed, and not the opposite. *Action to promote the awareness and exercise of the right to development must first go through the group.*

- *Perceiving the social differentiations and the general social context.*
- *Social situations are not homogeneous. One's social status determines how one perceives development.* Not to consider the existence of classes, and in general neglect the differences between the "haves" and the "have nots" in the rural areas, is to expose oneself to failure. The language and the themes stressed must vary from one society to another. In general, one must ask in whose interests are development efforts undertaken, and to whom must they be addressed. Problems are not the same in the rural world where land is not an issue and where traditional community structures continue to function, as in a society in which, because of the dominant market economy, land is subjected to individual appropriation and social rela-

tionships are based on a rationalisation developed from the use of paid labour.

- *Taking a stand on the restrictions on the basic freedoms of development such as evidenced in the:*

- . Relationships between the State and the rural communities *in the form of:*

- . Hindrances to the self-reliant development of the rural community by means of a generally authoritarian political atmosphere, political institutions such as single or dominant parties, the personalisation of government powers employed with patriarchal tendencies.

- . Excessive State centralization, which tends to take away the prerogatives and personality of rural groups and very often substituting in their place action beneficial to elements outside of the rural world.

- . The technocratic tendency to make decisions and manage community development from a central authority.

- . The incapacity of the State and its politico-administrative institutions to educate the communities and promote self-reliant development.

- . The tendency to encourage the appearance of techno-bureaucratic social classes living

off the State machinery and exploiting the rural inhabitants.

. Internal social inequalities and their causes, particularly:

.Divisions between foodcrops and cash crops;

.Tendencies in certain regions to dispossess the farmers of their means of production and of their land, in particular;

.Questioning traditional community relationships with the land, which becomes an exchange asset;

.Transformation of social relationship: tendency in certain regions to dispossess the farmers of their means of production (introduction of agricultural wage earners) converting the farmer, sometimes on his own land, into a farm laborer. At the same time the birth of a landowning class which profits from the land and from exploitation of the farmer's labour.

.Impossibility for the rural communities to satisfy, through their own labour, the new needs created by the rising standard of living and the penetration of the important market represented by the rural dwellers, by certain aspects of the consumer society, thereby bringing about or perpetuating:

.The rural exodus which deprives the countryside of its young

- .The deterioration of city-country relationship
- .Imbalanced trade
- .Deterioration of the terms of trade, etc.
- .Unequal access to education and culture
- .Illiteracy, which impedes the raising of consciousness and participation
- .Culture of the poor, etc.

Efforts to provide legal assistance in development will be successful and contribute at all levels to the establishment in Africa of forms of self-reliant development, fully controlled by the rural populations, *if it learns how to approach these communities and define the proper strategies.*

THE IMPORTANCE OF LEGAL RESOURCES
IN STRATEGIES FOR THE RURAL POOR IN
SUB-SAHARAN AFRICA

By

James C.N. Paul and Clarence J. Dias

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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 environments 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 the community if "development" is to place within it, but this aid must be provided through processes which respond to local needs and which lead to self-reliant 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, confidences and a willingness to innove 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 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 group-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 group-economic enterprises.

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

1. Why strategies for the rural poor deserve special emphasis in struggles for development in Sub-Sahara Africa in the 80s (a proposition which we believe is now widely supported within development circles, and by the rhetoric of national plans).
2. What kinds of conditions of impoverishment these strategies must address in various African settings.
3. Why the development of self-reliant, participatory organizations of the rural poor are central to these strategies.
4. How legal resources contribute to the formation and effectiveness of these organizations.
5. How legal resources *for the rural poor* can be developed.

Each of these subjects is obviously complex enough to deserve a separate paper--if not more 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, a summary exposition of some concepts, approaches and issues which must be considered in the different countries of the region, 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.

The approaches outlined here are now being discussed seriously in other parts of the Third World--as bases for social action. They are derived from an increasing body of experience: the continuing, organized struggles of more and more impoverished and excluded people in Asia and elsewhere to achieve a greater measure of development, dignity and empowerment. There is also a growing, worldwide network of organizations which seek to support those efforts in more active ways--and a growing literature which portrays the importance of law and legal resources in strategies for the poor. Of course this knowledge has hardly penetrated more orthodox development circles. But a combination of factors--e.g., the deteriorating conditions of the rural poor in so many countrysides, food shortages, the growth of rural unrest, and an increasing concern over the roles of human rights in development processes--may force more attention, over time, to the questions raised here.

II, THE IMPORTANCE OF STRATEGIES FOR THE RURAL POOR IN SUB-SAHARAN AFRICA

There are many reasons why it seems important to examine strategies for the rural poor in a meeting organized to consider the role of law and human rights in rural development in Sub-Saharan Africa. In the first place, there now seems to be wide agreement that the productivity and well-being of peasant smallholders must be a central focus of concern in the countries which comprise this region. Needs to boost deteriorating production of both food and other crops, to arrest massive migrations to urban areas, and to create local markets, domestic industries and more equitable distribution of income and employment opportunity combine to produce this new emphasis. Secondly, for reasons grounded in both pragmatic assessments of the pathologies of development administration in rural areas and in human rights' considerations, it seems vital that peasant smallholders must no longer be perceived as the passive objects of state-directed efforts at rural development, but rather as the active subjects of these efforts.

Several very recent, major reports on development experience in Africa (e.g., the OAU *Lagos Plan of Action*, the World Bank's *Accelerated Development in Sub-Saharan Africa* and documentation developed within the UNDP, FAO and the International Fund for African Development) have marshalled massive amounts of data to depict critical situations confronting most countries--crises

produced by a conjuncture of exogenous shocks, failure of national strategies and flaws in development administration. According to these sources, most countries (notably the poorest) are confronted with:

- dependency on a few primary export commodities and deteriorating terms of trade;
- decline in agricultural production--often of cash crops and almost everywhere of basic food crops necessitating imports of food which seriously exacerbate foreign exchange crises);
- failure of import substitution industrial development strategies (for a variety of reasons, e.g., rising import cost, inefficiencies, lack of markets);
- increasing rates of urban unemployment;
- deteriorating infrastructures for smallholder agriculture;
- recurrent weaknesses in the design or administration of programs of rural and agricultural development.

