

The Right to Development and Legal Empowerment of the Poor

BÅRD A. ANDREASSEN *

Legal empowerment of the poor—especially through legal protection of their property rights—has recently been advocated as an essential ingredient of a comprehensive package to combat poverty. The formation of a High Level Commission for Legal Empowerment of the Poor by the United Nations in 2005 has given a strong impetus to this new movement. Many in the human rights community are suspicious, however, of the focus on property right because of the fear that the pursuit of this right might be inherently biased in favour of the rich and that it might even entail a sacrifice of other socio-economic and cultural rights. This paper attempts to provide a balanced view on this debate by arguing for two inter-related propositions. First, it shows that the call for the protection of property rights is entirely consistent with the human rights laws and principles as enshrined in the various covenants and treaties on human rights. Second, it makes the case that for the protection of property rights to actually lead to the legal empowerment of the poor rather than to strengthening the hands of the rich, the programme of legal empowerment must be embedded in an explicitly human rights approach to development such as the one embodied in the concept of the right to development.

I. INTRODUCTION

The relationship between legal position and social inequity has long been recognised by the sociology of law. This relationship has two dimensions: legal protection and security requires resources, including knowledge and access to institutions that is often the privilege of the affluent and rich. At the same time, crime and insecurity is more widespread in areas where people live in poverty with little security of resources and inadequate legal protection. In short, legal position has generally a social bias in disfavour of the poor.

* Professor at the Norwegian Centre for Human Rights and Director of Research (Human Rights and Development) at the Law Faculty, University of Oslo. This article draws on an earlier work published by the Norwegian Ministry of Foreign Affairs (Andreassen 2006).

Over the last few years, the impact of legal position—the property of having access to legal institution, and human and financial resources to take advantage of this access—has become a field of interest for development studies and interventions. One reflection of this is the establishment of the UN High Level Commission for Legal Empowerment of the Poor in September 2005. The Commission was to set up “on the assumption and conviction that the fight against poverty can only be won and the MDGs (the *Millennium Development Goals*) only achieved if governments succeed in rendering legal recognition of the assets and institutions of poor people and democratising the rule of law” (HCCLEP 2006).

This point of departure for the Commission’s work was justified by the observation that the vast majority of the world’s poor live in the so-called informal or extralegal sector of the economy, without access to the benefits of a legal order. Poor people, the Commission assumed, lack effective legal protection and recognition of their assets and transactions. They also lack protection of legal security, and access to welfare provisions and institutions of social security that substitute, or complement traditional systems of protection.

This article addresses the formalisation of legal empowerment from a human rights approach, and asks whether the discourse on the right to development can offer insights in this novel attempt to address poverty reduction and eradication through strengthening the legal position of the poor. Human rights are increasingly being addressed in development discourses, yet when the High Level Commission was established there was a striking absence of a human rights framework, or analytical reflection on the role of human rights in developing means and measures for the enhancement of asset security and property rights of the poor. The major part of the article, therefore, discusses how the so-called formalisation agenda can be addressed from a human rights approach, and gain from the insights of the last few years’ discourse on the rights to development.

II. THE LEGAL EMPOWERMENT AGENDA

Legal studies that address the social functions of law suggest that better legal protection of properties and assets for production may potentially have a significant social transformative role. Law can help people benefiting from their material resources and properties, and enhance their capabilities to function better and more effectively as productive and social agents. Legal security and protection gives better freedom of action. It allows people to move around to do their business without undue interference. A secure environment is important for markets to operate, and for producers to sell their produce. Fear and danger of losing basic means of production, for instance secure access to land by legally secure title, make

people less free to invest in land for better utilisation and production. Lack of security of employment makes people worse off in situations of cyclical economic decline, and may be catastrophic for people already living at a subsistence level.

Historical evidence records the social importance and impact of law: The growth of the modern welfare state was fundamentally the gradual expansion of legally secured entitlements in complex legal webs protecting labour rights and job security, social security for those in need of help, legal protection of pensions for the aged, access to health facilities for the sick, and special protection for people in particular need of help.

