



Beyond Formalisation

*A land rights agenda for Norwegian
development and foreign policy*



The Norwegian Forum for
Environment and Development

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Introduction

In recent years there has been a heated debate about formalisation of the property and businesses of the poor as a mechanism to combat poverty. However, evidence indicates that such a formalisation model is too simplistic and can actually exacerbate poverty and even violate human rights. Initiatives need to be properly adjusted to the different socio-cultural and political contexts. Introducing individual property titles or simply formalising existing informal structures is not necessarily appropriate to ancestral lands of indigenous peoples or traditional communal and customary land systems. Furthermore, many formalisation projects have entrenched power and economic imbalances within existing informal systems, leading to the disempowerment of women, small-scale farmers and pastoralists, and urban and rural tenants.

A greater concern in this debate has been the absence of the voices of those whose core interests are at stake: the poor themselves, women, indigenous peoples, pastoralists, ethnic minorities, smallholders and the landless. It is claimed that the formalisation agenda is demand-driven and based on local initiative. However, the contrary is often true. The process within the Commission on the Legal Empowerment of the Poor (CLEP), for example, has been top-down from the outset, and hardly – if at all – based on local initiatives. This underlines a major contradiction regarding the whole concept of empowerment, which is supposedly at the heart of CLEP. Can 'empowerment' be forced upon marginalised groups by initiatives emanating from the political elite? Even if such a process contributes to improvement, is it really empowerment?

The Norwegian Forum for Environment and Development (ForUM) supports the Government of Norway's aim of securing the rights of the poor to land and resources. We endorse the Government's human rights-based approach in support of indigenous peoples and encourage a similar and more explicit approach to land policy, management and administration. This presents a people-centred alternative to the predominant neo-liberal privatisation agenda. A rights-based approach implies that support for privatisation, including formalisation, and economic liberalisation is subject to human rights and environmental concerns. The UN Declaration on Human Rights and international human rights treaties have priority over all other national and international policies and agreements, including regional and multilateral trade-rules.

In this briefing paper, we make recommendations for a broader vision of poor people's land rights, the aim being to bring the idea of legal empowerment of the poor back to its origins by focusing on the more diverse and complex issues of disempowerment that need to be addressed. The separate sections on collective land rights, agrarian reform, women's land rights, indigenous peoples, and urban areas, highlight the key land rights issues that, we believe, the Government of Norway should make

a priority in its development aid and foreign policy. Another aim of these recommendations is to support commissioners and others within CLEP in assessing legal empowerment in a broader sense; that is, based on human rights principles rather than on the more limited and technical formalisation of property rights.

Some of the key themes that emerge in the report are the importance of:

- *Going beyond* individualised formalisation models and supporting a menu of options for improving land tenure security.
- *Recognising or adopting collective land rights where appropriate*, for example customary rights in rural sub-Saharan Africa indigenous peoples ancestral lands land rights or communal/cooperative models in urban upgrading.
- *Ensuring protection from forced evictions* by adopting laws and reforming institutions as well as changing prejudices that may heighten vulnerability to eviction.
- *Putting pro-poor agrarian reform and urban upgrading* firmly on the development agenda and provide sufficient support.
- *Protecting and promoting women's access to land* by eliminating discrimination in laws and practices concerning ownership, use and inheritance of land.
- *Reforming and building capacity of land management institutions* to deliver pro-poor land rights, services and conflict resolution systems.
- *Take a rights-based approach to participation in land-related processes* by incorporating groups who are excluded and setting minimum and enforceable standards, for example rights to consultation and consent for indigenous peoples.
- *Building capacity of grassroots and civil society* to assist rights-holders claim and access their land rights and hold governments and powerful actors accountable.
- *Ensuring that international financial institutions, foreign corporations and donor agencies do not violate* land-related human rights.



Young shepherd in Ethiopia

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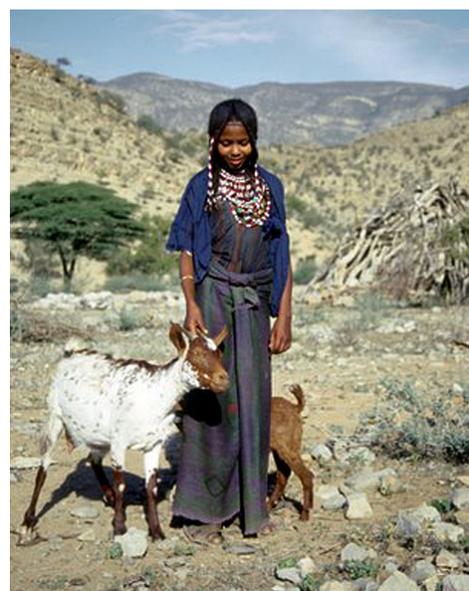
Collective land rights

Two-thirds of the world's poor – approximately 900 million people – live in rural areas.¹ Most of them, particularly those in Africa, access land and resources through collective *customary* land systems. Ensuring that such access is secure is key to combating their poverty and realising their human rights. Norway can play a lead role in this process by supporting collective solutions for rural land use that are more firmly rooted in local contexts and based on human rights. Other sections in this briefing paper note the potential for wider use of collective land systems; for example, collective ownership of ancestral lands of indigenous peoples and use of communal land trust and cooperative housing in urban areas.

