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KEYNOTE ADDRESS

Who are the Poor and Whose Justice are they Accessing?
The Dilemmas of a Legal aid Activist

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The problems of the poor to access justice are legendary. They are well known to all of us here who, in one way or the other, have been involved with legal aid. I could rehearse them all over again, perhaps more eloquently, perhaps with greater detail and examples, but, I ask myself, for what purpose and why? Does poverty disappear by singing about it? Or, to give a better analogy, does charity eradicate poverty? After all, they have lived together as Siamese twins over the ages. One cannot exist without the other. What Marx said about religion, applies *mutatis mutandis* to charity. It comforts the rich and massages their consciences, while dampening the anger of the poor. And lo! behold, we continue to have more rich, more poor and more charity!

When we were still students, and still revolutionary, a generation ago, our militant organization called the University Students African Revolutionary Front (USARF) decided to put a stop to the tradition called Rag Day inherited straight from Oxbridge. On a Rag Day, middle class students would parade in streets dressed up in rags to collect money for the poor. On the eve of the Rag Day, as we planned and strategised,

I recall Walter Rodney summing up our analysis in the following words: ‘Charity is like giving by the ounces and taking by the tons!’

I am of course exaggerating. But there is no harm in exaggerating the truth. I know legal aid is not exactly charity. But we also know that both are the products of a system, which harbours systemic inequities. Anatole France’s graphic dictum that. “Under the majestic equality of law, both the rich and the poor are free to beg in the streets and sleep under bridges.” is still valid in our countries and societies today. Beggars in streets may have become a phenomenon of the past in Northern countries, thanks to colonialism, but thanks to imperialism, ours are not.

The equality of law, and the inequity of the underlying social system, is precisely the contradiction which no honest advocate of legal aid fails to agonise over. When Haroub Othman invited me to this seminar to celebrate ten years of the Zanzibar Legal Services Centre and asked me to speak on the poor’s access to justice, I did not know if I had anything new to say, except to refresh our historical memories on the dilemmas of the then young legal aid activists a generation ago. History has become more important to the people of my generation as we are being incessantly bombarded with the ‘end-of-history’ and ‘end-of-ideology’ propaganda in this new era of globalisation and liberalisation.

A quarter of century ago, when my colleagues and I in the Faculty of Law of the University of Dar es Salaam, re-organised the Legal Aid Committee, we faced such dilemmas. Having grown up in the milieu of liberation and revolution, and having advocated fundamental changes in society, and having condemned law as the

instrument of the oppressive ruling class and the *status quo*, we found it very difficult to stomach our involvement in a kind of philanthropy. I remember an interview with *Mzalendo*, in which, after tracing the origins of legal aid to philanthropy, we explained our role as a sacrifice of the young for their society, which had paid to educate them. This was of course taking a cue from Nyerere's famous quote, which used to hang in many a school during those bygone days:

> Those who receive that privilege therefore have a duty to repay the sacrifice which others have made. They are like the man who has been given all the food in a starving village in order that he may have strength to bring supplies back from a distant place. If he takes the food and does not bring help to his brothers he is a traitor. Similarly, if any of the young men and women who are given education by the people of this Republic adopt attitudes of superiority, or fail to use their knowledge to help the development of this country, then they are betraying our Union.

Thus we saw our participation in legal aid as a sacrifice, as a social duty, as a moral calling, to make a difference to the lives of the disadvantaged. 'Disadvantaged', that is the furthest we could go in describing our legal aid "clients". The term "poor" would not even come to our lips. The more political, analytical and radical among us, saw legal aid as another front in the struggle of the working people against oppression, exploitation and for liberation and emancipation. We saw law as an arena of struggle, legal aid a school of demystifying the hypocrisy of bourgeois law and our role in it as a contribution to change the world towards a more rational and humane social order. We believed that the working people, who were oppressed through law by the ruling classes, would be able to see through the mystic of law by engaging with it, and thus armed, would free themselves from the hegemony of bourgeois ideologies.

But the dilemmas persisted. Weren't we playing into the hands of the powers-that-be when we knew that law is ultimately the agency of reinforcing the *status quo*, not an agency of change? Weren't we really becoming accommodated in the system? And worse, weren't we legitimising and lubricating the system, which we knew needed to be *transformed* rather than *re-formed*? In other words, we asked ourselves, could you really defeat the master by using his own weapons? When the then Attorney General positively cited the Wejja election petition, which was successfully litigated by the Legal Aid Committee on behalf of a lowly paid woman against a powerful political potato, we did not feel complimented. Rather it reinforced our fears, the fears that our efforts would be, and could be, used to rationalise, justify and legitimise an inherently oppressive system.