The legal empowerment agenda assumes that secure property to means of production, e.g. title deeds to land (as property or user rights) can help improve people's opportunity to invest in production of marketable goods and hence, contribute to a long-term reduction or abolition of poverty. It rightly observes that an important means of economic growth and welfare is the availability of funds for investment, and that security in legally secured property can give access to capital for investment. Legal empowerment and formalisation is, however, hardly a shortcut to poverty reduction. Formalisation of access to property and other assets as a strategy for legal empowerment faces complex practical challenges that need to be addressed. Chief among these are causes for poverty other than lack of access to property rights; poverty is, as the High Level Commission itself acknowledges, a highly complex phenomenon.

In particular, two issues are at stake: First, legal disempowerment is closely related to (and often caused by) social exclusion, as well as political marginalisation, and lack of influence and representation of the interests of the poor in political institutions. Second, poor people have difficulties retaining and keeping their property and asset, when they get them, because they are vulnerable to "bad times" and the need to sell off their assets for survival or other poverty-related causes. To be realistic, international efforts to strengthen the legal position of poor people and the formalisation of property rights and security of assets as methods for poverty reduction needs to analyse and understand the role of social, economic, legal and political conditions and contexts for the *production* of legal empowerment. In processes for empowering the poor by better legal property and other asset protection and security, it is therefore necessary to bring in *sustainability factors* for legal empowerment—notably institutional, organisational and collective factors for the security of people's rights. We take it that rights without institutional structures, including support by social movements and collective organisations, easily end up as empty promises, or goods to be traded off, resembling Thomas Hobbes' dictum that "covenants without the sword are but words."

The formalisation agenda, in other words, need to take into account the social fabric and power relations in any given societal context in order to understand how social and economic structures, conflict patterns and cleavages, and political institutions are part of the production of poverty, and hence reflect on how interests and power represent impediments to needed change in these structures. Securing people resources and freedom of agency through enhancing property rights and right to assets also requires attention to *contingent* rights and institutions that condition property rights, and make them realistic and enforceable and hence can fulfil their “empowerment vision.” It is in this context that the international system of human rights norms offers significant institutional guarantees for the formalisation of rights to assets in the informal sector. Potentially, the discourse of the right to development adds some conceptual clarity for this contingent functions for human rights in the legal empowerment effort.

III. A HUMAN RIGHTS APPROACH

Human rights is, as Amartya Sen suggests, “an intensely evocative idea” as system of basic rights which others must pay attention to, “irrespective of citizenship and residence” (Sen 2010, p.3). However, since its modern inception by the *UN Charter* of 1945 and the *Universal Declaration of Human Rights* in 1948, this idea has been remarkably disconnected from development thinking, including its dimension of economic development, and its equity and social justice dimensions. Even the *Millennium Development Goals*, adopted by the UN in 2000, do not in themselves refer to human rights, even if the *Millennium Declaration*, as a preamble to the Goals, refers to human rights in substantive terms. The failure, however, of transforming this normative and legal framework into operational goals illustrates that human rights and development still are not operationally interrelated at the international plane. This is the case in spite of some progress over the last decade and a half in developing new conceptual linkages between economic development and theory on the one hand, and a normatively grounded development theory on the other.¹

Hence, since the early 1990s the notion of development has gradually changed to a more comprehensive concept of human development and sustainable human development, particularly influenced by the United Nations Development Program’s *Human Development Report* published annually since 1991. This report and parallel conceptual and empirical studies in the late 1990s gave rise to the concept of human rights-based development. This approach to social and institutional change has been more thoroughly discussed elsewhere (e.g. Alston

¹ The work of Amartya Sen and others have been particularly influential in this regard.

2005). The suggestive idea of the approach is simple: social, economic and political change should be conducive to the enhancement and expansion of people's basic human rights and entitlements, taking cognisance of fundamental rights to subsistence and well-being as well as civil and political rights to freedom of agency. It does not say much about the exact modalities of how this should happen; but it says that both the process and outcome of development intervention undertaken by national and local development agencies (including governmental ones) as well as international interventions should respect and uphold the normative and legal principles and guides of international human rights.