Of course there are many ways to analyse and address these problems: the situation of most African countries in the world economy is a major subject--and one with important legal implications. But in terms of immediate action, smallholder households and smallholder agriculture--long the victims of benign neglect, or, far worse, discriminations in resource allocation and poli-

tical recognition which have alienated people from their politics--deserve a special priority.

In most countries of the region, agriculture accounts for the largest share of GNP and is the source of employment and income for a large majority of the population. No country can sustain its population with average regional growth rates of food production of less than two-thirds that of population growth, and with declining rates of agricultural export production. Agricultural production is thus fundamental to the economy and welfare of populations throughout Sub-Saharan Africa. In the low-income countries of the region, approximately 80% of the labour force provides for its cash and subsistence needs from agriculture, while in the region as a whole, the proportion is in excess of 70%. It is thus virtually self-evident that raising the output and income of rural workers is central to the development strategy of the region. But the arguments in favour of a strong rural emphasis in future development strategy also lead to an important distinction between growth of agricultural production and improvements in the welfare of the rural poor. An increase in agricultural production, without a relatively even spread of the incomes thus generated, will not maximize employment, reduce migration, or create a substantial new market for industrial output or reduce vulnerability to famine and other disasters.

The majority of rural producers in Sub-Saharan Africa operate largely outside the cash economy. Much of their effort is devoted to meeting their own basic household consumption needs of food, water, fuel and housing. There is, now (at last some might say), a recognition that strengthening these traditional production systems can provide a foundation from which additional marketed surplus can come. Mobilization of the productive potential of the rural poor is surely critical to long-term resolution of national economic problems in the region. Thus, rural strategies in Sub-Saharan Africa must look to small farmers and herders, who are--in increasing numbers-- currently producing only for their own basic household requirements; and the thrust of these strategies must be to support such small farmers and herders in efforts to produce more in the future, either a food crop surplus or an industrial or export crop to generate cash income.

The case for a development strategy in Sub-Saharan Africa that focuses on the rural poor becomes even stronger when considerations of equity and human rights are taken into account. The rural poor have tended disproportionately to bear the burden of national economic vulnerability. They are confronted, today, with conditions which produce increasing impoverishment: the threat of landlessness in some areas-- and declining production of basic staples for subsistence; degraded physical environment, in others; lack of access to essential resources which make increased productivity possible; lack of basic

services which reduce vulnerability to disease and famine; shrinking arenas for participation in decisions which directly affect allocation of resources for their essential needs.

III. SOME CONTEXTS OF RURAL IMPOVERISHMENTS IN SUB-SAHARAN AFRICA

A growing number of surveys of rural conditions in Africa--whether originating from international institutions like the World Bank or from more "radical" quarters--portray the urgency of developing both better understandings of impoverishing conditions in different African environments and of understanding how to develop efforts within communities which will engage the rural poor in collective activities to address the specific conditions which are impoverishing them.

lack of resources to aid production and employment. Most people in Africa work as members of a rural household (or an aggregation of households) which produces crops for subsistence and, usually, some surplus for exchange. The settings for smallholder agriculture vary significantly, depending, for example, on rain and soil conditions and the capacities of land to produce different types of crops and the extent to which commercial crop production dominates the area.

In those communities where land is fertile and valuable as a commercial asset (e.g., because of its location in relation to roads and other infrastructure),

and particularly where both land/population ratios and social stratification are increasing, smallholders may often face the threat of landlessness. Pressed more and more into a commercial economy, smallholders may be unable to provide both enough provisions for their own subsistence and sufficient produce to sell on the market to meet family needs for money for other important necessities, e.g., education or health care. A combination of other factors may aggravate this situation. Government agricultural policies (reflected, e.g. in programs concerned with credit, extension, inputs and research) have (over a long period of time extending from colonial periods) ignored or, worse, discriminated against marginal smallholders in commercial production areas--favoring larger-scale, capitalist units and the production of cash crops. In these settings cooperatives tend to be dominated by affluent farmers working with government supervisory officials, and often openly used to advance their interests. Similarly, government programs and institutions establishment to control the marketing of cash (and some food) crops have provided adverse terms of trade which impact with special severity on small-scale producers (particularly when cash payments for produce purchased by parastatals are delayed because of administrative failure). There is growing evidence that inadequate storage facilities frequently causes losses--often of grain crops; and these losses may be especially severe in settings where more and more land is being used for commercial production.

In the face of these pressures, customary systems of land tenure--providing security of possession to family--give way to new legal forms (e.g., pledges of land; tenancy arrangement), which enable more affluent (and, historically, more favored) farmers to acquire control over the land of less fortunate neighbours. Total food production and food suppliers decrease, and communities become more vulnerable to the threat of famine.

In some of these settings the plight of smallholder families is aggravated by the able-bodied men move to urban areas to seek wage employment--leaving women and the young or old to cope with the tasks of production. In many areas the numbers of households now headed by women has increased dramatically with urban migration. But women often face special constraints--discriminations generated both from within their own communities (e.g., customs limiting rights of possession of land by females) and without (e.g., denial of membership in cooperatives or of access to credit).

Other settings for smallholders agriculture--many of them--may be characterized by a harsher physical environment: less rainfall, land with less capacity to regenerate (and hence the need for larger acreages to allow for long-fallow periods), threats of drought and pests (locusts, vermin). In these environments, infrastructure is less developed, and the level and availability of basic services is frequently low. Often

enough, too, the region may have suffered from ecological degradation--erosion, de-forestation. Environmental legislation may go unenforced. Water and fuel (firewood) are scarce, and programs for producing these resources are often badly administered--where they exist. Again, in these places, government agricultural policies may be geared towards production of a single, often unstable, commercial crop--ignoring food needs and possibilities of encouraging other crops.