Recommendations

ForUM recommends that Norway, through its foreign policy, development aid and membership of UN agencies, international financial institutions and CLEP:

1. Support efforts that legalise collective tenure systems by focussing on existing land tenure systems, recognising that formalisation and the granting of legal titles does not necessarily provide greater security than traditional legal systems.
2. Enhance customary land laws and management institutions that are democratic and respect and protect the rights of women and marginalised groups.
3. Promote the recognition of the resource rights of pastoralists as well as the community-based and local land systems and institutions that secure their access rights to strategic seasonal resources.
4. Support low-cost, simplified, accessible and transparent land registration.
5. Promote the strengthening of accessible and appropriate land dispute resolution mechanisms, recognising that competing claims and interests exist within customary tenure systems.
6. Support decentralised land management that enhances local participation and ensures fair access to legal processes.
7. Respect and encourage efforts to enhance local communities' protection from forced evictions and rights to be consulted and to share equitably in due compensation in cases where there is foreign investment.
8. Support civil society and social movements in land policy development, implementation and monitoring.



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¹ This section draws on L. Cotula, C. Toulmin and J. Quan, *Better land access for the rural poor: Lessons from experience and challenges ahead* (IIED and FAO, Oct. 2006).

1. Legal recognition

Most rural people in developing countries, particularly in Africa, gain access to resources through belonging to a community, a kinship group or an ethnic group. Land rights are often allocated through informal, customary laws in which the individual, family or sub-group have more or less exclusive, temporary user rights to land that is managed collectively. These informal and traditional land tenure systems have a high degree of legitimacy in the local context, but in the past have not been granted legal recognition, even though in Africa, for example, they account for up to 85 percent of land tenure systems. As long as land use and/or ownership is not contested or under pressure, people feel no need for legal recognition or formal registration. However, as commodification of land and population growth pressure on land and related resources has intensified, disputes over overlapping land claims and land-grabbing by political and economic elites and chiefs have become more common. They now pose a real threat to these informal and traditional tenure systems.

Many see formalisation as the answer. However, introducing private and/or individual ownership, as is often prescribed by international financial institutions such as the World Bank and indeed by many national governments, is highly problematic. Privatisation has often reduced access to land by poor people and marginalised groups; in particular, because more powerful groups then decide over, or can more easily take advantage of the formalisation process.

Norway should recognise that formalisation and legal titles do not in themselves give more security than traditional legal systems, as laws are founded on the ability, capacity and the resources available to implement them. Since the ability to implement legislation depends on local and national political will and the resources available to implement it, legalising collective tenure systems can draw on the energies and resources found in existing systems insofar as they comply with human rights.

2. Rights of women and vulnerable groups

Although respecting the flexible and diverse nature of customary tenure systems is key to securing the access of the poor to land, the complexity of these systems requires knowledge of how they work, and for whom. While customary tenure systems have often disfavoured women and marginalised groups, efforts can be made to adapt customary land systems to take account of human rights, as the example of Tanzania illustrates in the box. Norway should support efforts to secure the development of democratic, accountable, transparent and inclusive land management institutions at all levels that seek to secure the rights of the marginalised in any customary land system.

3. Pastoralists' land rights

Pastoralists are highly dependent on flexible access to sizeable areas of grazing land and water resources. Rights to access resources, rather than property rights to land, are of central importance to their economy,

Human rights and collective land tenure

The International Covenant on Economic, Social and Cultural Rights recognises that the right to gain secure access to land in a culturally acceptable manner is part of human rights to livelihoods, food and housing. This right to access land in collective forms is reinforced by the Universal Declaration of Human Rights, which recognises in article 17 that “Everyone has a right to own property alone as well as in *association with others*” (emphasis added). Regardless of the type of tenure, all persons are also entitled to “possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats” according to the United Nations.

Women's rights and customary land law in Tanzania

In 1999 the Village Land Act recognised customary land rights as property rights if they conform with constitutional principles such as non-discrimination. The law also provides for women's participation through a quota for women's membership in the Village Land Council and Village Adjudication Committee, which played key roles in defining and adjudicating communal and individual land. However, active participation by non-elite women has been hampered by absence of information.

livelihoods and way of life. Unfortunately, many countries consider the pastoralist way of life to be backward. Instead of recognising the sustainability of their resource management systems or their economic contribution, efforts are made to turn pastoralists into sedentary agriculturalists or cattle-farmers. As a result of this cultural bias, their access to resources is seldom recognised and easily encroached upon by agribusiness, game parks and sedentary farmers. Furthermore, a failure to address conflicts over land and water between pastoralists and farmers is the root cause of much armed conflict, particularly in Africa. In order to sustain the livelihood security of pastoralists, their access rights must be acknowledged and secured, and efforts must be made to build conflict management systems that respect the multiple users of shared resources.