Note that the protection of human rights represents legal empowerment of any human being, affluent or non-affluent. Human rights are moral and legal entitlement that anyone can legitimately claim, and are enforceable by national courts and increasingly by international jurisprudence in regional Courts of Human Rights. The right to property has been part of this system since the adoption of the Universal Declaration in 1948, and was indeed a central right of the natural rights tradition going back to John Locke. A human rights approach to the formalisation agenda, however, represents a comprehensive normative and legal framework and assumes that fundamental human rights are normatively interrelated and interdependent.

Although it may be legitimate to give priority to some rights over others in particular situations and contexts in terms of which rights should have most resources allocated, they are in principle equally important and laudable. A human rights approach to formalisation and empowerment through protection of property rights, therefore, requires that one particular right is seen in the context of other human rights and the underlying human rights principles. One of these principles is the concern for equality, proposing that everyone is born free and equal in dignity and rights.² Another is the principles of non-discrimination, stating that there should be respect and observance of human rights and fundamental freedoms for all, without distinction as to race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status.³

The importance of seeing human rights as interrelated can be illustrated by a couple of examples: An effective use of property rights, e.g. land rights, depends on a functioning and non-corrupt system of governance that secures a formal and non-partisan management of registration and gazetting of appropriate documents. By all means, property rights also relies on a non-partisan and independent judiciary capable of resolving land disputes and other conflicts that may arise in the management of land tenure. Access to a legal system is commonly quite expensive,

² Article 1 of the Universal Declaration of Human Rights.

³ Article 2 of the International Covenant on Economic, Social and Cultural Rights.

and usually involves bureaucratic systems of legal enforcement and resource allocations for legal aid to help people getting access to a judicial system. Legal empowerment is generally both expensive and resource-demanding.

Note, however, that the legal system is not at all the only arena for protecting and promoting rights and legal entitlements. Often people's rights and entitlements are promoted by organisations or institutions mandated to defend the interests and rights of their members. By exercising public influence, interest groups such as peasants associations or trade unions promote rights through public awareness, institutional negotiations or other forms of public influence and resource allocation. Organisations can more easily than individual citizens have access to resources that are necessary for taking a matter to the court in individual cases or in cases involving a collective group. Legal empowerment of poor people, therefore, requires that the right to organise and associate, the right of petition, access to receive and impart information and freedom of expression are being respected. It requires, in other words, a system of governance that is respecting basic rights and freedom of individual and collective agency.

In short, formalisation of property rights and legal empowerment of the poor rests on political, institutional and legal conditions that make formalisation realistic, feasible and effective. A human rights approach to the formalisation agenda requires that property rights are seen in this broader and interrelated human rights framework.

IV. THE RIGHT TO PROPERTY

There is a variety of types of property rights, and their legal and social construction influences how they function socially, and how they may contribute to poverty reduction. Different categories of poor people, e.g. urban, rural, women, indigenous people, pastoralists, etc., may have quite different approaches to the need for securing user or property rights. A key point is that *de facto* rights protection requires resources for the utilisation of *de jure* rights in terms of know-how, resources, access to financial credits for investment, resources for maintenance of property, etc.

A key aspect of property rights is protection from interference from public authorities. In the case of property rights to land, property normally entitles a person to prevent others from entering his or her land. However, the right to property in human rights law (as is common in national jurisprudence) can be restricted under certain conditions. An important concern is the scope and margins for public authority to legally regulate and restricts the exercise of this right. Limitation is usually justified by reference to the interest of the public good, for instance by introducing land reform. The general provision of human rights law is that any

interference in property rights must be taken in the public interest and it must be provided for by law. Deprivation of property should not be arbitrary, and the holder of the property is entitled to some form of compensation. The standard of compensation, however, is not very explicitly defined by human rights law.

The conception of property varies considerably between societies and communities. Usually viewed as a private right, the right to property may also be exercised collectively. This is the norm in pastoral societies (where the issue usually is about access to land and user rights rather than property rights), and often the case in agricultural societies (where private ownership may be combined with access to collectively owned land, or land owned by the state). For the rural poor, access to land and a secure tenure to utilise land is often the main preoccupation, not individual ownership. A human rights approach to formalisation should acknowledge the variation in conceptions of property, and understand how it is rooted in different cultures and social practices and traditions.

