Alternative Development: A Legal Prospectus

James C.N. Paul
Clarence J. Dias

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The generation of new kinds of "grass-roots" organizations is now widely believed to be an essential first step in the evolution of new approaches to development which emphasize human needs and "human rights." These "non-state" organizations can also become--it is assumed--vehicles through which millions of people can gain capacities for self-reliant collective action and power to change economic and political relations which perpetuate impoverishment.

To some these beliefs may seem utopian: it is quite easy to be cynical and certainly appropriate to be cautious about the possibilities. But the aspirations are grounded in values which, to many, seem to express the very essence of "development" if that idea is taken seriously; and the assumptions are grounded in some empirical reality. Moreover, it may be worth emphasizing again, here, that "alternative development" is not a holistic theory of social change; rather the term denotes a variety of interrelated strategies grounded in basic principles such as participation and self-reliance. To a considerable extent these principles carry significant legal implications. These have hardly yet been discussed, and the omission is serious because a focus on legal issues raised by "alternative development" is a useful way of examining concrete problems which illustrate both difficulties and possibilities of developing these strategies. The agenda is large and complex. Only some topics are explored here. We address two interrelated areas of concern.

1. The need to create legal environments which will facilitate the emergence of "non-state" rural organizations of the poor as vehicles for community empowerment and development.

2. The need to create "legal resources" (i.e., knowledge and skills) which can be used by local groups and others working in their behalf to advance shared interests.
I. Legal Environments

Despite neglect or repression, in much of the third world, groups --varying in size, function, form and relationship with the state--have continued to be part of the rural scene. Some are small and rooted in tradition; some simply provide organizational forms for mutual self-help, savings or construction of desired community facilities; some have evolved into vehicles of protest; some are in overt opposition to governments of the day. Increasing disillusionment with conventional strategies of development administration has stimulated increasing interest in understanding why and how these groups have evolved--or why they have languished and failed; how they can further develop if they are given more breathing space by state law and administrators, more resources from outside sympathizers. A division of the ILO has initiated a series of interesting studies --histories of mobilization and collective efforts by the rural poor, in different settings and different times, to confront conditions of impoverishment, histories of success and failure. A number of international and regional nongovernmental organizations have become more directly involved in providing backup services for rural groups. In some countries officials and agencies sympathetic to needs for rural mobilization are seeking ways to help develop popular organizations by providing them with organizational resources. (Project Sarilakas provides an interesting example of this kind of action by both national and international agencies.) In a number of countries, rural unrest is becoming more visible. Increasing rural mobilization may lead to increasing conflict in one form or another. States will be forced to respond to this phenomenon. Law and human rights will be implicated in these struggles.

As several papers in this symposium show, a large empirical literature discusses the psychic and other benefits which autonomous participatory groups can often bring to rural peoples--in terms of generating functional knowledge and civic capacity and willingness to take political and economic risks--the foundations for more sophisticated efforts to initiate collective, self-reliant activities. There is also a growing body of experience to show that land reform or credit or other service-providing programs can be more successful--in terms of human needs criteria--when organized through "joint venture" arrangements between state and non-state institutions. Several reports in this collection show how this has happened. These structures can often be seen as transitional institutions which may, in the future, assume further functions and powers in the local political economy of development.

Many social factors seem to contribute to success or failure of efforts to form participatory groups and to engage in collective action to pursue shared interests. There is much to be learned by those who seek to help
these complex processes. But, legal factors are also important. The kind of institution we are here discussing must originate as a result of the voluntary, collective action of its members. The powers, functions and tasks it assumes must be developed by endogenous group norms. The roles of particular actors—organizers, leaders and others endowed with special functions—must be determined by the group, and these actors must be accountable in the first instance to the group itself, not, to some external public authority. The processes by which decisions are made must be participatory, but again the norms to achieve this result must be derived from the group. Experience suggests that the capacity to develop this kind of "non-state," organic group law is probably essential to maintenance of a group over any extended period.6

The task of state law is to allow this to happen. That can only be done by recognizing the essential rights of people to form organizations and use them to pursue economic and political purposes.

1. Rights to Form Non-State Organizations. Convention 141 of the ILO, adopted by the International Labour Conference of 1975 and now 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" includes smallholders, tenants, laborers, sharecroppers and self-employed home workers. The convention can serve as a model for the kind of legal environment we are talking about. It declares (with emphasis added):

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 preceding 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, nor shall it be so applied as to impair, the guarantees provided for in this Article.

A "recommendation" enacted by the same conference, in effect, sets out some assumptions explaining the intended scope of these guarantees: rural organizations are envisioned as vehicles of "defense" of the "interests of rural workers," and as vehicles to enable more effective "participation" in state structures--not only participation in "the formulation" and "implementation" of "programs of rural development" (at "all stages"), but also in the "evaluation" and determination of accountability of those who manage them. Further, rural worker organizations are to be vehicles for direct access to goods and services controlled by the state; they are to be vehicles for initiating local, public works and organizing new kinds of group-managed economic activities.7

Convention 141 is a counterpart of the much celebrated Convention 87 which deals with employees. A great deal of "law" has been developed by the ILO through specific interpretations of 87--interpretations requested when workers' organizations have alleged that particular laws or practices violate their rights.8 Most of this jurisprudence can be carried over by analogy to 141, and Convention 141, like 87, could become something of an international Magna Carta for rural workers--if they can become empowered to use it in the same way that unions have used Convention 87 over the years.

