

CONCLUSIONS
AND
RECOMMENDATIONS

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

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INTERNATIONAL COMMISSION OF JURISTS

Conclusions and Recommendations

Introduction

The International Commission of Jurists in collaboration with the Rajpipla Social Service Society, India, organised in December 1987, a South-Asian Seminar on Legal Services for the Rural Poor and Other Disadvantaged Groups in South Asia.

The purpose of the seminar was to:

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

Participants who came from Bangladesh, India, Nepal, Pakistan and Sri Lanka included lawyers working with the disadvantaged, law teachers and students and representatives of grass-roots organisations. In addition to the South-Asian participants there were also observers from the Philippines and Thailand.

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

The seminar discussed the role of legal activists and social activists in helping the poor, and the need for cooperation between them. The legal activists are lawyers who mainly use law as a resource to help the disadvantaged by conducting legal awareness programmes, by defending the rights of

the disadvantaged in negotiations with the authorities and, where necessary, in court, and by working for law reforms. The social activists are those who work directly with disadvantaged groups at grass-roots level in different fields of development, and help them to organise themselves through a variety of programmes.

In the Conclusions and Recommendations of the seminar the word 'activists' refers to both legal and social activists working together.

Conclusions

1. States through their development policies and programmes have tended to strengthen the traditional inequalities in their societies, and have created a majority of disadvantaged people as a result of inequitable allocation of resources and adherence to development plans and policies that benefit a few at the expense of others.

2. Among other projects, the building of large dams in the name of development has created disadvantaged groups when the projects involve the expropriation of survival resources of the tribals and others in the project area resulting in large scale displacement of such people without adequate compensation to cover their resettlement needs.

The Narmada dam project currently under construction in India is a good example of such a project.

3. The environmental damage and the ecological impact of dam projects affect not only the local people but a much larger section of the population. For example, the flooding of low-lying areas may even affect people in neighbouring countries as has happened in Bangladesh as a result of dams built in India.

4. In addition to the development policies and programmes of the governments, state managed cultural and social changes have also affected disadvantaged groups. The rise of religious fundamentalism when linked to policies pursued by governments has contributed to the creation of new disadvantaged groups. The inability of states to deal with diverse ethnic groups, and the escalation of ethnic conflicts, linked to state action or inaction, has also created disadvantaged groups.

5. The disadvantaged groups in the region can be broadly categorised as coming under the bonded and exploited labour sector, the high risk sector and

the threatened sector. Women are a good example of the bonded and exploited labour sector. The workers in hazardous industries such as the ex-employees of the Union Carbide Plant at Bhopal and workers in nuclear power plants come under the high risk sector. The tribal women working in the Narmada dam project which when completed will wipe out their entire means of existence also come under this sector, as do the women who are forced to sell their bodies in order to survive. Lastly, the threatened sector consists of disadvantaged groups whom the state deems expendable and about whom it takes unilateral decisions, e.g. the tribals affected by the Narmada dam project. The groups belonging to this category are the most disadvantage and most vulnerable.

6. State repression is aided and abetted by,

- institutions of Law and Order and this includes the Armed Forces, police and para-Military forces or vigilantes;
- the bureaucracy or administrative system;
- the judicial and legal system;
- the professions, especially the legal profession;
- the legislature;
- the press and visual media; and
- local elites including the political power bases at the local level.

7. Among the ways in which state action or inaction results in repression of disadvantaged sectors are:

- failure of states to build a common nation including all the ethnic and other minorities;
- violation of the rights of ethnic and other minorities;
- control over natural resources;
- state controlled violence and misuse and abuse of lawful authority;
- non-performance of positive obligations imposed by law and flouting of orders and directions made by courts;
- selective enforcement of penal laws against social activists and non-enforcement of such laws against social elites;
- political process that excludes disadvantaged groups;
- exclusion or secrecy whereby disadvantaged groups are not consulted on projects affecting them so that the negative effects of such projects becomes a fait accompli; and
- control over the media and information technology.