4. Land registration

As pressure on land grows, marginalised individuals and communities often seek to secure their access to land resources through formal registration. In most cases, people find that individualised formalisation processes are far too costly, difficult to access, favour the primary rights holders (men and elites) and are unreliable due to weak and corrupt institutions. Land registration processes must therefore be designed to allow for collective land registration. They should be transparent, accessible, affordable and equitable, with emphasis on protecting secondary rights holders, such as women, pastoralists and tenants.

5. Decentralised land management

By bringing land management closer to land users and the landless poor, land laws stand a better chance of supporting the rights of those who are supposed to benefit. Devolution of power entails the transfer of authority and resources, as well as local government capacity building. Transparency and accountability must be incorporated into the decentralised land management structure. Furthermore, decentralisation must be founded on the broad participation of civil society; firstly, to check the power and influence of bureaucrats, rural elites and traditional chiefs and, secondly, to ensure that local governance is democratic, inclusive, accountable and respects national laws and basic human rights principles. Norway should support local governance efforts that enhance local participation and ensures peoples' fair access to legal process.

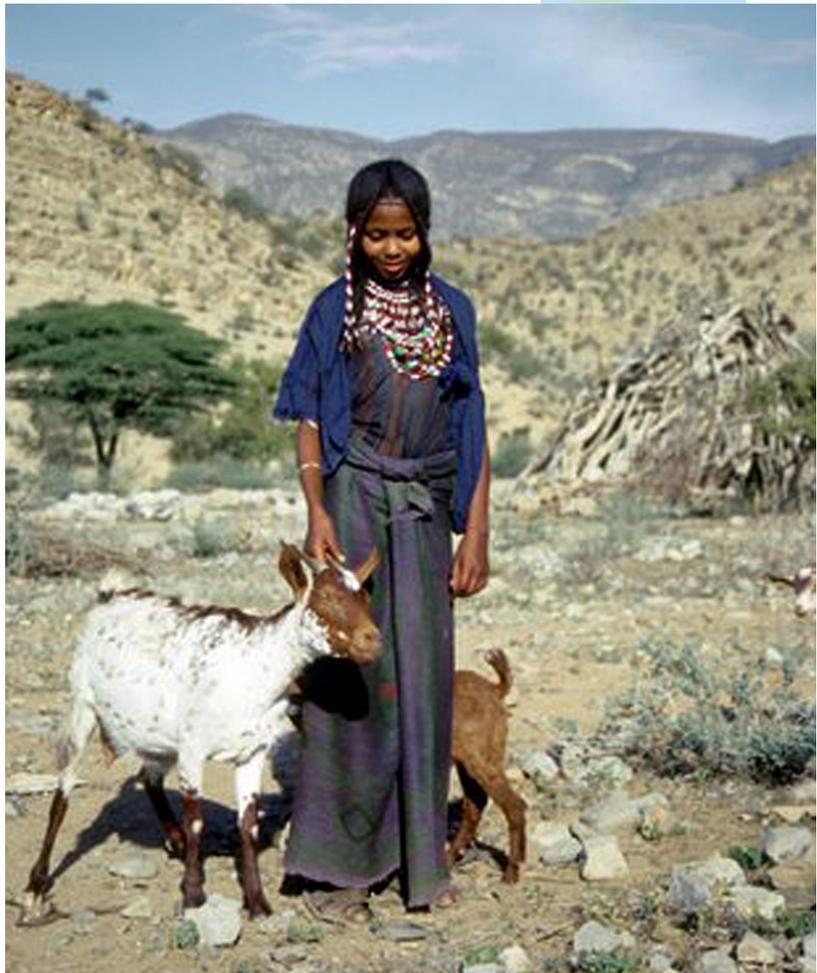
6. Dispute resolution mechanisms

Conflicts over land are prevalent in both customary and statutory land tenure systems. For most people in rural areas, customary dispute mechanisms are the only accessible forum for dispute resolution. As land becomes scarce and land values rise, communities with informal and overlapping land claims are more vulnerable to the arbitrary rulings of more powerful actors, including chiefs, the elite, and external interests. This conflict tends to escalate when formalised individual property rights and 'informal' collective land rights collide. Dispute mechanisms should therefore be strengthened to ensure that the interests of the marginalised are respected and satisfied according to the law. These systems can be low-cost and simple, and can function alongside customary dispute mechanisms.

7. Rights to protection from forced eviction and fair compensation

In many resource-rich countries, poverty prevails due to bad governance. The resources that belong to the people, and are supposed to benefit the development of society at large, are often pocketed by the elite. Customary tenure systems are vulnerable to resource exploitation because they lack the legal protection that provides some security for private property holders. This results in forced eviction or inadequate compensation, which intensify poverty. International and regional human rights law (for example, the African Charter on Human and Peoples' Rights) and accompanying jurisprudence provide that eviction from land, regardless of the type of tenure, must only occur in exceptional circumstances.² There must be

² See Committee on Economic, Social and Cultural Rights, *General Comment 7, Forced evictions, and the right to adequate housing*, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997); *SERAC v Nigeria*, African Commission on Human and Peoples' Rights,



Afar pastoralist, Ethiopia
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substantial justification, due process including consultation, and legal remedies including fair compensation or provision of alternative land.