Of course, as Convention 141 indicates, the right to maintain organizations of rural workers can be limited by general laws which protect other shared social values of importance to rural people--notably the very values which make the right to organize beneficial to people. Thus the right to organize is not a right enabling some to use groups to exploit or repress others within or without the group, nor to use groups for corrupt purposes. There are also shared interests in securing peace within communities--including peace between different religious or ethnic groups, and shared interests in maintaining 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 "alternative" development, and they can be accommodated without impinging on the rights of rural workers to form organizations.

Indeed, the state's role as facilitator of these rights--rather than regulator--is what must be stressed. Clearly the intention of Convention 141 was that the state should assume affirmative obligations to foster, not frustrate, non-state structures developed by people themselves.
Several reports in this collection show how state agencies can be formed to provide organizers, information and related resources directly to rural communities. The importance of that role is now widely recognized. A 1978 workshop of "senior agricultural administrators from developing countries," sponsored by the Overseas Development Institute, subscribed with unanimity to this pronouncement: 9

We believe that a radical revision of both strategy and tactics are needed.... There can indeed be dynamic government action, in investment in the rural environment and infrastructure, so that the field of action can become one in which human energy can be more fruitfully employed.... But final achievement depends upon the initiative and self-organization of the poorer people themselves and the demands which they make upon government. It is the business of government and administration so to cast their policies and their contacts with the rural population that this initiative can be far more widely supported and translated into action.... 'Rural activists' are needed, both from the people and from the [agencies] who support them.

Existing laws and modes of administration in many countries stand in sharp contradiction to these aspirations. Laws which require registration and official approval of voluntary associations can be used to frustrate formation of "lawful" groups. State laws which prescribe a fixed structural form for those voluntary organizations which seek to enjoy legal capacities to make contracts or own property may be used to restrict 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 development. Penal laws which proscribe vaguely-defined activities, such as open-ended prohibitions against threats of disorder, often can be construed to legitimize suppression of group activities which cause no demonstrable harms--only the possibility in the minds of law enforcers. Similarly, licensing laws which regulate group activities --such as holding meetings--can be used to frustrate organizational activities, particularly when the law enforcers are vested with lawless discretion. These possibilities are vastly increased when there are no meaningful popular controls over the police, when local courts are not made sensitive to human rights and human needs values and when people lack both tangible and intangible resources necessary to use courts as agencies to vindicate rights.

There are other more subtle ways by which local officials can contain the activities of autonomous rural organizations. By monopolizing state control over essential resources, or by using parastatal organizations to
distribute them, local officials can preempt or co-opt grass-roots efforts of people to work through groups. By catering to traditional elites, or to existing distinctions between castes, or sub-classes, and to traditional norms governing sex and age roles and to other anachronistic customs, they can reinforce tendencies towards segmentation and repression of the disadvantaged. Rumors and lies can be systematically circulated— defamation is a disabling technique frequently used by those who feel threatened by organizational efforts. State control of communications, education and the training and recruitment of people who provide community services can be used to limit the quantity and quality of contacts of illiterate and geographically-confined people with the outside world and with sources of much needed information. Cumulatively, these conditions may impose formidable obstacles—especially in communities where rural people seem to lack traditions and experience of forming and participating in organizations large enough in scale and sufficiently sophisticated in outlook and management techniques to confront impoverishing conditions and structures. As the Sarilakas report suggests, rights to organize, whether they already exist on paper or have to be won through practice and conflict, may never be realized in many settings unless people are helped through provision of social resources— notably, knowledge and skills.

Thus, in many places, rights to form organizations (whether or not they are recognized in law) will have to be won through hard trials. Moreover, as illustrated by the reports on Gal Oya and Sarilakas, the processes of mobilizing, forming groups and initiating collective action often require the catalytic action of "organizational resources"—the introduction of specialists, information and training, which usually must come from resources outside the community if they are to come at all. Needs for these organizational resources must be regarded as a "basic needs," and the rights of some people to seek and others to provide resources to satisfy these needs must be seen as essential human rights which make possible the realization of other human rights.

2. Rights of People to Form Regional, National and International Nongovernmental Organizations to Support Rural Organizations. As we have seen, progressive governmental agencies have successfully provided "organizational resources" directly to communities under terms which enabled intended beneficiaries to control the use of this assistance and determine the outcomes. Indeed the structuring of state agencies designed to aid mobilization and organization is an important problem to be addressed in settings where there is the requisite political will, for the landscape of experience here is strewn with abortive and misplaced efforts at "animation rurale" or "mobilization" through "political cadres." Surveying experience and problems of government efforts to develop cooperatives of the rural poor, Goran Hyden writes: "In countries where the local
cooperatives have been initiated from above as part of a national campaign to 'transform the countryside'...experience suggests that only hollow structures result." 12

In any event, reliance on governments to meet needs for organizational resources is often unrealistic and certainly government monopolization of this task is antithetical to core concepts of alternative development. As Hyden has written:

To promote grass-roots development, and particularly to incorporate the poor in such programs, has not been easy using party or government machineries. The nongovernmental agencies have a greater potential in achieving this task, and greater interest in their work seems justified if the shortcomings of prevailing approaches are to be overcome.