8. In the countries of South-Asia, disadvantaged groups, in addition to state repression, also face increasing lawlessness of centres of private economic power. Examples are the atrocities committed by dominant castes and communities against minority castes and communities, and the severe repression of landless labourers by landed interests. States often connive at or even support such violence by dominant groups against disadvantaged groups.

Recommendations

Role of Legal and Social Activists

9. Legal activists, instead of treating law as a body of rigid rules, should view it as a means of helping to bring about social change. They need to undertake a deeper analysis of the potentialities of rights enshrined in constitutions, human rights laws, norms and values.

10. Legal activists, in close collaboration with social scientists and other experts, should critically review government policies and their impact on the rights of the rural poor and other disadvantaged groups, initiate public debate on such policies, and if needed take preemptive judicial action. They should also undertake public interest and social action litigation on matters of public importance.

11. To appreciate and understand the problems faced by disadvantaged groups, legal activists should work in close collaboration with social activists working with disadvantaged groups who are familiar with the effect of laws on the disadvantaged. Together they should strive to establish accountability of state institutions so as to limit their power over disadvantaged groups.

Accountability of State Institutions and their Disempowerment

12. Power tends to be monopolised by the state and needs to be redistributed. Inadequate mechanisms to monitor the use of power at different levels increases the risk of abuse of power. Activists should seek to monitor the use of state power and obtain redress for victims of abuse.

13. Devolution and decentralisation of power is also necessary to facilitate

effective participation of the people. As part of the strategy to combat all forms of state repression conscious and continuous efforts should be made by activists to mobilize disadvantaged groups on their problems as well as to effect structural changes.

14. Local officials are the most feared persons in the rural areas and need to be held accountable for their actions. There should be remedies against officials who abuse power. These may be by way of injunctions, or civil or criminal proceedings. Resort also can be had to other methods to restrain local officials, such as demonstrations and public protest meetings. Activists could also devise means of local dispute settlement.

15. The key to accountability is access to information. Law making should be an open process. In order to seek more information on the implications of a draft law, legal activists should campaign for a reasonable time to be given before a law is passed by the parliament, and the groups who are to be affected by that law should be consulted and activists should campaign for such consultation to take place. In the law making process those bills that may affect a person's quality of life, dignity, livelihood, or liberty should be given adequate time for discussion and consideration by the public and should not be treated as urgent bills.

16. Activists should also study the implications of draft laws and suggest necessary amendments to the legislature and executive. Also, they can together draft new laws. In the Philippines, organisations representing various disadvantaged groups cooperate with an umbrella organisation which facilitates the preparation by legal and social activists of alternative draft laws to those prepared by the executive. The activists then campaign for adoption of their proposed draft by the law-makers.

17 Reports should be published on the human and environmental consequences of urban planning, industrial and development projects prior to their being approved. Such reports should be detailed and identify both the intended beneficiaries as well as those who would be adversely affected by projects. There should also be regulations governing the re-location of any population to be displaced, with provisions for re-employment and compensation. Donor agencies granting aid for a project should insist on the preparation of such reports by the government receiving the aid. An insurance fund against future hazards of a particular project should be set up jointly by the government and donor agencies.

18. Activists should press their governments not to grant exemptions to multinational corporations (MNCs) with regard to payment of minimum wages, compensation for injuries and other labour and social security laws. In particular there should not be any distinction between free trade zones and non free trade zones. The MNCs should declare their intended length of operation in a country and while winding up should not discriminate between workers and executives in terms of severance payments and other benefits. Regional inter-governmental bodies should formulate common principles concerning the concessions to be given to MNCs and thereby strengthen their bargaining position and reduce competition among them.

19. The high level of militarisation in the countries of the region has contributed to the increasing use of the armed forces in ordinary law enforcement activities. The activists should create public opinion against increasing militarisation and the propaganda of state authorities that seek to justify increased use of arbitrary power and curtailment of rights of the people to meet an alleged external threat.