In most rural areas the cycle of farming is such that there are periods requiring considerable labour and periods requiring much less. However, opportunities for local employment (which would reduce pressure for migration) are scarce or nonexistent. Government policies and programs concerned with marketing, storage and processing and provision of various services are enforced by public corporations vested with powers to monopolize; or through regulations and licensing requirements restricting entry into trades. These programs, and government credit and extension policies may combine to deter--or impose severe legal restrictions--on local initiatives and prevent, rather than encourage, local efforts to organize group-managed, income-generating activities (e.g., in marketing, storage, or transport of crops; or in local production of essential goods or artisan services).

Lack of access to decision makers, lack of power. 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--e.g., 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 government programs in rural development and agriculture because it is difficult to change the structures through which programs are designed and administered (e.g., to change characteristics of institutions and key actors who wield power over resources and the processes by which allocative decisions are made).

Historically, peasant smallholders in most African states--like their counterparts throughout the third world--have lacked effective access to, or influence within and accountability over institutions which dispose of essential resources--whether the institution be a national planning body or 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 government 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).

Thus the rhetoric of government plans and political executives now 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 groups)

to impose accountability--may frustrate those aspirations. The authors of the Indian Development Plan of 1978 discussed one answer to these problems in terms which could probably apply just as well to many African countries:

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 favour of rural areas with an in-built redistribution 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.

A major problem, then, is how to develop "organized pressure" from within communities to secure goods and services deemed essential by the rural poor. In African settings this problem may be especially formidable for various reasons. For example, grass-roots - focused studies of rural communities, point to factors such as the following:

- the deterioration, usually over a long period of time (rooted in the colonial experience), of local, *endogenous* structures for participation in decisions which affect shared community interests;
- the authoritarian nature of state structure, which have expropriated or replaced endogenous structures of governance, so that those who control resources of power locally are linked to centralized agencies of the state rather than to popular control; and
- the use of techniques of manipulation, co-optation and (where necessary) force to deter or suppress endogenous efforts to mobilize "organized pressure" on state officials and agencies which allocate essential resources.

Whatever the barriers to the mobilization of endogenous organized efforts by the rural poor, they need to be studied and understood, if strategies for the poor are to be developed. For these strategies depend, in turn, on strategies of mobilization and organization which will enable more self-reliant participation in the processes of rural development.

IV. THE IMPORTANCE OF PARTICIPATORY ORGANIZATIONS IN STRATEGIES FOR THE RURAL POOR

The Indian Plan (quoted above) 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 NGOs 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 has collaborated with the Rural Policies' Section of the 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--and then raise some questions about their relevance to African contexts.

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 resources 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 analyse 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 cooperation); 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-roots⁴ organizations in many, varied, third world settings through participatory "research" techniques. He describes the impact of knowledge of law on Asian landless workers:

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.

Thus, knowledge of one's 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 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 African 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 analyse and address shared problems often leads groups to initiate new economic enterprises which in turn help to change impoverishing relationships. In Sri Lanka, smallholder 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 potentialities 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. It 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 despoliation of forested areas in India by commercial firms--a process which could quickly destroy existing forest ecologies and 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 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 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 problem 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.

It may of course be said that the Asian experiences described above have grown out of different social contexts, that in Africa the constraints against mobilization of independent smallholder households are far more formidable.

For example, in many African settings, peasant households may be dispersed; village may sometimes be too small to provide the social base for very strong peasant organizations--while (perhaps) political districts may be lacking in social cohesion. Moreover, it has been argued that, class and ethnic loyalties may tend to segment people, creating potential divisions which may frustrate spontaneous formation of cohesive, new, endogenous groups mobilized around economic and political objectives.

Further, it may be argued that governments in Africa-- and perhaps particularly officials charged with governing local areas--will be hostile to efforts to organize the countryside (unless, at least, the organizers proceed under that discipline of official control). Moreover (it is sometimes argued), authoritarian controls over local affairs are deeply entrenched (state structures having expropriated or corrupted traditional structures of community governance); the power of the police backed up by local courts (which are seen as areas of local government than independent institutions) and the dependency of people on local officials for vital services may be used as strong deterrents against any apparent challengers to existing relationships.

Further, it has sometimes been suggested that crucial resources for mobilization of the rural poor are lacking: organizer-catalysts from the outside and appropriate leaders within communities. Perhaps many persons who can provide these talents are likely to be part of the network of dominant classes or groups with vested interests in the status quo; perhaps, too, it is more difficult for outside "organizers" to bridge social gaps and operate effectively in alien communities. In any event (it may be argued), these organizational resources can only be marshalled by the state, and only deployed effectively under the sponsorship of the state. Yet the dangers of state sponsorship are all too evident: for example, governments will enact laws prescribing, a priori, the legal structure for social associations, they will hire and

control community organizers and co-opt local leaders; the result will be creation of hollow structures devoid of genuine attributes of self-reliance, self-management and participation. In support of this thesis one might cite an extensive literature criticising the experience at efforts to organize community development and rural "animation", or cooperatives, or--though it is surely very difficult to make generalizations here--experience in organizing villages as self-reliant, participatory, political and economic entities.

The propositions asserted above are simply meant to be suggestive--a way of raising questions indicating some of the problems which may need to be considered in developing grass-roots' organizations as components of strategies for the poor in Africa. While these questions are important, it may also be appropriate to note that there is considerable experience reflecting the capacity of rural peoples in Africa to form and use the kinds of groupings which concern us here. For example, one could point to the formation (despite hostile political environments) of endogenous cooperative movements among cotton producers in colonial Tanzania and Mozambique (organizations which, it is said, served as something of a model for Ujamaa concepts); one could point to the formation of very vital, useful associations among the Sidamo people in pre-revolutionary, southern Ethiopia; one could point to the existence of similarly vital, village-level, endogenous cooperatives in some Franco-phone countries. Moreover, many other micro groups--

organized for purposes of mutual aid, social security or savings--are all indicative of people's capacities to develop collective activities which are often governed by complex endogenous "law". Finally, the mobilization and operation of peasant groupings in struggles against colonial regimes may also suggest important lessons.