There has probably been a striking, recent growth of efforts to develop various kinds of nongovernmental support organizations to aid rural groups. Church and women's organizations 13 have taken a more activist stance towards mobilization. Nongovernmental institutes concerned with rural development have moved from detached research to collaboration. At the "international" level many action-oriented agencies have appeared on the scene: 14 the motivating concern may center on problems of food production, health care or specially-disadvantaged groups, but increasingly efforts have turned towards needs for community mobilization.

A few illustrations may suggest something of the range of activities or strategies followed. ACT (the Association for Caribbean Transformation) supplies agricultural and business services to rural groups in the Caribbean area--for example, helping people to develop new crops and find markets for them through their own organization. PIDA (the Participatory Institute for Development Alternatives) has begun training and supplying "change agents" to rural communities in Sri Lanka. CEPES (Centro Peruana de Estudios Sociales) provides information--notably legal--to rural groups in Peru by using radio programs and sending legal assistants into the field. CAP (the Consumers Association of Penang) became concerned with the industrial pollution of rivers in Malaysia; environmentalist motivations merged with "alternative development" concerns when CAP began to work with the people of the fishing village of Kuala Juru whose livelihood had been destroyed. CAP helped to publicize the wrongs done to Kuala Juru, helped villagers demand and eventually secure enforcement of relevant environmental laws, helped villagers establish their own cooperative to raise and sell cockles as an alternative to fishing, helped that cooperative get villagers back into fishing through purchase of modern boats and equipment.
Other agencies have served as catalysts to organize networks or more cohesive federations of local groups. Thus the Philippine Ecumenical Council on Community Organizations (PECCO) helped to unite a great many small squatter and community groups in the Tondo area into ZOTO—a mass-based membership organization which has wielded considerable power in the struggles of people to retain land they claimed as their own.

The potentialities of this "third sector" of development agencies have hardly yet been explored in a systematic way by "scholars." Given greater national and international support, these agencies can become even more proactive in helping the processes of rural mobilization; moving from "support" to more aggressive "social action"—acting as surrogates for local organizations in national and international forums. Indeed, support groups may represent an even greater threat to those who have a vested interest in the status quo.

Hence the importance of establishing legal environments for these activities. Support and social action groups must enjoy rights analogous to those set out in Convention 141; for the empowerment of organizations of "rural workers" may depend a great deal on the empowerment of other kinds of groups to help them. Support groups, to be effective, will need to raise funds not only by seeking grants from other national and international bodies, but by mass solicitation which, to be effective, may call for liberal exercise of rights of free speech and mass communication. Support groups, like their rural counterparts, will need to enjoy attributes of legal personality in order to borrow and lend funds and contract for services. Since enjoyment of these rights may inevitably bring these groups into conflict with the state, their own needs for legal resources may ultimately become quite significant.

3. Group Rights to Engage in the Economic Development. The right to form groups is, of course, simply a point of departure; people must also enjoy rights to use organizations for a variety of economic purposes: to demand essential resources controlled by the state; to manage distribution of these where that can be done efficiently (as in the Gal Oya project); to resist the exploitative practices of private lenders, traders, landlords and employers; to initiate new kinds of economic enterprises, including "joint enterprises" with state agencies, which enable people to escape exploitative economic relations as well as generate new employment and skills. When successful, these self-managed projects regularly seem to lead to other group initiatives and social changes within impoverished communities: new efforts to accumulate savings; new demands upon the state for resources; changes in local politics; construction of new community facilities; formation of new groups to pursue other objectives. Where women are involved, a fortiori where they are the organizers of new economic enterprises, the
generation of self-reliant assertion of new rights seems even more apparent. Thus the right of groups to engage in new economic activities goes to the essence of people-centered development.

A typical example of this comes from a Sri Lanka report of activities undertaken in a poor rural community where betel was the most important source of income for most families. Prices were set by traders, who often fixed them in collusion, and then sold the crop to a government corporation. With the aid of organizers ("change agents" supplied by the Ministry of Rural Development--but accountable to the community under the terms of a UNDP grant) villagers began to investigate the marketing of betel. "It became obvious" that they could "more than double" their incomes if "exploitation could be eliminated." So a group of villagers decided to form their own association. Various obstacles had to be overcome: the group was told that "lack of legal standing" prevented direct dealings between it and the government export agency; producers were confronted by attempts by traders (backed by officials in the export agency) to secure a legal monopoly over betel marketing. These efforts to subvert the group were resisted, primarily because the members insisted on their "rights" to act collectively to market their produce. Over a two-year period, a number of results occurred:

-- The membership of the association increased from 35 in March 1979 to about 200 at the end of 1980. Producers from a number of neighbouring villages had joined the association.

-- Betel production in the village expanded by about 30 percent. A number of new producers (some of them youth) entered the betel industry.

-- In January 1980, a common savings fund was started to which all producers contributed a specified portion of their weekly income from betel. The fund rose to a level of nearly Rs.30,000 by mid 1980.

-- Collective action was expanded to other activities such as input procurement, marketing of other village produce such as arecanut and turmeric.

