

LEGAL PROFESSIONS AND THE PROTECTION OF HUMAN RIGHTS: THE CONUNDRUM OF THE HALF FULL/HALF EMPTY BOTTLE?*¹

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When the question is asked, "Are lawyers and the legal profession a help or a hindrance to the protection of human rights in developing countries?", totally different answers are given depending on who is answering the question. The legal fraternity itself is always self-congratulatory. Lawyers tend to see themselves as valiant defenders of human rights. They repeatedly argue that a strong independent profession and judiciary would assure the autonomy of a legal system guided by its own, internal norms, and thus assure robust interpretation of constitutional standards, fair administration of criminal justice, defence of the disadvantaged and continuous reforms in the legal system to prevent misuse or abuse of legal rules by dominant groups or by the state itself. Prominent lawyers and judges throughout the Third World have espoused this ideal on many occasions.²

However, those who do not belong to the legal fraternity but instead tend to view it as a legal mafia, tend to take a totally different view of the role of the legal profession in the protection of human rights in developing countries. They ask the question, "protection of whose human rights?" "The rights of the privileged few and the ruling elites?" "Or the rights of the powerless and impoverished masses?" Critics of lawyers and the legal profession (whose numbers are legion) tend to take a very negative view of the professions' role in the protection of human rights. Legal professions are alleged to be "part of an official superstructure" which sanctions "distributive injustice, social stratification, class interest, and 'peripheralization' of impoverished people".³ Such critics maintain that the private bar has been a willing participant in the process which has resulted in "the rule of law" degenerating into little more than "the law of the ruler" and in human rights amounting to little more than the right to impoverish, exploit, and perpetuate dependency and slavery-like conditions. The public interest bar has also come in for criticism. Environmental lawyers have been quick to defend the right to a clean environment against "filthy" squatters and pavement-dwellers. They have remained largely uninvolved when permanent degradation of the physical environment has led to widespread famine or when reckless deforestation on hill slopes has threatened those in the path of resultant landslides and rock slides with virtual extinction.

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