It is important but not at all a new issue to address legal empowerment of the poor by addressing access to land, distribution of land, and land rights. Land reform and access to land has been a contentious political and social issue, and often key to violent conflict and social unrest. For the urban poor the issues are different, and basically a matter of reliable access to credit without security in fixed assets. Note that modern welfare states to a large extent were developed by extension of rights that were legally guaranteed. Social protection and security have been regulated by legislation enforced by legal systems, and not left to changing political trends and governments.

This is also a basic tenet of modern human rights law. It is supposed to be incorporated or transformed into national legislation, and to operate through domestic law. However, when human rights are incorporated into domestic law, there is a “margin of appreciation” inherent in the specification of legal standards, which is supposed to give recognition to local and national structures, traditions and institutions. There is some degree of flexibility in using human rights norms as legal standards for public policies and reforms.

The right to property is an important human right in itself. Historically, it was one of the “natural rights” in John Locke’s philosophical scheme justifying fundamental rights of the individual. Locke’s conception represents an important precedent to the modern human rights doctrine. Today the right to property is often a precondition for the free exercise of other human rights, for instance the protection of economic rights such as the right to adequate food by an individual’s or household’s self-provision. The right to work and an adequate income may be conditioned on the secure access and protection of private or collective property.

This is reflected in modern human rights instruments where the right to property has found its way into all key documents. Here is a sample of important legal references to human rights law:

The Universal Declaration of Human Rights:

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

The Convention on the Elimination of Racial Discrimination

Article 5 (d)

The right to own property alone as well as in association with others.
The right to inherit.

The Convention on the Elimination of Discrimination against Women

Article 15

....equal rights to conclude contracts and to administer property.....

Article 16 (h)

The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, disposition of property, whether free of charge or for a valuable disposition.

The African Charter on Human and People's Rights:

Article 14

States that the right to property shall be ensured. It shall only be "encroached upon" if there is a public need, or required by a concern for the public interests, and prescribed by law.

The African Convention on Human Rights, 1969:

Article 21

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reason of public utility or social interest, and in the cases and according to the forms established by law.

3. Slavery and other form of exploitation of man by man shall be prohibited by law.

The European Convention on human rights and fundamental freedoms (Protocol 1): Article 1

Everyone has the right to the “Peaceful enjoyment of one’s possession...[and shall]...not be deprived of possession.”

In spite of being included in the Universal Declaration, the right to property was not included in the *UN Covenant on Civil and Political Rights*, nor in the *UN Covenant on Economic, Social and Cultural Rights*. In lengthy debates in the Human Rights Commission during the drafting of the two Covenants, disagreement arose on all key issues including the scope of property, conformity with state laws, expropriation and other limitations, and compensation in situations of expropriation (Krause and Alfredsson 1999, p.365). This, however, does not imply that the right to property is not recognised as a human right as we can see from its recognition by the Universal Declaration, special human rights treaties and regional human rights treaties. The non-inclusion of the right in the two Covenants, however, emphasises that the right to property as a human rights has been surrounded by passionate political and ideological controversy, and this fact ascertains that human rights norms are constructed in processes of political negotiations, and hence, subject to political disagreement and risk.

V. RIGHTS-BASED DEVELOPMENT, THE RIGHT TO DEVELOPMENT AND FORMALISATION OF PROPERTY RIGHTS

A human rights approach to formalisation of property rights views these rights as integrated, interdependent and indivisible with other human rights. The so-called human rights based approach to development, which is a development model that builds explicitly on human rights, presupposes this interdependency, and provides standards for what development ought to be about (the purpose and goals of development) and how development planning and programming should be carried out in order to reflect and respect human rights standards.