These human rights obligations fall on both national and foreign governments who may be providing support to expropriation-related projects. Foreign governments must also regulate the activities of firms and foreign investors registered in their country. Such private actors have the responsibility to refrain and desist from forced evictions. In order to make all parties accountable, national laws should prohibit forced evictions and ensure the provision of fair compensation and a legally binding international framework for investment rules should be developed.

8. Civil society

Civil society plays a vital role at all levels in developing and supporting pro-poor land management systems. This includes influencing the development of land laws and the monitoring of their implementation. Civil society organisations raise awareness of peoples' land rights and obligations, share experiences on the effects of formalisation programmes, build capacity at the local level, facilitate interaction between local government and communities, provide legal advice, and mobilise action in the event of violations of peoples' rights. The role of social movements in land policy development and implementation must not be underestimated. Governments should actively endorse them and international donors such as Norway should support them accordingly and ensure they are given space in national and international forums to effectively participate.

Agrarian reform

Agrarian reform is one of the main tools that can be used to enable poor peasants to obtain secure access to and control of land, seeds, water and other productive resources, all of which enable the fulfilment of their right to food.³ Many tenants are harassed, and even killed, for claiming their land after a land titling process. Land titling must not reduce the tenure security of peasants, especially through debt burdens and loss of property due to long-term economic difficulties.

Recommendations

ForUM recommends that Norway, through its foreign policy, development aid and membership of UN agencies, international financial institutions and CLEP:

1. Promote pro-poor agrarian reforms based on human rights as a key measure to fulfil the right to food, including within CLEP.
2. Support genuinely participatory processes towards negotiations of pro-poor agrarian reform laws and programs. Norway should also support participation of Southern rural poor representatives in the specialized UN agencies working in the area of food and agriculture, such as the FAO and IFAD, and other UN bodies.
3. Support social movements and organisations representing the poor, acknowledging their diversity of opinions.
4. Assist countries interested in implementing the ICARRD final declaration to develop strategies to implement pro-poor agrarian reform programs, including protections against forced evictions, land tenure and ownership for the rural poor, marking indigenous land and adequate infrastructure.
5. Encourage targeted measures to guarantee access to land for women, indigenous people or religiously discriminated groups.
6. Support holistic and participatory efforts to ensure that strategies are effectively implemented and monitored.
7. Support a menu of options for land reform and identify whether its ODA contribution is supporting mere market-led land reform programmes that may also replace and/or block more progressive agrarian reform or lead to forced evictions.
8. Norway must also ensure that the development programmes it supports and corporations registered in Norway do not violate land-related human rights of the rural poor.



Philippine peasant organisations demanding the implementation of the Comprehensive Agrarian Reform Law in June 2006.

³ See, generally, S. Borra, *Land, empowerment and the poor: challenges to civil society and development agencies*, Special Event at the International Conference on Agrarian Reform and Rural Development, IFAD, 2006.

1. Putting pro-poor agrarian reform on the agenda

Property rights are social constructs and not merely technical attributes of things. Resolving the pending issues on land is therefore not merely a question of formalising rights. Agrarian reform policies must make use of measures such as redistributing land and setting a maximum limit on owning and leasing it, and must critically assess justifications for expropriation of lands beyond protecting social interests. Land regularisation cannot be used to legitimise land robberies that occurred in the past. Studies show that the countries that have been least successful in terms of rural poverty reduction are characterised by highly unequal landownership, with substantial investment in large-scale farming.⁴ The World Bank concludes that small scale farmers are economically more efficient than large farmers but this has not resulted in a 'take-over' of the large farms by the former. To a large extent, this is due to the discrepancy in bargaining power. It is also important to appreciate that land has a multidimensional character — it has economic, social, political, cultural, and environmental meaning and importance. Norway should ensure that pro-poor agrarian reforms are included in all its development work, including in CLEP and relevant FAO processes, and actively monitor their progress. It should also actively support the implementation of the ICARRD declaration.⁵

2. Empowering the rural powerless in policy-making

Although land policies promoted by many governments and multilateral organisations affect the fundamental rights of rural communities, peasants and the landless, in this process women and indigenous peoples have played a marginal role. The language in discussions has been dominated by academics and technicians. Land reform is a politically sensitive issue and requires that all stakeholders – including beneficiaries, current landowners, former colonial powers, donors and government – commit themselves to negotiation. Agrarian reform programmes should be negotiated in a transparent, participatory way that is pro-poor and based on human rights. In the land reform process, the bargaining power of the various stakeholders must be balanced. It should not simply empower those who can easily afford to buy land, should not reinforce or deepen existing inequalities. The needs of the poor must be central to land reform laws and programmes. To this end, representatives of the poor must be heard and their human rights, especially to food and water, must be respected, protected and fulfilled as a result. Norway should support genuinely participatory processes towards negotiations of pro-poor agrarian reform laws and programmes, especially in its partner countries. It should also ensure participation in the specialized UN agencies in the area of food and agriculture, the FAO and IFAD, and other UN bodies of representatives from marginalised groups in the South.