Whether one opts for state-sponsored efforts to aid processes of mobilization, or for nongovernmental efforts, or some combination--an important principle to be maintained is respect for the *right* of people to form associations of their own choice and subject to their own control. This right has been articulated in important international covenants and declarations, and the "law" they propound is of great significance in developing strategies for the poor in any part of the world. Two examples of this emerging international human rights' law will illustrate the point .

The 1979 FAO-sponsored World Conference on Agrarian Reform and Rural Development adopted this declaration:

Participation of the people in the institutions and systems which govern their lives is a basic human right and also essential for realignment of political power in favour of disadvantaged groups and for social and economic development. Rural development strategies can realize

their full potential only through the motivation, active involvement and organization at the grass-roots' level of rural people with special emphasis on the least advantaged strata, in conceptualizing and designing policies and programmes and in creating administrative, social and economic institutions including cooperative and other voluntary forms of organization for implementing and evaluating them.

Convention 141 of the ILO, adopted by the International Labour Conference of 1975 and ratified by a number of third world countries, calls for legal recognition of a universal right of "rural workers" to form "non-state" rural organizations "of their own choice". The term "rural workers" explicitly includes smallholders and self-employed home workers as well as tenants and landless laborers.

Article 3. 1. All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and to join organizations of their own choosing without previous authorization.

2. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and

voluntary in character and *shall remain free from all interference, coercion or repression.*

3. *The acquisition of legal personality by organizations of rural workers shall not be made subject to conditions of such a character as to restrict the application of the provisions of the preceeding paragraphs of this Article.*

4. *In exercising the rights provided for in this Article, rural workers and their respective organizations, like other persons or organized collectivities shall respect the law of the land.*

5. *The law of the land shall not be such as to impair, not shall it be so applied as to impair, the guarantees provided for in this Article.*

Article 4. *It shall be an objective of national policy concerning rural development to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers.*

Existing laws and modes of administration in many countries stand in sharp contradiction to these rights. Laws which require registration and official

approval of voluntary associations can be used to frustrate formation of "legal" groups. State laws prescribe a fixed structural form for voluntary organizations which seek to enjoy legal capacities to make contracts or own property contradict (or may be used to contradict) the "right of rural workers to form organizations of their own choice"; and they may, in any event, deny values of endogeneity in group formation which are important to alternative approaches to rural development. Penal laws which proscribe vaguely defined activities such as prohibitions against threats of disorder, often are construed to create opportunities to legitimize suppression of group activity which cause no demonstrable harm. Similarly, licensing laws which regulate group activities--such as holding meetings, or engaging in ordinary economic pursuits--are inconsistent with essential premises of alternative development, at least to the extent that licensors are vested with lawless discretion.

Of course--as ILO Convention 141 indicates--the right to maintain organizations of rural workers can be limited by general laws which protect other shared social values--notably the very values which generate the right itself. Thus the right to organize (as perceived by Convention 141) is not a right enabling some to use groups to exploit others within or without the group, not to use groups for corrupt purposes. There are also shared interests in securing unity and peace within communities--including peace between different religious or ethnic/^{groups} and for main-

taining equitable access for all groups to state and parastatal structures. But these interests are *not* hostile to the values which should underlie law geared to people-centered development, and they can be accommodated without impinging on the right of rural workers to organize.

Indeed, if the ends and means of alternative development are taken seriously, the state's role as facilitator--rather than regulator--is what must be stressed. Clearly the intention of Convention 141 was that the state should assume an obligation to enact laws enabling formation of participatory rural organizations: legislation which bestows rights of legal capacity, standing and access to courts and other state bodies. Thus the task is to find ways by which state law can foster, not frustrate, non-state structures developed by people themselves, and foster, not frustrate, creation of national bodies to help these processes.

V. 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 status and power to legitimize exploitative and oppressive transaction. 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) in their 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) 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, 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, however, can aggregate more financial resources and also 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 access to

legal information and to develop capacities 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, etc. This knowledge often helped groups to mobilize and through group direct action seek enforcement of laws which had gone unimplemented: 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, e.g., by assembling convincing exposures of inexcusable inaction.

(b) Organization. Legal resources also seemed important to the formation and maintenance of groups. The endogenous, internal law which gives structure to an organization was 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 reinforced shared interests in cohesion. Similarly, knowledge of external law governing the organization is important, both in securing legal personality needed for access to credit and other services provided by bureaucracy as well as 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 to 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 numbers to press them. 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, not 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.

Neither can impoverishment groups 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 provision of a narrow range of largely court-centered services to individuals (rather than group and collective needs). Usually these programs (created and managed ex parte by elites) "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-reliant*, *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. *Deprofessionalization* 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.

VI DEVELOPING LEGAL RESOURCES FOR PARTICIPATORY ORGANIZATIONS OF THE RURAL POOR

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 rights to propound it; to deliver a narrow range of litigation-centred counseling and provide services on a "reactive" rather than 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.

Developing Legal Resources Within Participatory Organizations of the Rural Poor: 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, for example, through interaction with 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.

Developing Legal Resources for Participatory Organizations of the Rural Poor: 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 center: offices which in turn have access to information found in scarce publications and 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 relative few 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 towards a massive redevelopment project which had been planned with no participation by 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, often 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 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 people to form and use groups.

Developing Legal Resources for Participatory Organizations of the Rural Poor: 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., of smallholder subsistence producers) and of particular groups within them (e.g., women). These activities include:

1. Developing understanding and appreciation of the role of legal resource.

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 as to 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 this 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 the degradations of 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 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 employers 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 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 dealing with relevant programs--can be facilitated and local employers 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 deploy young, law-trained people into communities to work with other providers of tech-

nical 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, e.g., 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 and monitoring these activities.

These projects are simply suggestive. The tasks of developing local 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.

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 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 impoverishment 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. ICJ 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-interests 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.

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.

APPENDIX TO THE PAPER BY

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A P P E N D I X

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 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 in 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 changes 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 co-operative organization, 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 internalized within the government legal aid office.