A human rights approach to development (HRBAD) insists that the goal of development is to promote, protect and fulfil human rights. A HRBAD suggests that international human rights provide institutional guarantees that enable people to make choices that enable them to live a life they have reason to value (using Amartya Sen’s terminology of capabilities and choice, see Sen 1999). Planning and development interventions must be done in ways that are conducive to human rights standards. This approach takes as its basic premise that states that ratify a human

rights treaty has an immediate and unconditional obligation to respect, protect and ensure that human rights are fulfilled by facilitation or provision. The human rights approach to social and economic change, however, is broader than just state-led development (through legal reforms and public policies). In recent years, an important discourse has emerged on the human rights responsibilities of *non-state* commercial and non-commercial actors, and their responsibility for labour rights, social rights and rights of workers and local communities to e.g. be informed, be involved, and have a voice in commercial decisions that influence their communities and lives (Andreassen 2010). Without going into details here, with reference to article 2(1) of the UN Covenant on Economic, Social and Cultural Rights, this discourse also addresses the issue of international duties to co-operate with poor countries and to assist them in expanding the resources needed to fulfil their obligations prescribed by the Covenant.

A HRBAD addresses development as process and as outcome. In human rights theory this is referred to as state obligation of conduct and obligations of result. States as the primary obligatory of human rights fulfilment are responsible for structuring development processes in ways that are consistent with human rights standards and principles. Human rights advancement as a process should nurture and respect all human rights. As a minimum, states should make legal reforms and initiate plans for how to implement rights for the protection of basic subsistence, and implement policies conducive to basic economic and social rights. Non-state actors should, at a minimum, respect the “do no harm principle,” demanding that all agents of development do not violate human rights in their commercial or humanitarian activities. In principle, all rights concerned should be respected, including the right to popular participation and involvement, equality and non-discrimination, public transparency and insights, etc. At a global level, the human rights approach to development requires respect for article 28 of the *Universal Declaration of Human Rights*, which says that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.”

It is imperative that having a right also implies being in a position to claim one’s right: To claim one’s right, however, is contingent on resources, a functioning legal order, and a political dispensation that respects and secures people’s rights and the rule of law. Institutional structures at different levels, in particular appropriate state institutions, are important for any state authority’s capacity to ensure a legal order that guarantees people’s personal security and rights of property. The way institutions operate to secure rights is also an important matter. The institution of the *free market* in the exchange of land have in many cases dismal effects on the poor who may not be in a position to keep on to their land in times of bad harvest and

hunger, and are forced to sell off their land to the better off. Securing the property rights of poor farmers under such conditions may require particular institutional and financial support systems that can help them in hard times.

Summing up, a human rights approach to development rests on the principles of equality and non-discrimination, but access to the legal system is usually unequal, expensive, bureaucratic and knowledge-demanding in a way that hampers fairness in access to justice and in justice as outcome. Legal empowerment of the poor through the advancement of property and other related rights, therefore, requires critical examination of how formalisation strategies may imply social, gender or other biases and inequalities in resource distribution, utilisation and outcome.

At a communal or collective level, particularly as regards indigenous people, the question of right to property is related to self-determination over the resource endowment of a given territory for their development and welfare. In this context, the right to development and the related right to self-determination are important *conditioning rights* for the functioning of the right to property. Two analytical dimensions are important here. First, although the idea of the right to development is not fully covered by international human rights law, it is included in embryonic and fragmented ways. In spite of lacking a legal status, the *Declaration on the Right to Development* (1986) has over the last decade gained some political and normative weight and power. At the same time, important dimensions of the right to development are parts of the main human rights legal body: for instance, common article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) that refers to all people's right to self-determination. Paragraph 2 of article 1 states that; "(a) All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." These self-determination components of the right to development are repeated by article 1 of the 1986 Declaration stating that "The human right to development also implies the full realisation of the right of people to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources" (UN 1986).