20. The magistrates and lower judiciary should be made conscious of their responsibility towards persons in custody and verify at every stage the need to continue their detention, as well as to apply the rules concerning the rights of persons in custody and on remand. On all these matters the higher judiciary should exercise strict supervision over the lower judiciary.

21. Judicial investigation should be compulsory on complaints of police misconduct or abuse of power. Any police official found responsible for such behaviour should be personally liable, and compensatory remedies should be available. Judicial investigation of complaints of police misconduct or abuse of power should be obligatory.

22. To prevent abuses in prisons and other custodial places,

- activists should be given access to prisons and they should form a committee consisting of people from all sections of the population to undertake prison visits;
- the prison rules and jail manuals should be reviewed to bring them into conformity with international norms for the treatment of prisoners, and activists should make recommendations in the reformulation of prison rules and jail manuals; and
- activists should evolve programmes to rehabilitate women who have been isolated and abandoned as a result of imprisonment.

Empowerment of Disadvantaged Groups

23. Disadvantaged groups must be organised if they are to be empowered. Wherever possibilities for empowerment exist they should be pursued, and where they do not exist they should be created. Activists should help disadvantaged groups to form their own organisations and work for legal recognition without state control. Activists should create public opinion against laws that impinge on their rights, including the right to organise.

Activists should draw up models for conferring legal status upon organisations of the disadvantaged for the purpose of developing cooperative economic activities.

24. Activists should help disadvantaged groups to participate in the law making process. For example disadvantaged groups such as fishermen and peasants with the help of legal activists could prepare a document outlining needed reforms to laws that affect them.

25. In addition to rights awareness programmes carried out by activists there is also a need to focus on corresponding duties and obligations as well as to identify the state organs from which respective rights could be demanded.

26. Activists should undertake dynamic programmes for imparting legal awareness to the rural poor and other disadvantaged groups. Some of the methods that could be used are:

- circulation of written material in local languages e.g. booklets, leaflets;
- cultural programmes like plays, Mushairas;
- publishing articles in the local press;
- visual presentation e.g. posters, comics;
- audio-visual presentation;
- meetings, seminars and discussions; and
- para-legal training

In addition to regular awareness programmes, special campaigns and demonstrations could be organised on specific issues that affect a particular disadvantaged group in cooperation with the group.

Training of Para-Legals

27. It is essential that para-legal training programmes be provided for social activists and for members of disadvantaged groups since it is not possible for

trained lawyers to be involved continuously in legal dissemination programmes in rural areas.

28. Legal activists should design para-legal training programmes in consultation with and according to the requirements of social action groups working with the disadvantaged and provide training for persons recommended by them.

29. Prior to providing basic legal information to para-legals who will be working with a particular disadvantaged community, legal activists should acquaint themselves with the situation and problems faced by that community.

30. The basic legal information provided to para-legals should not be confined to existing rights, but should include both the potential and limitations of law, as well as the interaction between law and prevalent social conditions.

31. Para-legal training should also include training in alternative means of dispute settlement.

32. Para-legal training should clearly demarcate and specify the use and role of law and legal aid and legal resources programmes. This would enable para-legals to work with existing laws as well as to change laws and not give disadvantaged groups unnecessary hopes by confusing law with the aspirational goals of the programme.

33. Social action groups should continuously assess and evaluate the performance of para-legals to ensure that they are carrying out their functions properly.

Use of Customary Law and Courts

34. Activists, while dealing with the problems of the rural poor and other disadvantaged groups, should take note of indigenous methods of dispute settlement which may be socially effective and expeditious, as opposed to the formal procedures which have the problems of accessibility and delay, and at times are socially ineffective. However, indigenous methods would only be effective in disputes between members of the same or similar groups. Also, they should not be resorted to where traditional methods offend established

human rights principles. There is a need to review continuously those aspects of customary law that have become part of the formal legal system, so as to ensure that they are in conformity with international human rights norms.