The same group went on to propose the 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 counselling, the structuring of transactions, and the formation of association; and
5. the organization of the delivery system to include participatory involvement of potential beneficiaries. Such participation to take the form of management of the legal aid scheme, dissemination of information about social welfare schemes and redistri-

bution 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. This aspect, the Sri Lanka approach shares 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, namely, 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 solidarity and the counter-vailing power needed to promote their common interests. In addition to the community facilitator, a legal facilitator was also assigned to each site,

The legal facilitator was recruited from newly-graduate law students who were fully qualified to practice as lawyers. The legal facilitator 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 facilitator was 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, the legal facilitator would also begin to share with the community information about relevant rights, procedures and remedies.

At the end of this three-months 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 projects sites. During this 12-months period, the legal facilitator's 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 then was to assist in implementating 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 its short history, project Sarilakas has witnessed the community facilitators, the legal facilitators and the Bureau of Rural Workers (BRW) develop together into a very strong support 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, for example, in 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. In 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 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 Philippine Loan Guarantee Program and then encouraged the farmers to seek to improve 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 bureaucracy*. Thus, for example,

Sarilakas workers have shifted from tenancy to leasehold status. They have also intervened with the National Irrigation Authority to prevent an increase in the rate of fee charge for irrigation.

4. Sarilakas project workers have also found themselves forced, at times, to play an *advocacy* role, particularly as regards 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 reformer* role. Thus, for example, they have pressed for reform of the law governing recruitment of migrant labor so as to provide better safeguards to the migrant laborer.

6. recently, BRW has 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 Conference in the Sugar Industry that are convened periodically. At this conferences, 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 influences on 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 Sarikalas 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, namely, legal experts whose interests and expertise are directed towards developing legal resources for the rural poor.

FINAL REPORT

A CODESRIA/ICJ seminar on : DEVELOPMENT AND LEGAL RESOURCES was held from 18 to 20 April 1983 in Dakar. Central to this meeting which gathered together members of the legal profession and social scientists were the presentation and discussion of two papers entitled : The importance of the Legal Resources in Strategies for the Rural Poor in Sub-Saharan Africa. prepared by James C.N. PAUL and Clarence J. DIAS on behalf of the International Commission of Jurists and Right to Development and Rural Communities in Sub-Saharan Africa, prepared by Boubacar LY on behalf of CODESRIA. Written from grass-roots experiences in Asia and in Latin America, the first paper described the use of law by rural people through its (law's) involvement in self-reliant, participatory development projects : The document addressed two points : research and social action.

As far as research is concerned, the paper drew attention to the need to develop, within communities, the understanding of the context of their impoverishment, of the way in which law contributesto this impoverishment and how it could be used to enhance their fight against it.

Concerning social action, the suggested legal resources approach is an attempt made by lawyers to take on new roles in order to help rural people to develop communityself-reliance by using legal resources more effectively in their claims and in the advocacy of their interests.

Thus these communities can acquire the material or non-material resources needed for this process of self-reliant, participatory development.

The second paper which was based on the principle of the need for a self-reliant development of rural communities and for their total participation in this process, tried to identify the social obstacles to such development. In order to achieve this goal, the paper first viewed African societies historically as essentially agrarian civilizations. It then proceeded to study in these societies the changes brought about by their contacts with Western civilizations, and finally presented the post-independence situation of African countries, particularly their rural development policies and the changes in rural structures and life. It emphasized the external and internal difficulties of African societies, which tended to make this self-reliant development problematic if not impossible.

The presentation of these two papers prompted various reactions from the participants. They discussed in turn some of the arguments propounded, suggested other interpretations, and enriched the debate by contributions, suggestions and proposals for new lines of research or discussion.

It was a very open debate in which each of the participants was able to express his or her view very frankly on the question under discussion.

This report is an attempt to make a synthesis of the major problems foreseen by the participants.

The contributions can be classified into three general themes : Development, Law, Legal Resources.

DEVELOPMENT

There were very fruitful discussions on the concept of development. Some participants expressed their reservations on the very theme of the seminar and the way in which development problems are approached. They wondered whether the dichotomy between rural and urban people was still justified. Are the poor found only in rural areas ? Development is a general process but the particular emphasis on the rural area, as such, is a line taken by some international institutions such as the World Bank, FAO, etc... Others wondered whether we had not better ponder over the validity of reformist options in the Third World rather than accept them as such, and discuss the very principle of development as conceived today. In spite of these reservations, efforts were made at defining development in the present circumstances. However, it was impossible to reach a consensus on this point in view of the number and the variety of definitions proposed.

Despite these differences in addressing the problems of development, an agreement was reached on the fact that the kind of development suggested by the World Bank raises difficulties because of its orientation.

Hence, the question raised is that of the assistance to be given to rural masses in order to help them determine their own priorities, identify the obstacles to these priorities and define ways and means to carry them out.

In this context, institutions should help carry out action programmes which include priorities identified by rural people themselves. If these were to be taken into consideration, national development plans would be more self-reliant and more likely to lead to participation. Development is running into many obstacles today because it has not adopted this line of action. Indeed, participants strongly stressed the exogenous obstacles rooted in the international context, the endogenous ones related to institutions, political practices (authoritarian and one party systems), administration, sociological and cultural conditions. The participation of rural people becomes problematic in view of these impediments to development. Discussions were opened on this point. Some participants shared the view that small farmers have not been productive because of their non-participation. Others argued on the other hand that the idea of non-productivity of small farmers was erroneous and that they have contributed significantly to primitive capital formation.

Nevertheless every participant agreed that small farmers should be assisted in developing control over their own lives and that the members of the legal profession can play a role in this respect.

L A W

Law can help in some circumstances. First of all what is law ? This was the question raised by a number of participants. Law results from customs prevailing in each country ; therefore it depends upon the civilization. This is why it is difficult to transfer it from one civilization to another. This happened however in Africa in which a foreign, positive, rational law was superimposed on the existing inherited African law. Most of the African countries copied this Western law in its various divisions (for instance : personal rights, family law, banking law, land reform etc...). In spite of the differences between the francophone and the anglophone systems of law, the principle remains the same. Besides, this external law is often used to maintain the status quo ; therefore it is often unable to reflect present society and its aspirations. As noted by some participants, no final conclusion should be drawn from this situation. Law can also be dynamic : it need not be static, it can mould itself to the society and help make changes and progress. With regard to this, it may be a resource which can be used by rural powers, to improve their plight and in general to develop.