-- The association succeeded in building up a reputation as an important supplier of quality betel and, as its sales volume expanded, it enhanced its bargaining power vis-à-vis the export organisation, obtaining better terms of sale.
As the association grew in size (embracing over 200 producers) the effective management of the organisation fell into the hands of a committee of office-bearers. This system gave little opportunity for the ordinary members to participate in the affairs of the organisation. In this situation, some groups broke away from the organisation and formed their own small group organisations where the marketing and handling operations were undertaken by all members on a rotation basis. By mid 1981, the Betel Association had broken up into five smaller organisations, each undertaking its own marketing work and operating as autonomous units.18

With the help of catalysts, the betel producers were able to diagnose and resolve their problem themselves, without state aid. In many situations, however, the collaboration of state agencies may be essential to the resolution of problems which people want to address: officials must be encouraged, or persuaded, to engage in "joint enterprises" with rural organizations. An example was recently reported by Frances Korten:

In many contexts, meaningful participation can only be generated if certain rights are recognized. Community and social forestry programs exemplify this problem....For centuries sparsely inhabited, hilly-forested areas of many developing countries were seen as a resource properly owned and protected by the government. But exploding populations in the lowlands have forced larger numbers of people into these upland areas, where they cut down trees to cultivate the soil, causing massive erosion that exacerbates floods and droughts in the lowlands, and reduces future productive potential of lands both high and low. Governments are beginning to recognize that approaches using police or guards to solving this problem are futile, and that people living in upland forested areas must be encouraged to take responsibility for resource management and to plant economically productive trees as a means of livelihood. But since the people have no security of land ownership, the dilemma arises that they are legally nothing but encroachers on government land. Consequently they have no incentive for planting and tending trees which will not become profitable for several years, unless they are sure they will be allowed to stay to reap the benefits. Yet resolving this dilemma by actually deeding government lands to
private individuals is a step that few national governments are willing to take, and such a move might lead to a situation where absentee landlords acquire large holdings of land once it is available for private ownership.

In such situations, program managers need to search for alternative ways to provide the legal framework necessary to pursue the programs. In the Philippines, one tribal group has worked out an agreement with the government to lease a 14,000 hectare area for 25 years with an option to renew. With this security the tribal group has developed programs to preserve and develop large areas of forested land. Other forestry programs have provided individual or community permits validating the people's rights to use the land at least temporarily. Finding different solutions in different parts of the country appears to be a more workable approach than to confront the broader issue of national policy governing land ownership in all forested areas. If these programs are seen as successful, a climate conducive to broader legal and policy changes may develop.19

Another example of "joint enterprise" which has attracted wide attention is an experiment recently initiated in Nepal—the Small Farmer Development Program (SFDP) which was devised, in part, to take account of repeated failures of governmental agencies (charged with implementing land reforms and credit programs) to reach the rural poor, let alone benefit them in any way. The very design of the project was developed through interaction with concerned groups—through a series of "workshops," held round the countryside. Small farmers, landless laborers and officials of the Agricultural Development Bank (ADBN) discussed perceived needs for credit and terms of providing and using it. As a result efforts were initiated to encourage small farmers and landless rural workers, in selected areas, to:

form organizations of their own below the level of cooperatives—small (15 to 20 members), homogeneous, multifunction groups around a common nucleus of income-raising activity based on group work plans and group action, supported by an integrated program of supervised credit, extension and technical backstopping. A group organizer-cum-action research fellow (GO) was stationed in each district to play the vital catalytic and monitoring role and link with the ADBN and the various line agencies.
The groups were to receive credit for individual members, as well as for the groups as a whole on the basis of group demand, under group liability and with credible income-raising action plans only, without any other collateral being required. Emphasis was placed on production enterprises in crops, livestock, horticulture, pisiculture and cottage industry. In addition the groups themselves were to develop their own group-saving fund with member contributors, for providing consumption, distress and emergency loans to their members.20

In the beginning each small group acted as a disburser and collector of loans made to individual farmers. But gradually groups qua groups have begun to engage in various new enterprises--development of orchards, wool production, cottage industries.

The relative success of group borrowing from group investment has led to further innovation, which represents the third phase. In the Tupche Project area there is a total of 40 small farm groups. With the bank's advise and encouragement, seven groups (Group No. 40, 41, 43, 35, 20 and 9) [sic] have joined hands to launch a joint cottage industry project based on inter-group cooperation. Under a bank loan of Rs. 250,000, the seven groups are cooperating to install 50 manual looms that will employ 50 men and women who previously did no work during their spare time or were simply unemployed. Each of the seven groups own this enterprise. Each group sends one representative to the board of directors who are responsible for the overall management. The directors have hired one controller and one technician, and they take an active interest in the operation of the enterprise.

The textile company represents further advance in cooperation since it requires inter-group coordination in decision making and also raises new problems in control. The owners of the enterprise are all the members of the seven groups or about 126 people. The factory belongs to them and the people in the management committee are their representatives.21

The projects described above are models of what can be done, but hardly depictions of a pervasive trend. In many countries legal as well as social environments are hostile to initiation of group-economic enterprises. The social constraints have been analyzed from many perspectives: class
and power structures which repress initiatives; inexperience and lack of entrepreneurial resources of the rural poor; continuing dominance of pre-capitalist social formations among people. While of course law cannot by itself change these social environments, it can be used by those who struggle to break away from the bondage of existing relations. The rights of people to engage in new kinds of development activities must be emphasized because, as we have seen, enjoyment of these economic rights makes assertion and enjoyment of other social and political rights more possible.

A variety of legal changes may be necessary to secure rights to initiate new kinds of group enterprises. Indeed, this complex subject needs far more careful study than has yet been bestowed; a few illustrative problems are simply noted here.