⁴ See Borra, S. 2006. Land, empowerment and the poor: challenges to civil society and development agencies. Background paper for Special Event at the International Conference on Agrarian Reform and Rural Development hosted by IFAD.

⁵ International Conference on Agrarian Reform and Rural Development hosted by FAO and the Brazilian government in 2006. http://www.icarrd.org/en/news_down/C2006_Decl_en.doc

Right to food and agrarian reform: Hunger is political

More than 850 million in the world cannot realise the minimum level of the right to food even though there is sufficient amount of food for all. Large food surpluses exist in countries where significant parts of the population are hungry, even starving. In order to understand the politics of hunger, it is necessary to understand poverty production and the highly skewed political and economical power that exists within and between States. The UN Special Rapporteur on the Right to Adequate Food stated: "access to land and agrarian reform must form a key part of the right to food" given that "access to land is often fundamental for ensuring access to food and to a livelihood, and therefore freedom from hunger".¹ The 190 member States of the UN FAO have highlighted the importance of access to productive resources in guidelines on the right to food ('Guidelines'),² and a recent World Bank publication states that pro-poor land reform is vital for combating poverty.³

¹ Report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler, to the UN General Assembly in accordance with Resolution 56/155 on 15 February 2002. UN Doc. A57/356, paras. 30, 24.

² Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security. 127th Session of the FAO Council, 22-27 November 2004 www.fao.org/righttofood/en/highlight_51596en.html

³ R. Brink, G. Thomas, H. Binswanger, J. Bruce, and F. Byamugisha, Consensus, Confusion and Controversy. Selected Land Reform Issues in Sub-Saharan Africa (Washington: World Bank, 2006).

3. Listening to and supporting social movements

Capturing the voices of the poor and the social movements is neither axiomatic nor straightforward. Their views are not homogenous; there is a diversity of social movements and a variety of opinions among the poor. It is important to understand the different constituencies and ensure that all representative opinions are heard in a transparent and participatory manner. This will enable all parties to express their needs and concerns and negotiate with competing stakeholders. This also requires political and economic support of these groups to strengthen their bargaining power. The implementation of pro-poor agrarian reform programmes must be monitored by civil society within the country, to ensure that the programmes are carried out in a way that promotes and secures the human rights of the poor. Norway can contribute to strengthening the political power of the poor by supporting capacity building of civil society organisations and media.

4. National strategies and legislation

Access to land and agrarian reform must be a part of national strategies, including PRSPs, for the progressive realisation of the right to adequate food. According to the Guidelines and General Comment 12, elaboration of these strategies should begin with a participatory and transparent evaluation and reform of existing law, policy, programmes and institutions relating to ownership of and access to land within resource constraints. Attention must be given to revising or creating legislation to prohibit forced evictions, a prime cause of poverty. Such laws should maximise land occupants' security of tenure in accordance with international human rights law, strictly controlling the circumstances in which evictions can be carried out. National strategies must also define concrete objectives and time frames for other central aspects of access to land, including: securing sufficient land tenure and ownership for the rural poor; demarcating indigenous land and territories; facilitating or providing access to land to the most marginalised groups; and ensuring adequate infrastructure for small- and medium-scale producers. In implementing the Guidelines, Norway can play a pro-active role in encouraging such evaluation and reform.

Demands from the ground

In March 2006, Brazil and FAO hosted the International Conference on Agrarian Reform and Rural Development (ICARRD) with 92 States and approximately 200 social movements and NGOs participated. The final document from the parallel NGO forum emphasizes:

- The socio-environmental value of land and natural resources;
- That the State must play a strong role in policies of agrarian reform and food production;
- That no agrarian reform is acceptable if it only aims at the distribution of land;
- Small-scale producers must be supported with locally appropriate and low-interest credit, fair prices and market conditions, and technical assistance for agro-ecological production forms.
- No genuine agrarian reform to happen without gender equity.

5. Targeted measures

Special measures must be ensured to guarantee access to land for women, indigenous people or religiously discriminated groups. As all these groups have been historically discriminated against, their access to land should be considered an act of compensation or positive discrimination. Ensuring infrastructure (water, irrigation, health, education, transport, energy) for the distributed or redistributed land, as well as access to extension services and credit for production, is a fundamental part of any agrarian reform programme based on human rights.

6. Implementation and monitoring

In order to ensure that governments fulfil their legal obligations with respect to access to land, there must be a holistic and participatory approach to implementation with strong civil society monitoring mechanisms for holding governments accountable. It is important that States ensure the coordinated efforts of the relevant ministries, agencies and offices and establish, for example, national intersectional coordination mechanisms to ensure the concerted implementation, monitoring and evaluations of policies, plans and programmes. In order to effectively realise these strategies it is essential that institutions for agrarian reform and land ownership have sufficient resources as well as sufficient highly qualified personnel. This is especially important given the current tendency in many countries in the world to dissolve institutions for agrarian reform, or reduce their mandate, functions, personnel and resources. Equally crucial is protection against budget reductions in basic social programmes such as those for access to land and agrarian reform. Foreign resources can be an important factor in achieving this.