LEGAL RESOURCES

Participants asked how members of the legal profession by using relevant law, could help to introduce change.

The main idea proposed was that members of the legal profession should work together with sociologists in order to find out ways of making law accessible to the masses. Rural people should be helped by lawyers to organise themselves on a legal basis. To do this, lawyers should reflect upon ways and means of training para-legals within communities.

After discussing these various points, the seminar made two types of recommendations :

- Law and Legal Resources
- Development.

LAW AND LEGAL RESOURCES

- Need for a new breed of lawyers who will make law accessible to the masses ;
- Reflection upon the ways and means of training para-legals within the communities ;
- Commitment of lawyers to help the process of legal reform at the national level ;
- Organization by lawyers of seminars on the right to development and the role of particular social groups, such as women, in the process of development ;
- Organization of a meeting of members of the legal profession to define the role of the profession in development ;

- Reexamination of the legal assistance provided by law firms. These should not limit themselves to conventional legal aid but should form part of the legal resources to promote self-reliant development and the creation of pressure groups that can help develop public law.

DEVELOPMENT

Collaboration between lawyers and social scientists to analyse the extent to which rural people have been involved in the planning processes.

It is necessary :

- To point out the need for communities to develop the capacity to organize themselves and participate in the process of decision-making and of explaining, implementing and monitoring development policies ;

- To make development policies "self-reliant" through :

- . decentralization ;
- . adaptation of technology ;
- . consideration of specifics ;
- . consideration of local human factors .

- to undertake case studies of self-reliant, grass-roots projects in order to understand how communities create their own political space within the existing political structures ;

- to determine whether bureaucratic channels obstruct or reinforce the process of development ;

- to analyse the role of "institutions for development";

- to urge lawyers and social scientists to participate in the planning of projects financed through loans provided by international organizations or through bilateral agreements in order to minimize the harmful effects of these projects on rural masses ;

- to ensure that lawyers and social scientists are able to participate in the work of technical commissions for development.

APPENDICES

1. AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS
2. PRESENTATION OF THE AFRICAN INSTITUTE FOR HUMAN RIGHTS
3. PRESENTATION OF THE INSTITUTE FOR HUMAN RIGHTS AND PEACE
4. LIST OF PARTICIPANTS

AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

PREAMBULE

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights" ;

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples" ;

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights ;

Taking into consideration the virtues of their historical tradition and the values of African civilizations which should inspire and characterize their reflection on the concept of human and peoples' rights ;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights.

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone ;

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights ;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign

military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion ;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations ;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa ;

HAVE AGREED AS FOLLOWS :

PART I - RIGHTS AND DUTIES

C H A P T E R I

HUMAN AND PEOPLES' RIGHTS

ARTICLE 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and

shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

ARTICLE 3

- 1 - Every individual shall be equal before the law
- 2 - Every individual shall be entitled to equal protection of the law.

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect

of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1 - Every individual shall have the right to have his cause heard. This comprises :

- a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed, by conventions, laws regulations and customs in force ;
- b) the right to be presumed innocent until proved guilty by a competent court or tribunal
- c) the right to defence, including the right to be defended by counsel of his choice ;

d) the right to be tried within a reasonable time by an impartial court or tribunal.

- 2 - No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ARTICLE 9

- 1 - Every individual shall have the right to receive information.
- 2 - Every individual shall have the right to express and disseminate his opinions within the law.

ARTICLE 10

- 1 - Every individual shall have the right to free association provided that he abides by the law.

- 2 - Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

ARTICLE 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ARTICLE 12

- 1 - Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.
- 2 - Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
- 3 - Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

4 - A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5 - The mass expulsion of non-national shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

ARTICLE 13

1 - Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2 - Every citizen shall have the right of equal access to the public service of his country.

3 - Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the

general interest of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

ARTICLE 16

- 1 - Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- 2 - States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ARTICLE 17

- 1 - Every individual shall have the right to education.
- 2 - Every individual may freely, take part in the cultural life of his community.
- 3 - The promotion and protection of moral and traditional values recognized by the community shall be the duty of the State.

ARTICLE 18

- 1 - The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health
- 2 - The State shall have the duty to assist the family which is the custodian of moral and traditional values recognized by the community.
- 3 - The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
- 4 - The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

ARTICLE 19

All peoples shall be equal ; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

- 1 - All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
- 2 - Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
- 3 - All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination be it political, economic or cultural.

ARTICLE 21

- 1 - All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
- 2 - In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

- 3 - The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
- 4 - States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
- 5 - States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their people to fully benefit from the advantages derived from their national resources.

ARTICLE 22

- 1 - All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
- 2 - States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ARTICLE 23

- 1 - All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
- 2 - For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that :
 - a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter ;
 - b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

ARTICLE 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the right and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

ARTICLE 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

C H A P T E R I I

DUTIES

ARTICLE 27

- 1 - Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

- 2 - The right and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty :

- 1) To preserve the harmonious development of the family and to work for the cohesion and respect of the family ; to respect his parents at all times, to maintain them in case of need ;
- 2) To serve his national community by placing his physical and intellectual abilities at its service ,
- 3) Not to compromise the security of the State whose national or resident he is ;
- 4) To preserve and strengthen social and national solidarity, particularly when the latter is

threatened ;

- 5) To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law ;
- 6) To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society ;
- 7) To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society ;
- 8) To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART II - MEASURES OF SAFEGUARD

C H A P T E R I

ESTABLISHMENT AND ORGANIZATION OF THE AFRICAN
COMMISSION ON HUMAN AND PEOPLE'S RIGHTS

ARTICLE 30

An African Commission on Human and People's Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

- 1 - The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and people' rights ; particular consideration being given to persons having legal experience.
- 2 - The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same State.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

ARTICLE 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the State parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

ARTICLE 35

- 1 - The Secretary General of the Organization of African Unity shall invite States parties to the present Charter to nominate candidates at least four months before the elections.
- 2 - The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it

to the Heads of State and Government at least one month before the elections.