The content of law governing the legal capacitation of voluntary, non-state participatory associations needs attention. As some reports in this volume show, governments typically monopolize this field by prescribing the terms under which autonomous groups can secure attributes of "legal personality" necessary to engage in self-help, economic enterprises. State law dictates the requisite organizational forms, the roles of actors, and processes for taking group decisions. Unless these terms are satisfied, endogenous groups may lack vital rights to contract, own and exchange property and enjoy limited liability. Professionals within governments who write laws on this subject often use models of structure borrowed from foreign experience. This preemption by the state can stifle capacities of people to form "organizations of their own choice," structures geared to their perceptions of the appropriate law governing membership in and management of their group. Studies of indigenous cooperatives, water-user associations and other kinds of customary "business groups" demonstrate the importance of this lesson. Of course there are difficult problems here. Groups which raise funds and engage in business must follow norms which protect both the interests of their individual members and those with whom they deal. But it is one thing to recognize and identify these problems, and quite another to hold that the state, through state-managed structures of regulation, will not only dictate the interests to be protected but the organizational forms which must be used to achieve those ends.

A second set of problems may arise from monopolization of various kinds of economic activities, either by the state or by private firms and people (sometimes operating under the protective cloak of state regulation). While the need for state laws which protect producers and consumers from exploitative practices is clear, it does not follow that the state must secure those objects by preventing people most in need of development from initiating new kinds of activities which help them to change...
adverse relations of production and exchange in the countryside. Monopoli-
ization of marketing, transport, banking and various production activities,
when coupled with the exclusion of rural workers in these enterprises often
perpetuates the very conditions which maintain poverty and dependence.
What must be put in issue is the right of rural workers to renegotiate the
terms under which state and private sector organizations may monopolize
these activities and thus appropriate surplus. If group rights to engage in
economic development are valued, the state must allow rural workers to
form their own alternative communal organizations, or, they must enjoy
rights to share more power in the management of state monopolies.

A third, related set of problems focuses on the rights of autonomous
rural groups to deal with state agencies which control resources essential
to realization of group needs: land, credit and services. The problem--
as illustrated by several reports here--is how to structure "joint enter-
prise" arrangements between state and non-state organizations which are
conducive to self-reliant, people-centered development. As the Gal Oya
report suggests: one state body may facilitate organization of an endoge-
nous group; but the next problem for the group may be: how to secure
benefits, e.g., credit and inputs, from other state organizations--benefits
which make efforts to develop group activity meaningful? The problem
may turn on the terms by which the state supplies the resources. While of
course scarce resources cannot be dissipated, groups must enjoy rights to
bargain effectively for them--and rights of redress where resources are
either withheld or extended under terms similar to an "adhesion contract." Resolu-
tion of these difficulties is crucial to realization of alternative ap-
proaches. Rights of access to state-controlled resources obviously cannot
be prescribed _a priori_.

Historically, the state has seldom worked in partnership with rural
people. If self-reliance and participation are taken seriously the need for
partnership relations to replace patron-client relations is apparent. The
terms of "joint enterprise," partnerships between people and government,
have to evolve through negotiation just as they have evolved in other
spheres of state collaboration with private bodies.

4. Rights of Groups to Participate in the Design and Administration of
Rural Development. The hope is that, over time, groups can change polit-
cical environments and administrative structures. These changes must
usually begin with efforts to redress specific grievances: efforts to secure
particular resources, to curb abusive police practices. In many commu-
nities the only practicable way to press grievances may be through strate-
gies of "direct action:" protests, deputations and boycotts. Thus rights
of people to assemble, petition and picket become important components of
a legal environment for alternative development.
Successful direct action often leads to greater politicization within communities; an awareness of the costs of these strategies and of needs for more permanent remedies. In some communities, for example, groups have turned to the courts in efforts to secure more enduring relief from routine abuses of authority—the victims of police misconduct or corrupt dealings have sued in tort, or resorted to private prosecution; in other communities people have set up their own "non-state" tribunals and have (sometimes successfully) tried to force recalcitrant local officials to appear and address the problems. Usually struggles for structural changes must be carried upward to more central organs of government, and it is here where the aid of support and social action groups may become most apparent, and where liberalized rules of standing and judicial review become especially important. In India, for example, social action groups have used the courts (as well as other modes of public exposure) to protect tribal people threatened with ruinous disruption by government plans to build dams and flood large portions of their homelands. In Malaysia, as we have seen, CAP allied itself with the struggles of Kuala Juru to secure reforms and enforcement of environmental laws. In the Philippines, for example, efforts of organized sugar workers have led to review of existing price and wage policies within a national tripartite commission composed of workers, owners and government.

Efforts to remedy specific wrongs can lead to efforts to initiate new programs designed to meet the needs of specific communities or groups. Again with the help of other groups rural organizations can begin to challenge commodity price-fixing policies which discriminate in favor of urban areas, or projects in planning proposals which impose an unfair hardship on the poor. These kinds of efforts can lead to demands for new institutions to provide for greater public participation in the formation of policies and the design of programs.

While efforts of this sort have emerged in recent years in some countries, it is obvious that for most of the world's rural poor these kinds of changes still seem distant and difficult, at best, to obtain.