Let me hasten to add, even at the expense of modesty, that we did not simply agonise over dilemmas. We addressed them or, we thought, we addressed them. Legal Aid activists then were acutely conscious of the powerful individualising tendency of law. Law, we said, has this fantastic capacity to present the exploitation and oppression of the people as a grievance of the individual. We were very uncomfortable with, and constantly felt embarrassed by the fact that the dismissed workers fighting against their employer or the landless peasants claiming their rights against the state, placed such enormous faith in their advocates; seeing these young men gowned in black and speaking the alien language of law, as their saviours. Here we could see law disarming both the radical young advocate and the militant worker, who were supposed to be heroes of our impending revolution. We felt constantly frustrated by the fact that while we constantly hammered that law and justice were far apart, our "clients" seemed to think or believe that they could get justice through law.

Of course, it was only human to feel happy when we triumphed in court battles. The more we won cases, the more our potential agents of the revolution developed trust in the bourgeois legal system. The heroes of victories were judges and lawyers, not workers and peasants!

As I said, we tried to counter some of these tendencies. We insisted on taking only groups and mounting class actions. We picked and chose what litigation to take and what to refuse. We organised legal aid camps, not only to counsel, but also to convert. We published cyclostyled magazine called *HAKI*, not simply to raise awareness but as an ‘organiser’, as a means of horizontal communication among potentially militant constituents, or so we believed. We relied on our own resources, which we strenuously tried to build up through costs awarded by courts in successful cases. We turned down donor funds, at least for a decade, before we were swamped by it. That was the turning point.

We were entering a new era, the era of human rights, NGOs and partnership with donors. The militant ‘working people’ now became the ‘poor’; the wretched of the earth, whom we earlier saw as wreathing in anger, were now the 'most vulnerable'. Lesser the militancy, the more they qualified for legal aid. Instead of the previous network of former and potential legal aid "clients", which we fondly called ‘friends of legal aid’, we now build networks of NGOs and INGOs (International NGOs), the only common denominator among us being that we are all FFUNGOs (Foreign Funded-NGOs). We seek, and are pleased, when we are accepted and complemented by the state, or are funded by USAID, although in the bygone days, we would have

derided such groups as GoNGOs (Government Organised NGOs) or GRINGOs (American funded NGOs).

We no longer advocate transformation or even reforms of any kind, or for that matter, just try to understand our social and ideological formation. NGO-culture derides any thinking or understanding. 'We are activists, and believe in action, not arm-chair theorising' say the NGO-ists. In their previous incarnation, NGOs used to say, 'Think globally and Act Locally'. Now, our erstwhile partners tell us: 'Don't Think, only Act, and we shall Fund both!'

I guess I must end this nostalgia. I am sure Haroub Othman did not conceive this as an occasion for nostalgia, but rather for celebration. If I know him well, I know that I am not abusing the hospitality of Zanzibar Legal Services Centre by indulging in this self-critical and reflective soliloquy. Some twenty years ago, on the occasion of the centenary of Marx's death, Othman as the Director of IDS (the Institute of Development Studies) organised a symposium. I participated in it and presented a paper on 'Seven Thesis on Reform and Revolution' where I distinguished between reformist reform, and revolutionary reform. Many comrades participated and made excellent contributions. The symposium ended with a clarion call: "The central question of the African Revolution today is Democracy". We are doing nothing of the kind today. But on the celebration of ten years of the Centre, at which Haroub has invited me to give this keynote address, I would be insulting both him and Marx if I did not, at the least, indulge in some nostalgic past, so as to reflect critically on the present. Critical reflection, and not simply cocktail deflection, in my view, is the rationale for anniversary celebrations.

Nostalgia apart, I believe there are some serious issues that I am trying to raise by reflecting on twenty-five years or so of experience of the Legal Aid Committee at the University of Dar es Salaam. You will notice that I have been using ‘we’ in my presentation without defining who these ‘we’ are. I will let you wear the shoe if it fits. My hope is, and that is the proverbial silver lining, that there will be some of my contemporaries, and some of our younger generation, who will unhesitatingly reject this shoe of thoughtless jumping on fashionable bandwagons. They will, once again, want to reflect critically on the past so as to understand critically the present, and as certainly with commitment, rededicate themselves to changing the future. In short, they would want to make their own shoe.