ARTICLE 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

ARTICLE 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 39

- 1 - In case of death or resignation of a member of the Commission, the Chairman of the Commission

shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from date on which the resignation takes effect,

- 2 - If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity who shall then declare the seat vacant.
- 3 - In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the members whose seat became vacant for the remaining period of his term unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also

provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the cost of the staff and services.

ARTICLE 42

- 1 - The Commission shall elect its Chairman and Vice Chairman for a two year period. They shall be eligible for re-election.
- 2 - The Commission shall lay down its rules of procedure.
- 3 - Seven members shall form the quorum.
- 4 - In case of an equality of votes, the Chairman shall have a casting vote.
- 5 - The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

ARTICLE 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided

for in the General Convention on the privileges and immunities of the Organization of African Unity.

ARTICLE 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

C H A P T E R I I

MANDATE OF THE COMMISSION

ARTICLE 45

The functions of the Commission shall be :

- 1) To promote Human and People's Rights and in particular :
 - a) To collect documents, undertake studies and researchs on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
 - b) to formulate and lay down, principles and rules

aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

- c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- 2) Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
- 3) Interpret all the provisions of the present Charter at the request of a State Party, as an institution of the OAU or African organization recognized by the OAU.
- 4) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Governments.

CHAPTER III

PROCEDURE OF THE COMMISSION

ARTICLE 46

The Commission may resort to any appropriate method of investigation ; it may hear from the Secretary General

of the Organization of African Unity or any other person capable of enlightening it.

COMMUNICATION FROM STATES

ARTICLE 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State have the right

to submit the matter to the Commission through the Chairman and shall notify the other State involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

- 1 - The Commission may ask the States concerned to provide it with all relevant information.
- 2 - When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representations.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Governments.

ARTICLE 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Governments such recommendations as it deems useful.

ARTICLE 54

The Commission shall submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities.

OTHER COMMUNICATIONS

ARTICLE 55

- 1 - Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the Commission.
- 2 - A communication shall be considered by the Commission if a simple majority of its members so decide.

ARTICLE 56

Communications relating to human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they :

- 1) Indicate their authors even if the latter request anonymity ;
- 2) Are compatible with the Charter of the Organization of African Unity or with the present Charter ;

- 3) Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity ;
- 4) Are not based exclusively on news disseminated through the mass media ;
- 5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged ;
- 6) Are submitted within a reasonable period from the time local remedies are exhausted or from date the Commission is seized of the matter, and
- 7) Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

ARTICLE 57

Prior to any consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

ARTICLE 58

- 1 - When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Governments to these special cases.
- 2 - The Assembly of Heads of State and Governments may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
- 3 - A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Governments who may request an in-depth study.

ARTICLE 59

- 1 - All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of State and Governments shall otherwise decide.

- 2 - However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Governments.
- 3 - The report on the activities of the commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Governments.

CHAPTER IV - APPLICABLE PRINCIPLES

ARTICLE 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the parties to the present Charter are members.

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

ARTICLE 62

Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the right and freedoms recognized and guaranteed by the present Charter..

ARTICLE 63

- 1 - The present Charter shall be open to signature, ratification or adherence of the member states of the Organization of African Unity.
- 2 - The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.

- 3 - The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member states of the Organization of African Unity.

PART III - GENERAL PROVISIONS

ARTICLE 64

- 1 - After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
- 2 - The Secretary General of the Organizations of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the State that will ratify or adhere to the present Charter, after its coming into force, the Charter shall take effect three months after the date of

the deposit by that State of its instruments of ratification or adherence.

ARTICLE 66

Special protocole or agreements may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Governments may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

THE AFRICAN INSTITUTE OF HUMAN RIGHTS

Background

The African Institute of Human Rights was founded on January 16, 1979 as a result of a long-term successful process of organization of African Bar Associations, of barristers and judges. This process started in 1977. Several meetings were organized, primarily by the Dakar Bar Association and its leader Maître Moustapha Seck, during which many specialists in Human Rights came together. These meetings led to the establishment of the Institut de Formation en Droits de l'Homme (an Institute of the Senegalese Bar Association for training in Human Rights). Other meetings including a UNESCO meeting on "The Teaching of Human Rights", held on September 12, 1978 in Vienna and the foundation of the Institut de Formation en Droits de l'Homme by the leader of the Paris Bar Association Mr. Pettiti, reinforced the idea of creating an African Institute of Human Rights. The international conference of French-speaking Bar Associations which was organized by the Senegalese Bar Association from the 13th to the 17th of January 1979 in Dakar finally established the African Institute of Human Rights, and Maître Moustapha Seck was mandated to expand the Institute to include the whole of Africa.

Objectives

The objectives of the Institute are as follows:

- 1) to strengthen solidarity and cooperation among African Lawyers in general, Barristers and Judges in particular, in order to disseminate, teach, defend basic freedoms and human rights.

- 2) to make the greatest number of people understand the nature, the meaning and the scope of Human Rights through every adequate means of dissemination.
- 3) to develop a specialized training in Human Rights for occupations involving and lawyers oriented toward the teaching, the defense and the safeguard of these rights.
- 4) to undertake thorough research on issues raised by the violation of Human Rights.

Membership

The Institute is made of full members and of associate members.

Full membership is granted to any Bar Association, in African Independent State, which agrees to and approves of this Charter.

Associate membership is granted to :

- 1) Barristers belonging to a non-member Bar Association, who apply for membership;
- 2) Judges and Associations for legal training that agree to and approve of this Charter;
- 3) Faculty members of university Law and Economics Departments, who agree to and approve of this Charter.

A committee of sponsors is created. Membership to this committee is granted, in an ad hoc meeting, by the board of Directors and the Science Committee to any individual or any organization having rendered outstanding services to Human Rights or to the Institute.