It may be argued—and it often has—that the power structure in many countries is too heavily weighted against the poor to make it possible to realize these strategies. That may be the case, or appear to be so, in some settings. The only alternatives which people may perceive are recourse to warfare against the state or to "exit" through apathy. But the costs of recourse to warfare are great, and they fall most heavily on the poor. Moreover, the rural poor are not totally powerless in many situations. They are the producers of resources which are essential to maintenance of the state—food and commodities for exchange. Given information and means of communication they can make choices for themselves,
and they have the most at stake in determining when to attempt to appeal to law and justice to defend and advance their interests. Again, then, the need for information—and human resources to help people make self-reliant judgments—can be seen as perhaps the most basic of basic human needs.

II. Legal Resources to Create Legal Environments

The need for knowledge which helps people become more independent, innovative and inspired, and more capable of collective action, is now a pervasive theme in development literature. This functional knowledge can be neither ascertained a priori nor transmitted by traditional modes of pedagogy from the "informed" to the "ignorant." Mutual understanding of how to apply abstract doctrines to particular conditions must often come through an interactive process: the problems to be addressed and the modes of doing so can only be discovered by a dialogue where both "outside" specialists and members of the group are simultaneously informants and learners—and where the group is the ultimate decision maker on the question: 23 "what's to be done?" Needs to develop techniques which facilitate "interactive," "dialogic" research and learning are now emphasized in studies of extension, health care, credit and other programs where collective self-help is deemed a prerequisite for social change. 24

Similar needs exist in regard to "law;" for, despite its amorphous often uncertain character, law, like other bodies of knowledge and experience, can be used by people, sometimes in very creative ways, to identify problems, determine ways of addressing them and to justify and mobilize support for actions taken. 25 When and how this can be done is a complex matter which we hope to explore more adequately in another volume of reports and studies examining some recent experiences and lessons they suggest. 26 Here we briefly sketch some themes.

The concept of law as a resource for those presently exploited and excluded has two aspects: first, law, broadly conceived, is a potential resource for depressed rural people, even if it is little used for that purpose—and despite the pathologies which often characterize existing legal regimes governing administration. Second, knowledge of law can be used to help people understand how they are wrongfully oppressed, and why—and also, if the matter is pressed, how harmful practices might best be confronted.

This phenomenon becomes more evident if one takes a broad view of law. Here we conceive it as an authoritative body of particular rules, more general governing principles and doctrines, and, also as techniques for developing and applying these materials to resolve different kinds of conflict and regularize action. Moreover, the sources of relevant law are not
simply legislation, subsidiary rules and court decisions; the sources include the constitution and the ideology and doctrines which inform it; natural law—such as the principle that all people possess the same basic rights; jurisprudential concepts—such as the idea of "rule of law;" customs and endogenous law—such as customs which favor decision making by consensus; international bills of rights—the Universal Declaration and other "universal" norms which one's government has promised to observe.

All of these sources may in theory be used for varying purposes by people. International norms (e.g., ILO Conventions 141 and 87) and constitutional guarantees and court-made doctrines governing administration (e.g., the duty to provide natural justice) may supply principles needed to demand recognition of particular rights. Group-made law and recourse to traditional norms may provide a framework of rules needed to constitute a group-managed economic enterprise. Legislation, subsidiary rules and relevant policy statements may be used to demonstrate entitlements to a more equitable allocation of resources. Thus law can, in theory, be used to aid many different kinds of group activities—not simply litigation which is often the preoccupation of lawyers: law can be used to teach civics; to justify direct action measures—such as boycotts or deputations; to justify claims for goods or services; to embarrass lawless power-wielders; to organize economic enterprises; to resolve intra-community disputes without wasting scarce resources on advocates' fees and court costs; to change attitudes towards anachronistic customs which exclude and oppress women and youth; to conceptualize and resolve other shared problems. Such uses of all of these sources of law require legal specialists who can so interact with groups that people themselves can articulate problems and courses of action.

Obstacles to the development of legal resources will be readily apparent.

One source of difficulty lies within the legal profession. As with any other profession, there is the psychological tendency—strongly reinforced by economic motives—to monopolize knowledge of law and the right to propound it, not only in the courts but in other forums where officials purport to use law as the basis for decisions. The means by which lawyers exclude others from acquiring and using legal knowledge are well known—and particularly effective when lawyers interact with the poor. Further, the tendency of lawyers to deliver a narrow range of counseling on a reactive rather than proactive basis, often limits the value of those "services." So does the tendency of the lawyer to dominate the determination of whether and how a problem can be converted into a legal problem—particularly when the lawyer thinks solely in terms of individualized disputes and litigation. Moreover, the marketplace for legal services
strongly tends to direct most lawyers' energies, and indeed to shape their perceptions of what law is all about; and the poor are generally excluded from these (usually urban) places. There is, among influential members of the profession, little awareness of the problems of the poor, and there are few incentives to discover ways to use law innovatively to address them. Thus, the profession qua profession is both weakly motivated and poorly prepared to help generate legal resources.27

A second set of obstacles lies within rural communities. Geographically and socially they are distant from sympathetic lawyers and suspicious of courts. The Sarilakas report portrays familiar phenomena: the understandable tendency of the very people who most lack legal resources to view law and lawyers with aversion; the deep-rooted—and often plausible—belief that law does in fact empower officials, employers, landlords, money-lenders and others with status to engage in the practices which contribute so much to the plight of the poor. As the Sarilakas experience suggests— it may take a long time, much interaction, to show that these perceptions, while often accurate, are incomplete, and that to act on such beliefs is to act on a self-fulfilling prophecy of impotence.

Developing legal resources must, then, be perceived as a difficult, uncertain task.