The broader implications of these relationships between the right to development and positive human rights law cannot be thoroughly addressed here, but one significant area is the protection of resources that it provides, including property right of indigenous groups that qualify as people under international law. In discussing a Canadian case on the right of indigenous people, the UN Human Rights Committee, supervising the implementation of the ICCPR, observed that "the right to self-determination requires, inter alia, that all peoples must be able to

freely dispose of their natural wealth and resources and that may not be deprived of their own means of subsistence ...(...)...The Committee recommends that decisive and urgent action be taken towards the full implementation of the [Royal Commission in Aboriginal Peoples] recommendations on land and resource allocation.”⁴

The point to be emphasised here is that human rights law tends to secure indigenous people’s fundamental need for protection of property and/or access rights to traditional land (titled as property rights), by reference to article 1 of the two UN Covenants, which in effect implicitly represents a fulfilment of important dimensions of the right to development, with the state as a prime guarantor and obligation-holding party to the fulfilment of the right.

Secondly, the right to development is also related to the formalisation agenda by its conceptual design and architecture. The right to development is, *inter alia*, the right to a particular process of development. The main characteristic of this process is that development, as intentional design and management of public policies, should be made in ways that uphold all human rights of international human rights conventions. Economic policies for growth, according to the erstwhile *Independent Expert on the Right to Development*, Arjun Sengupta, should be made in ways that respect the rights and freedoms for all in terms of subsistence rights, welfare rights and rights to agency. Again, rights should be seen as interrelated, or, as the *Independent Expert* formulates it: The right to development is a composite right that insists on the parallel realisation of all recognised human rights in a process that is recognisable and subject to public scrutiny and criticism, although priorities among rights may be made conditional on context and circumstances.⁵ The realisation of one right—for instance the right to property—should be part of a larger agenda for the realisation of all rights. According to Sengupta (2010, p.38), “(n)ational obligations should begin with the formulation of a set of policies applicable to the implementation of each of the constituent rights of the right to development individually, as well as in combination with each other as a part of a development program. They should be categorised as a measure that prevents violation of any right and measure that promote the improved realisation of all rights. According to

⁴ For a fuller discussion of the relationship between the right to development and self-determination, see Scheinin (2010).

⁵ Human rights orthodoxy requires that human rights are indivisible and interrelated, and that no hierarchy or priority amongst them exists. In real-life situations, however, some human rights may obviously have priority in particular circumstances, and be given extra resources and attention for contextual and situational reasons as long as this does not imply the denial or violation of other rights.

the definition of the right to development, violation of any one right would mean violation of the right to development itself.”

Seen from the perspective of the right to development, therefore, the formalisation agenda on the legal empowerment of the poor, the right to property and assets should be reflected as a substantive right that is part of a composite right to development that requires public policies for the fulfilment of all internationally recognised human rights. This implies, for instance linking asset security and property right to the wider issues of rule of law, and access to resources to seek legal redress in cases of conflict over ownership or utilisation of property assets.

VI. CONCLUDING REMARKS: THE NEED FOR A COMPREHENSIVE FORMALISATION AGENDA

In this article it has been argued that the discourse on the formalisation of property rights should be situated in a rights-based model. A rights-based model for international development requires that the process and the outcome is conducive to human rights standards, and is being monitored by national and international human rights institutions. However, so far monitoring bodies have generally not paid much attention to the property rights. In spite of this, the formalisation discourse should examine and take notice of the work of international human rights bodies, including the work of the UN appointed *Independent Expert of the Right to Property* in order to identify more concretely the interpretation and operationalisation of property rights as human rights.

A human rights model requires, *inter alia*:

- respect for different types of property and user rights. The fulfilment of human rights for poor people, e.g. the rights to food, and to work and income, etc. are not *sui generis*; they are interlinked with the right to private property, and are more fundamentally dependent on stable access to and the right to utilise productive resources, including land, capital and other modes of production;
- that formalisation of property rights should be complemented by social and economic policies for legal justice and social redistribution. The right to property gives ample room for accumulation of property (for instance, when poor people trade off their rights in order to survive). Accumulation of property often leads to social inequality, inequity and disempowerment, and to a dire need for redistributive policies (e.g. through the taxation system.) The formalisation framework, therefore, requires political will and political reforms that are able to manage and accommodate demands for social justice and redistribution;

- a rule of law system that works in fairness and that facilitates legal reform, anti-corruption efforts and efforts to strengthen access of the poor to the legal system.