Disadvantaged groups could form their own 'peoples' courts' to resolve their problems without seeking redress in formal courts. However, there is a need to safeguard against corruption and other irregularities that afflict such courts and also to be aware of any customary bias against women.

The Legal Profession

35. Lawyers willing to assist in these programmes fall into three categories:

- lawyers who are fully committed to social action programmes and who are willing to work full-time with a social action group;
- lawyers who are committed to the ideals of social action and who are willing to offer their services whenever required by a social action group; and
- lawyers who are willing to render assistance in exceptional cases.

36. The tradition and culture of the legal profession, its economic benefits, and the lack of social recognition and physical and economic insecurity faced by lawyers involved in social action very often discourage large numbers of lawyers from assisting disadvantaged groups.

37. The following measures could be undertaken to attract more lawyers to work with disadvantaged groups,

- social action groups either individually or jointly providing financial support to lawyers willing to work with disadvantaged groups;
- lawyers joining and conducting their professional practice as a group so as to pool their limited time and resources to help disadvantaged groups;
- legal aid programmes raising substantial resources to acquire the services of professional lawyers,
- use of media to generate adequate social recognition of lawyers engaged in legal services programmes for disadvantaged groups;
- restructuring legal education curricula to include courses in allied social sciences, and to place law in the socio-economic context, so as to enable prospective lawyers and judges to develop a socially oriented and multi-disciplinary approach to law; and

- organising 'socio-legal' clinics and field studies as part of the curriculum in law schools in order to expose law students to the actual working of law and to the multi-dimensional aspect of law.

The Judiciary

38. In keeping with the socio-economic realities of the region there is a need for judges to develop an approach oriented towards the rural poor and other disadvantaged groups.
39. The concept of judicial isolation needs to be reviewed. In practice judicial isolation tends to prevent judges from understanding the problems of disadvantaged groups and affects the dispensation of justice.
40. Judges in the region very often rely on precedents, particularly foreign precedents, which may not always be relevant in the given socio-economic context.
41. Continuing legal education should be provided for judges at all levels.
42. Laws concerning contempt of court need to be revised and frank discussion of legal issues and judicial decisions should be allowed. Judges like any other public official should thus be accountable for their performance.

Public Interest Litigation

43. Public interest litigation is a court proceeding initiated by an individual or organisation on behalf of a person or more often a class of persons who by reason of their disadvantaged position are unable to approach the court.

Public interest litigation is a useful and important development in providing legal services to the rural poor and other disadvantaged groups. However, public interest litigation should be used discreetly and imaginatively taking into consideration that, if improperly used, it could be counter-productive and that it could also be used by privileged groups to deprive the disadvantaged of their rights. As far as possible public interest litigation should be undertaken after proper consultation with concerned disadvantaged groups, experts and activists working with similar groups in other parts of the country.

Media and Legal Activism

44. Governments are often inclined to use their control over the media to silence criticism and opposition to their policies and programmes. Since legal and social activism involves criticising and confronting the government's policies and programmes, it is essential to develop alternative media to present such views. Legal and social activists should use alternative media to expose draconian laws, create public indictment of false propaganda by state and private media and strengthen the information network among activists. Legal activists should develop legal journalism to create awareness of the impact of law on disadvantaged groups and to highlight instances where law has been used effectively by disadvantaged groups to claim their rights.

Research and International and Regional Coordination

45. There is a lack of information among activists in the region concerning developments in law and other related fields taking place in different countries of the region. To remedy this situation the following steps could be undertaken:

- research on law as a means for social development to understand the developments taking place in the field of law in different countries of the region;
- research on the implementation of welfare legislation in different countries of the region and exchanging the findings of such research among activists in the region;
- increasing the flow of information between groups in the region by using the resources of existing organisations or by establishing a centre for collecting and disseminating information;
- in each country, an activists' group should assume responsibility for collecting and disseminating information to other countries, as well as disseminating within the country information received from other countries; and
- greater contact and exchange between groups in the region through exchange visits, internships, meetings and seminars.