Administration

The Institute is headed by a Board of Directors, composed of 10 members who are elected, in a secret ballot, by the General Assembly for a three year term.

The activities of the Institute are led by a Science Council whose procedure of appointment is provided for in the Rules of Procedures.

The Board of Directors (B.D.) and the Science Committee (S.C.) jointly elect a bureau made of:

- 1 President
- 2 Vice-Presidents 1 for the B.D. and 1 for the S.C
- 2 Secretaries 1 for the B.D. and 1 for the S.C
- 1 Chief Treasurer.

Members of the Board of Directors and of the Bureau may be re-elected.

Members of the Board of Directors or of the Science Committee work without pay.

A study Director will be appointed among members of the Science Committee.

Modalities for the payment of salaries will be set by the Rules of Procedures.

Operation

The General Assembly includes both full members and associate members. It meets at least once a year and whenever it is convened by the Board of Directors or at the request of at least one third (1/3) of its members.

Its agenda is determined by the Bureau.

The General Assembly considers reports on the management of the Bureau and both on the ethical position and the financial statement of the Institute.

It approves the accounts of the ending financial year votes the budget of the following financial year and considers the renewal of members of the Board of Directors.

It appoints an Auditing Committee made of six members who neither belong to the Board of Directors nor to the Science Committee and who are in charge of checking the accounts of the ending financial year.

Resolutions are passed by the majority of votes cast by members who are present or who are represented in pursuance of a power conferred in the Assembly.

Decisions can only be valid when 1/4 of the members are present. In the absence of a quorum the Assembly convenes a month later and can validly pass decisions, whatever the number of members present.

Resources

The resources of the Institute come from :

- 1) Member subscriptions
- 2) Grants by states, public bodies and institutions
- 3) Donations and legacies
- 4) Proceeds from its personal property or publications.

Activities

Since its establishment, the Institute has participated in approximately twenty conferences and symposiums, at the international level. It is also fully integrated into the system of non-governmental organizations.

In may 1980, the Institute backed up and organized a conference convened for the formation of the Inter-African Union of Lawyers. The Institute has been working since 1979 toward the realization of the African Charter.

The programme of the Institute include;

- in 1984, the issue of a handbook on Human Rights, which can be understood by the greatest number of citizens who are the actual users of such handbooks.
- in 1985, the Institute will back up the organization of the second world conference on Human Rights. This conference will bring together approximately six hundred militants on Human Rights from all over the World.

- the Institute will publish a quarterly newsletter on Human Rights, called La Lettre de l'Institut in the near future.

INSTITUTE OF HUMAN RIGHTS AND PEACE

Université de Dakar

Spearheading the African struggle for Human Rights, Senegal has actively contributed to the preparation and adoption of the African Charter of Human and People's Rights. In keeping with its people's tradition of dialogue and tolerance, it has just set up a continentally oriented university institute in Dakar, the Institut des Droits de l'Homme et de la Paix whose major tasks are as follows:

- Teaching Human Rights;
- Training and furthering the education in human rights of judges, barristers, professors, legal advisers, diplomats, medical doctors, members of such national associations as the Red Cross and the Red Crescent, armed forces, para-military forces, policy-makers and such public opinion shapers as unionists, journalists, politicians, teachers, religious communities, members of various associations and organizations;
- Carrying out activities of research, documentation and dissemination of information on Human Rights and on Peace;
- Organizing national and international conferences and seminars on Human Rights and on Peace.

The Institute carries out tasks in association or in collaboration with:

- the Faculty of Medecine and Pharmacy, the Faculty of Arts and Humanities and the Faculty of Science of the Université de Dakar;

- the Faculties, Schools or Institutes of Law and Economics, of Medicine and Pharmacy, of Arts and Humanities, of Science of African universities;

- authorities and institutions in charge of Human Rights and Peace issues in Senegal and in other African states;

- inter-African organizations, more specifically the Economic Community of West Africa (CEAO), the Economic Community of West African States (ECOWAS), the Organization of African Unity (OAU);

- international organizations, namely, the United Nations Organization (UNO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Labour Organization (ILO), the United Nations High Commission for Refugees, the Red Cross and related associations, relevant Non-Governmental Organizations;

- the other training and research institutes on Human Rights and on Peace.

The organs of the Institute are:

the Governing Body, the Science Committee and the Director.

The governing body which is presided over by the Vice-Chancellor, Chairman of the Assembly of the university consists of:

- a representative of the President of the Republic;

- a representative of the Prime Minister;
- a representative of the Minister of Higher Education;
- a representative of the Minister of Foreign Affairs;
- a representative of the Minister of the Interior;
- a representative of the Minister of Armed Forces;
- a representative of the Minister of Public Health;
- a representative of the Minister of Justice;
- a representative of the Minister of Planning and Cooperation;
- a representative of the Minister of Scientific and technical research;
- a representative of the Minister of Information;
- a representative of the Minister of Culture;
- the President of the Supreme Court or his representative;
- the Dean of the Faculty of Law and Economics;
- the Dean of the Faculty of Medecine and Pharmacy;
- the Dean of the Faculty of Arts and Humanities;
- the Dean of the Faculty of Science;
- the Director of the Institut Fondamental d'Afrique Noire;
- the President of the Bar;
- the President of the Senegalese Human Rights committee;

- the President of the Senegalese Red Cross;
- two faculty members and two members of the Institute, elected by the Assembly of their staff members;
- three student and trainee delegates elected in conformity with the conditions enforced in institutions with similar status;
- one delegate of each of the following organizations:

the Economic Community of West Africa
the Economic Community of West African States
the Organization of African Unity
the United Nations Organization
the United Nations Educational, Scientific and Cultural Organization
the International Labour Organization
the World Health Organization.

So far, the Institute has organized two seminars on the following themes:

- The Place of Human Rights in the Cultural Traditions of Africa in Saint Louis (Senegal), in March 1983.
- The Teaching of Human Rights in Africa, in Dakar, (Senegal) from 9th to 12th December 1983.

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