7. Menu of options: markets alone cannot resolve land redistribution

The market in and of itself cannot resolve the issue of land redistribution. The privatisation not only of collective and communal forms of land tenure but also of rural extension services has negatively affected peasants and indigenous people, especially in those countries where a considerable number had benefited from past agrarian reforms. The land tenure security needed by rural women and poor people is not the same as that demanded by investors. Privatisation has not resulted in greater land tenure security of women and poor rural communities. In the wake of privatisation measures aimed at redistribution of land, many peasants who were holding land title deeds have experienced bankruptcy. As these titles have become transferable, this has allowed banks to take possession of the lands. Market-based distribution of land, such as the voluntary sale or purchase of land, has only a limited and ambiguous impact and should not replace a redistributive policy. The costs of redistributed land must be within the means of families and communities with little or no land and it is therefore recommended that land be allocated free of charge or, if this is not possible, with subsidised payment or credits. Norway should therefore support a menu of options for land reform and identify whether its ODA contribution to the World Bank, IMF and other international institutions is supporting mere market-led land reform programmes. It should assess whether these programmes are replacing more progressive agrarian reform programmes. Norway should promote and support pro-poor agrarian reform models whereby land is distributed free of charge or at a subsidised payment or credit. Examples of successful pro-agrarian reform models can be found in Taiwan, South Korea, Japan, China, Cuba and the Indian states Kerala and West-Bengal.⁶

Land is a key resource in women's livelihood strategies. Despite the fact

Legal rights without holistic implementation? Case Study of Philippines¹

The Comprehensive Agrarian Reform Law 1988 allows the State to expropriate productive land from landlords and commercial farms and redistribute this land to the poor and landless. In order to acquire land, the poor must send a petition for land to the Department of Agrarian Reform. The Department has the authority to issue land titles called Certificate Land Ownership Award. For many tenants this has been very positive for their livelihoods. For others, the process of claiming their rights led to harassment by local landlords, farm owners, and the National People's Army, leading to increased poverty and even death. This is partly because the authorities unnecessarily prolonged the process without securing the safety of the petitioners. This has discouraged others from sending their petitions. Consequently the agrarian reform law and program has not been fully utilised and there is a need for stronger political commitment and holistic approach, including personal security, to encourage the landless to make use of the law.

1 FIAN. *Running Amok: Landlord Lawlessness and Impunity in the Philippines*. Fact Finding Mission Report, Quezon City, Philippines. 2006; Borras Jr., S., Franco, J., de la Rosa, R. and S. Feranil, 'On Just Grounds: Struggling for agrarian justice and citizenship rights in the rural Philippines', Institute for Popular Democracy/TNI, 2005.

6 Akram-Lodhi A. Haroon, Borras Saturnino M., Jr, Kay Cristobal, *Land, Poverty And Livelihoods In An Era Of Globalization Perspectives From Developing And Transition Countries*, Routledge ISS studies in rural livelihoods series.

Women's land rights

Land is a key resource in women's livelihood strategies. Despite that women produce between 60-80 percent of food, they own less than two per cent of land in developing countries.⁷ Women's rights to equally access and own land is a human right and essential in eradicating poverty and increasing economic productivity.⁸ The 185 States that have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) committed themselves to "equal treatment in land and agrarian reform as well as in land resettlement schemes". The disparity between policy on women's land rights and implementation can be addressed through awareness-building and legal and institutional reform.

Recommendations

ForUM recommends that Norway, through its foreign policy, development aid and membership of UN agencies, international financial institutions and CLEP:

1. Urge all States to review and reform statutory, customary and religious laws that discriminate against women in the access, ownership, control and use of land or prevents them from owning land or entering into related contracts.
2. Support legal recognition of joint registration of land rights by men and women, as well as regulations and programmes to ensure that the law is well-known and implemented.
3. Urge countries to reform discriminatory laws and practices that disinherit widows or strip divorcees of household assets.
4. Help strengthen the capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way and support the participation of women at all levels of land administration, management and policy-making.
5. Support widespread dissemination of information on women's existing legal and human rights with respect to land.
6. Support the development of paralegal networks and women's and legal group to help women intervene in disputes over access to land and prevent forced evictions.
7. Promote increased pro-poor and pro-women rural development that provides agricultural support services, labour-saving domestic and agricultural devices, basic public services, and access to credit, capital, appropriate technologies, markets and information.
8. Support programmes and projects that empower women and communities to prevent and remedy HIV-related evictions.



Landless day-labourers in Nepal
© Development Fund (Alice Ennals)

⁷ http://82.148.165.141/exchange/oerstavik/Kladd/VS:%20Ny%20viktig%20feil:.EML/1_text.htm#_ftn1

⁸ http://82.148.165.141/exchange/oerstavik/Kladd/VS:%20Ny%20viktig%20feil:.EML/1_text.htm#_ftn2

1. Gender equality in statutory and customary law

Although land in both rural and urban areas is a major resource in the livelihood strategies of women, they continue to face overt and implicit discrimination impeding realisation of their land rights, including access, registration and inheritance. Even though women make a major contribution to household well-being through domestic and productive labour, they are generally not rewarded in terms of control or ownership over household income and assets, including land. Women's rights in land are often 'secondary'; that is, derived through their membership of households and families. Even exercising these secondary rights, for example inheritance, is problematic in many contexts, partly due to women's lack of economic and social empowerment. In customary tenure systems, women often had indirect access to land rights in order to use communal resources, but in many cases this was lost due to formalisation and individualisation of land tenure. Religious law of more progressive origins, such as the Sharia, whereby the Koran grants women shares of property that are half those received by male relatives, has been more conservatively interpreted over time.