The objectives cannot be met by conventional programs of "legal aid;" the flaws in these are similar to those in other bureaucratized programs which provide other kinds of "professional services" such as health care or agricultural extension. A team of lawyers and social scientists who studied "Rural Mobilization and the Legal Needs of the Poor" in Sri Lanka made these observations:

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

Secondly, even within the sphere of interpersonal disputes it is limited to the formal judicial arena.... The scheme similarly has not sought to aggregate individual claims into collective demands for formative and institutional change in social welfare programmes.
Thirdly, the modes of advocacy were normally limited to the preparation of legal pleadings and oral representation in the courts of original and appellate jurisdiction. Rarely have professional services taken the form of structuring of:

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

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

Fourthly, the existing scheme has proved to be reactive, i.e., it responds passively to the problems of those who may accidentally reach its office. A legal aid survey revealed that 87 percent of the respondents were unaware of the existence of the scheme....The scheme should be proactive in that it would be decentralised 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 the access of underprivileged to legal administrative processes are internalised within the government legal aid office.

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

(a) the emphasis on collective demands and group interests;  
(b) the establishment of clinics which are proactive in that they actively seek out the grievance of poverty groups and advocate their interests;
(c) the expansion of the arenas of group advocacy to include administrative, legislative and other spheres of policy articulation and implementation;

(d) multiplication of the types of assistance to include counselling, the structuring of transactions, and the formation of associations; and

(e) the organisation of the delivery system to include participatory involvement of potential beneficiaries. Such participation to take the form of management of legal aid scheme, dissemination of information about social welfare schemes and redistributive legislation and an encouragement of self-help.28

The Sarilakas report portrays a somewhat different approach—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. The most important, shared "legal problems" of a community, like its "health problems," are rooted in social relations and longstanding practices which maintain impoverishment. The legal specialist who seeks to help people resist oppressive police practices, or extract action from a government agency, or organize a self-managed cooperative, or structure some other group transaction, needs a holistic view of the situation to be addressed and the social resources presently available within the community and the skills which must be developed and the risks to be encountered. Like an agronomist advising on production of new crops, he needs to work in tandem with other specialists, and learn broader perspectives seldom taught in law schools.

The Sri Lanka and the Philippines report (and other investigations, too) show that most lawyers often lack much of the knowledge and training about law which is relevant and imaginatively organized so as to benefit rural communities. While this failing is hardly surprising, it underscores another obstacle: legal assistants in the field must be backed up by well-organized support centers: 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.
Support centers also need legal resources to become activist groups themselves. Many claims of rural people can only be effectively pressed in capital forums. The representation of groups before planning bodies, ministries, parliaments, higher courts and other bodies is crucial to any long-term strategy geared towards alternative development; and, as we have noted, some social action groups are beginning to function along these lines. 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 alternative development; and there are scarcities of experience and material to aid those who do become engaged.

Perhaps action at international levels can help development of national legal resources. International support groups may also have "action" roles to play. Some years ago, in its struggles to save the Tondo lands for the poor, ZOTO, through friends, 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 those most severely affected. The challenge was grounded in international norms, and in the demand that the Bank follow its own policies favoring participation. 3

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 aid or 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 for themselves is a negation the basic notion of participation. Similarly, forums such as the UN Commission on Human Rights can be used much more aggressively to demand recognition of the kinds of group rights we have discussed here.

The current debate over the existence of a "Human Right to Development" highlights some of these issues, and the importance of developing legal resources at all levels for the victims of underdevelopment and mal-development. In order to address these problems the International Commission of Jurists (ICJ) and the International Center for Law in Development recently convened a workshop of representatives from groups supportive of alternative development, and ICJ submitted proposals from this meeting to the UN Commission on Human Rights. The submission emphasized the importance of recognizing group rights for purposes we have already described. It emphasizes the need for recognizing rights of "participation" at international as well as national and local levels of decision making. A central paragraph in this document summarizes some basic themes we have tried to develop here:
A declaration that development is a human right is important, in part because it will reflect an international effort to give legal recognition to crucial rights of victims of underdevelopment, not only rights to share essential physical resources more equitably but rights to share power over those resources. This underscores the importance of law as a governing framework for self-reliant development and the need for legal resources to help secure realisation of their right to development. 31

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Nearly three quarters of all the people on earth make some kind of living by cultivating land. From their ranks come the vast majority of the world’s estimated 800 million living in extreme poverty and hunger. Millions more are on the brink. Tenant farmers, sharecroppers, landless laborers and marginal subsistence cultivators form the vast mass of people who work the land. They have little control over the production or distribution of resources essential to their development. They stay poor because these resources are controlled by structures which usually favor the maintenance of state power and often enough the rich, and which, in any event, rarely change the social conditions that produce impoverishment.

In most developing countries the dominant classes are comprised of a minority with simultaneous interests in large plantations or landholdings, agribusiness, financial institutions, export and import firms and the maintenance of existing state structures. They enjoy the support of the government in the form of protective legislation, loans, subsidies, investment incentives and tax privileges. Thanks to their economic base, educational superiority, assumed social status, powers of patronage and access to intermediaries and persons in power, they are able to continue to exercise control over governmental bodies. Not surprisingly, national rural development policies end up creating instruments which, whether intended or not, fail to alleviate poverty and inequality. Not surprisingly, other goals such as raising agricultural productivity, containing political discontent and maintaining support for national elites become the dominant goals of most state structures.