For those of us who, I have no doubt with great commitment and sincerity, have taken to Human Rights-NGO syndrome, I am only saying, it is time to sit back, to retreat if you like, to think and reflect. While it is true that, ‘Hitherto philosophers have only interpreted the world, the point is to change it’ (Marx), it is also true that ‘Insurrection of Ideas precedes Insurrection of Arms’. Let me take the bull by the horns and suggest that the 'NGO-Human Rights Syndrome' has greatly undermined the intellectual task of interpreting the world, let alone changing it.

Let me suggest, if not seven, at least three hypotheses, to reflect and work on.

First thesis: That the human rights ideology has played an important, if not a decisive, role in the ideological and moral rehabilitation of imperialism, on the one

hand, and the ideological disarming of militant anti-imperialism and ideologies of liberation, on the other.

It may not have succeeded everywhere (particularly in Asia) but it does seem to have succeeded in this part of the world, at the least, in co-opting militant intellectuals and de-legitimising people's struggle for national liberation and social emancipation.

Second thesis: The donor-driven democracy and donor-funded-civil society organisations, have pre-empted the people-driven struggle for democracy on the one hand, and greatly undermined the traditional organisational forms of the working people through which to do it, such as trade unions, peasant associations, liberation movements, etc., on the other.

Third thesis: The HR-NGO Syndrome, has in the short-run, absorbed radical intellectuals thereby individualising and destroying a critical mass of intellectual body. The result is a surrender to TINA (there-is-no-alternative). 'Globalisation, the pseudonym of imperialism, is there to stay. We can only join it, because we cannot beat it.'

This is of course the rationalisation of the petty-bourgeois intellectual because the working people have no choice but to fight it. Their fate in the global village is clear: the pillage of their resources and perversion of their life and culture. Which they know instinctively, but there are no, or few, petty-bourgeois intellectuals around to articulate their resistance systematically, and fewer still, to commit suicide in Cabral's sense, and join the struggle.

Theses of despair, you may say. But this is only the pessimism of the intellect, a là Gramsci. Optimism of the heart persists. First, because the HR-NGO Syndrome does not have staying power, as we are already witnessing in anti-capitalist demonstrations. Globally we have witnessed the Seattle and the Genoa, and after the terrorist lull declared by the global king from the bush, Seattle and Genoa are back on streets. More locally, who would have ever thought that the largely, white-collar workers of NBC (privatised national bank) and technicians and clerks of TANESCO (electricity company) and TRC (the railways coporation), would be in the forefront of resisting mindless privatisation? Blocking office gates* to block South African managers from entering may look as primitive as Luddists' breaking of machines to block the industrial revolution, more so in this IT age where managers can manage their offices from their hotel rooms via a lap-top. But we have to take a Longer View. Luddists gave way to Communards, who in turn gave way to Bolsheviks, who gave us a glimpse of the possibility of a new world, never mind its deformities. And who dare say that first aid doesn't save lives, at least some lives, in the age of laser-directed surgeries?

But, unlike human beings, no system drops dead by its own weight, however ‘obese’ or obsolete it may have become. That is where the human agency comes in. And human agency first thinks before acting. As Marx said, unlike a spider that can instinctively construct a beautiful web, even the crudest of an architect first conceives and sees his plan in his mind, before he sets to construct.

The least that we can do, therefore, is to Think. We have to sit back and take stock of various HR-NGO syndromes in which we are involved: legal aid, human rights, poverty-reduction, NEPAD initiative, partnerships and networks, as consultants on governance and advisers on market reforms, as gender and environmental activists and as "development practitioners" (amazing vocabulary!). We have to sit back and Think and Think with the people, and Think for ourselves, for, as Wamba-dia-Wamba says: 'People think!' And not only think, but also act. It is we, in the NGOs, who seem to have stopped thinking.

Only by thinking and interpreting our world, can we make sense of the present context, which presents itself, as formidable, as given, as unchangeable. Once upon a time, the capitalist market was thrust on the people, and the people were disarmed from resisting it by the notion of the Invisible Hand. Nonetheless people resisted it and their resistance eventually produced an alternative, which said, 'economy is plannable'. Now we are told globalisation is irresistible, because it is driven by the invisible hand of technology. Why should we think that human agency will not once again intervene and think to do the unthinkable - overthrow globalisation before globalisation gobbles up the the globe.

This has been a rather long detour from the poor's access to justice and legal aid. Well, that is the risk Haroub took by inviting me. If he did that at your expense, he deserves to be reprimanded. If you think otherwise, then perhaps the risk was worth taking. Encourage him to do it more often!

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[*] Recently, the workers of the state utility electric company blocked the gates of their premises to stop the management from South Africa from entering the offices and take over the management of the company.