All States need to review and reform statutory, customary and religious law that discriminates against women in access to and ownership, control and use of land. Other legislation that prevents women from owning land or entering into contracts in their own right should also be reformed. As far as addressing women's particular disadvantages in relation to land ownership is concerned, access and control was not a major focus in the drafting of new land policies during the 1990s, though most countries now formally acknowledge gender equity as a goal at the level of principle. Norway can and should encourage this process. States should also be encouraged to ensure an unequivocal constitutional commitment to gender equality as a fundamental principle, to which all legislation and commitments to cultural rights and customary institutions must be subordinated. CEDAW should be incorporated in domestic law, and the fundamental principle of gender equality and non-discrimination should be re-affirmed in all national land policy documents.

2. Joint registration

There are various forms of legal ownership for women that should be encouraged and explored. Joint registration of land rights for spouses, including under customary law, can enable women to better protect their land rights. If housing and/or land were to be jointly registered, it would not become part of the estate on the death of a spouse: the widow would remain the registered rights holder of the land.⁹ However, legal provision for joint registration is insufficient due to lack of gender mainstreaming in practice and prejudicial attitudes towards women. In Latin America, the codes providing for joint registration are often misunderstood and misused, as joint registration by *fathers and sons*.¹⁰ In many regions, land registration forms often lack space for joint registration, and regularisation schemes often fail to ensure that women are given adequate opportunity to jointly register. Tanzania's Land Act 1990 is a positive example, as there is a presumption of

9 Marjolein Benschop, *Women's Rights to Land and Property*, presented at Commission on Sustainable Development, 22 Apr. 2004.

10 Ibid.

Equal rights for women in Moroccan law¹

Morocco's National Action Plan for the Integration of Women in Development (1988) contained a ban on polygamy, the right to divorce for women and equitable ownership of marital property. The plan was defeated after strong opposition, yet the debate raised public consciousness. Nine pro-women's rights associations created a coalition called the *Spring of Equality* to reform the Code of Personal Status. In March 2001, a commission of 3 women and 11 men was appointed by the Government and the new King to investigate proposed changes to the law. The *Spring of Equality* waged extensive publicity campaigns and protests drawing on a network of over 200 women's, human rights and development organisations. The reform was adopted in 2004, assisted by the gradual process of democratisation.

1 Drawn from Birte Scholz, Case study: Women's Participation in Land Processes (COHRE, 2007).



Women discussing inheritance rights. © Birte Scholz, COHRE

joint registration, unless otherwise indicated.¹¹ In addition, laws should adopt or retain the requirement of spousal consent in the case of land transfers. Community rights under management of women's groups on common property resources, such as forest and water resources, are also being explored and suggested as legal rights in some parts of India.¹²

3. Inheritance and divorce rights

Although inheritance plays a crucial role in protecting women's existing interests in land, law and practice continues to discriminate against them. While there have been some success stories, many laws only grant a widow a right to use the family home. Even matrilineal systems that have better protected women (such as those in some southern African countries) are under threat from land market pressure and individual registration. According to cultural dictates in some parts of Latin America, daughters are expected to relinquish land to sons,¹³ and there are numerous instances of widows in Africa and Middle East being violently removed from their land and homes by relatives of the husband. Likewise, women need equal protection in the event of divorce.

4. Gender-sensitisation and participation

The capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way needs to be significantly strengthened. Government officials tasked with the implementation of land

¹¹ Ibid.

¹² See CWRD-Action Aid paper prepared for ICCARD Conference in Porto Alegre, March 2006.

¹³ Ibid.

policies need to be trained on gender issues and women's rights. Women personnel should be recruited and existing practices reviewed. Women should be represented on decision-making and adjudication bodies, as well as in projects for land reform, slum upgrading, etc. Innovative projects, in which local women's groups work with officials, should be encouraged. Development initiatives also need to avoid reliance on the unitary household model whereby it is assumed that a male head speaks for the needs of the entire household. Men and women often do not share common goals within the household, which is a site of bargaining about, and/or contestation on, how time, labour and income should be utilised. In such situations, women are often at a disadvantage.

5. Awareness-raising

Many women are unaware of their legal and customary rights, whether because of illiteracy, poverty, lack of modern communication systems, or prejudice. Wide dissemination of information on women's rights is critical, including on existing rights under national law, and should be strongly supported.