Thus, rural poverty—and the deprivations and risks which accompany it—are not products of happenstance and scarcity so much as they are the products of political, economic and social power relationships often ruthlessly maintained. Attempts to change these relationships must inevitably
involve the rural poor (who will ultimately bear the risks) in the processes of both identifying problems and finding responses. Action strategies must be evolved at local grass-roots levels, as well as national and international levels.

The development of countervailing power for specific impoverished rural groups at the local grass-roots level must be the starting point of any action to alleviate rural impoverishment. The rural poor individually lack the means and power to secure access to or accountability of official decision takers. Through collective action, however, they can begin to create the leverage necessary to gain access to the basic resources they need, to develop the countervailing power needed to struggle against their impoverishment.

Of course these struggles—against structures and systems which produce impoverishment—have to be carried to both national and international levels. Promotion of large-scale, commercial production of export crops and other national policies and programs which impose unequal burdens on the poor must be challenged. Rural people are often quite sophisticated in their understanding of these matters. Their need may be less for instruction than for national groups and advocates to aggregate demands and press them in appropriate institutions. But these struggles, too, will depend significantly on mobilization and organization at grass-roots levels.

Similarly at the international level, the rural poor need organizations and advocates to press for laws and their enforcement which— for example—will control transnational agribusiness, and the introduction of "disabling technologies" and the impact of new modes of production and the sometimes powerful influence exercised by international development agencies over national policies. But again efforts to develop these struggles should be responsive to the needs of rural people, reflecting their concerns. The base of power must come, in large part at least, from the countryside and ultimately be accountable to it. Otherwise the state will remain autonomous, unaccountable to the mass of people it governs.

Thus, the generation of new kinds of "grass-roots" organizations is an essential first step towards those kinds of "development" which address the political economy of rural "underdevelopment" and emphasize realization of the basic needs and rights of the victims of it.
FOOTNOTES


2. Perhaps (understandably) academicians tend to be more cynical than rural people who have experienced gains through organizations.

3. A recent United Nations document, reviewing the evolution and scope of the right to development indicates that based on major United Nations' instruments and debates there exists "a general consensus as to the need for the following elements to be part of the concept of development":

   -- the realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development;
   -- the human person should be regarded as the subject and not the object of the development process;
   -- development requires the satisfaction of both material and non-material basic needs;
   -- respect for human rights is fundamental to the development process;
   -- the human person must be able to participate fully in shaping his own reality;
   -- respect for the principles of equality and non-discrimination is essential; and
   -- the achievement of a degree of individual and collective self-reliance must be an integral part of the process.

Report of the Secretary General, Commission on Human Rights, Question of the Realization in all Countries of the Economic, Social and Cultural Rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights and Study of Special Problems Which the Developing Countries Face in Their Efforts to Achieve These Human Rights. The International Dimensions of the Right to Development As a Human Right in Relation With Other Rights Based on International

4. The 1982 meeting of the Society for International Development (SID) is organized around alternative development themes, notably strategies of aiding rural development. A large part of the agenda is devoted to reviewing experiences of grass-roots initiatives and strategies.

A major new program of SID is its Grass Roots Initiatives and Strategies Program (GRIS) which will "attempt to pool the knowledge and technology emanating from spontaneous people-oriented activities in industrialized and Third World countries." "Action research" on participatory groups of the poor is being encouraged by a number of organizations including the ILO, UNRISD, UNESCO and the International Council for Adult Education of the World Council of Churches. Rural Development Participation Review, published by the Rural Development Committee of Cornell University is designed to promote the sharing of knowledge and ideas on "rural development participation."

5. See note 4, supra (GRIS) and notes 13 and 14, infra.


13. See note 4, supra. See, e.g., Information Kit for Women in Africa produced by International Women's Tribune Centre, Inc. (New York) in collaboration with African Training and Research Centre for Women, UN/ECA (Addis Ababa) (1981). Similar "resource books" have been prepared for women's groups in Asia and the Caribbean area. These materials in turn contain an impressive listing of private international organizations which supply funding and support to nongovernmental women's organizations engaged in development projects, and an interesting inventory of women's grass-roots organizations in Africa.

14. E.g., the International Foundation for Development Alternatives (IFDA), through its publication IFDA Dossier, was formed to develop an international network of nongovernmental groups pursuing alternative development strategies.

15. The GRIS program of SID (see note 4) includes plans for a series of national and regional meetings for "those directly involved with grass-roots experiments and peoples' movements" and for those who are "networking" these activities. A second stage will be a World Conference. See SID, GRIS Notes No. 2, July 1, 1982.

16. See, e.g., "Concept Paper for Legal Assistance Project for Grass-Roots Organizations" (January 1982: Philippines). CENDHRRA (Center for Development of Human Resources in Rural Asia) provides services for rural groups and leaders through a network of "partner" country organizations, and has sought to represent its constituencies in various world conferences sponsored by UN agencies.


22. On the concept, needs for, and legal implications of, and also the limits of direct action, see U. Baxi, "Legal Mobilization and the Needs of the Rural Poor" (1982) (a paper which will be published in a forthcoming ICLD volume on "Legal Resources for Participatory Organizations of the Rural Poor.")


26. See note 22. The volume will include reports of several studies of the shared perceptions of needs for legal resources within communities in Peru, Sri Lanka, the Philippines and other countries.


30. J. Fernandez-White, "Community Involvement in Improving the Quality of Life" (1976).