We may ask whether the debate on legal empowerment of the poor has focused too much on “formalisation” and too little on informal or structural distributive mechanisms and institutions or, for that matter, other contextual factors, including social and economic power relations. In states where governance institutions are closely knit with private economic interests and inadequate public control of the use of state resources, legal empowerment may have little effect. Historically, access to resources for acquisition of property has been the prerogative and privilege of those already in position of resources and influence. Paternalism marginalises women, and the poverty trap of the poor to sell off goods (such as titles) for the immediate satisfaction of basic needs prohibits the poor from retaining resources that they have obtained, such as secure assets and property rights. An important issue is how to counter legal disempowerment of the poor in bad times granted that they have improved their property conditions in “good” times.

The enhancement of rights of poor people is to a large extent a matter of collective action and responsibility. Protection of rights often takes place in non-legal channels and institutions. Rights, including human rights are often promoted and enhanced by social movements and non-governmental organisations, e.g. by peasant associations, small-farmer or trade unions. For poor people, the legal channel is a rights-protecting institution with significant limitations due to problems of accessibility and the high expenses involved. The formalisation agenda should, therefore, include a concern for legal aid and access to institutions of law enforcement, as well as the importance of and effective enforcement of the freedom of assembly and the right to organise as means of promoting and defending the rights of the poor.

Lastly, a widespread problem in countries and societies with large populations living in poverty is weak institutionalisation and low trust in public authorities. This represents significant obstacles to an effective formalisation agenda. A progressive formalisation agenda must acknowledge that many societies with pervasive poverty have political systems where traditional and informal institutions live side by side with modern institutions of democratic representation and law enforcement. Such systems of parallel structures of authority make it imperative to define and resolve how conflicts that arise between different types of institutions as regards property rights shall be settled.

Often, formalisation, institutionalisation and legalisation of interest and access to goods such as property lead to the cementing of social inequality and existing

injustices. Empowering the poor requires transgressing or abolishing social injustices. The formalisation agenda should assess the effects of social inequality on the effective protection of property rights of the poor, and the need for grounding the formalisation agenda in an evaluative analysis of social and distributive justice.

REFERENCES

- Alston, P. 2005. "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals." *Human Rights Quarterly* 27: 755-829.
- Andreassen, B. A. 2006. "Formalisation and Poverty Reduction: A Human Rights Approach. In Mona Elisabeth Brøther and Jon-Andreas Solberg, eds., *Legal Empowerment – A Way Out of Poverty*. Oslo: Norwegian Ministry of Foreign Affairs.
- _____. 2010. "Development and the Human Rights Responsibilities of Non-State Actors." In Bård A. Andreassen and Stephen Marks, eds., *Development as a Human Right. Legal, Political and Economic Dimensions*. Antwerp: Intersentia. Second edition.
- HCCLEP. 2006. "High Level Commission on Legal Empowerment of the Poor" Concept Paper. September 6, 2006. Available at <http://legalempowerment.undp.org/reports/concept2action.html#5>.
- Krause, Catarina and Gudmundur Alfredsson. 1999. "Article 17." In Gudmundur Alfredsson and Asbjørn Eide, eds., *The Universal Declaration of Human Rights. A Common Standard of Achievement*. The Hague: Martinus Nijhoff Publishers.
- Scheinin, Martin. 2010. "Advocating the Right to Development Through Complaint Procedures Under Human Rights Treaties." In Bård A. Andreassen and Stephen Marks, eds., *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd ed.). Antwerp: Intersentia.
- Sen, Amartya. 1999. *Development as Freedom*. Oxford: Oxford University Press.
- _____. 2010. "Human Rights and Development." in Bård A. Andreassen and Stephen Marks (eds.) *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd ed.). Antwerp: Intersentia.
- Sengupta, Arjun. 2010. "The Human Right to Development." In Andreassen, Bård A. and Stephen Marks, eds., *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd ed.). Antwerp: Intersentia.
- UN. 1986. *Declaration on the Right to Development*. General Assembly Resolution 41/128, adopted 4 December 1986. New York: United Nations.