6. Legal support and access to justice

In both rural and urban areas of developing countries, most women lack access not only to information on their legal rights, but also to any form of legal support. In many cases, paralegals (non-lawyers with basic training) can prove invaluable in helping women to intervene in land disputes (whether under statutory or customary law, or informal arrangements) and in protecting them from forced evictions. Norway can support the training of such paralegal networks as well as women's and legal group that provide assistance to women in formal courts.

7. Wider development support

Land issues cannot be divorced from the wider development agenda. Women's productivity in using land is constrained by the various demands on their time and energy that they have to manage, by their poverty and by the lack of general agricultural support services. There is a need to support:

- Investment in agricultural support services that target both women and men.
- Investment in labour-saving domestic and agricultural devices that address women's needs with regard to their labour and/or time famine.
- Non-farm rural development such as basic public health (water, sanitation, etc.) and rural social services such as schools and clinics.
- Administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information.

Laos: Ensuring women benefit from land tenure programmes¹

Laos has had numerous land registration systems, both formal and informal. Women have been disadvantaged throughout these processes — especially in relation to land documents. The Laos Women's Union (an official State institution) and a gender research centre found that women were unrepresented in both the rural land allocation and the urban titling programmes, and that the names on land documents did not always reflect the actual landholder. They began an information campaign and also targeted land titling beneficiaries to ensure that women became aware of the risks and benefits of land titles. It was reported that *village information meetings were the most important and effective way* to reach beneficiaries. As a result, the number of land titles issued to women doubled within the project area and the number of joint titles significantly increased.

¹ Drawn from Birte Scholz, *Case study: Women's Participation in Land Processes* (COHRE, 2007).

Watchdog groups in Kenya¹

GROOTS Kenya mapped two divisions of Kakamega District to provide information on asset stripping and disinheritance of women to village elders and government officials. A multi-stakeholder Watchdog Group was then formed. Women, working with local authorities, focus on increasing women's knowledge of their rights, encourage women to register their marriages and obtain birth certificates, obtain free legal advice from paralegals, and help resolve intra-familial disputes. Now, the Watchdog Group has a representative on the local Land Tribunal, a widowed grassroots woman.

1 GROOTS Kenya and Huairou Commission, *Mapping Leads to the Development of Pro-poor, Grassroots Land Tools: A Case Study of the Formation of Two GROOTS Kenya Watchdog Groups*, 2007.

8. HIV/AIDS and forced eviction

The staggering rate of HIV/AIDS in the African continent has led to a rapid increase in the number of widows. Often infected with the virus themselves and unprotected by the law, when their husbands die they become victims of property-grabbing and evictions, and are violently expelled from their marital homes. Land policy in the light of HIV/AIDS should be reviewed with a focus on district-level demographic, economic and social impacts on land access and land use, and on housing and support projects for AIDS orphans in communities. Norway can support programmes and projects to empower women and communities to prevent such evictions and provide support for women who are evicted.

'Ossified' Customary law and access to justice in South Africa¹

Under the customary law rule of primogeniture and the Black Administration Act, the house of the father became the property of the eldest male relative. In the *Bhe* case, the mother and daughters took legal action, along with others in a similar situation. The Constitutional Court declared the customary law rule unconstitutional and struck down the statute since it ossified official customary law and was discriminatory. The Women's Law Centre who helped take the action commented that the challenge is to ensure the decision is implemented in rural areas where deceased estates are often dealt with informally.

1 *Bhe v. Magistrate Khayelitsha & Ors.* 2005 (1) BCLR 1 (CC), 15 Oct. 2004. See Michelle O'Sullivan, "Ensuring Women's and Children's Equality Rights and Socio-Economic Rights – Recent South African Developments" *Housing and ESC Rights Quarterly*, Vol. 2 No. 2 (2005), pp. 1-5

Indigenous peoples' land rights

Marginalisation and impoverishment of the world's more than 350 million indigenous people can only be remedied through their legal empowerment. The main priority of indigenous peoples all over the world is the legal recognition and protection of their collective rights to lands and territories. Increasingly recognised in international human rights law, the right of indigenous peoples to ownership and possession of their ancestral territories is fundamental to their material and cultural survival as groups. Formalisation of land rights can be a significant step, but only if done in ways that take into account the special relationship of these peoples to their lands. A strategy built on individual title and fungibility of lands is bound to fail, and is also likely to cause considerable harm. Norway's efforts to support indigenous peoples in development cooperation have sought to be human-rights based and are founded on ILO Convention 169 which recognises the land rights of indigenous peoples. Norway has supported policies and projects that promote recognition of indigenous land rights and assisted the World Bank to develop guidelines for indigenous peoples.

Recommendations

ForUM remains concerned that the rights of indigenous peoples are not fully mainstreamed in all development and foreign policy. We recommend that Norwegian policy makers, particularly those involved with the CLEP and international financial institutions:

1. Support indigenous peoples' rights to collective ownership of their lands, territories and natural resources, in accordance with traditional customs and international human rights law.
2. Promote mechanisms for the return of seized lands to indigenous peoples.
3. Promote collective, inalienable and non-transferable collective land titles.
4. Support simplified administrative procedures for demarcation, titling and registration of lands and accountability measures to ensure governments respond.
5. Promote active participation of indigenous peoples' representatives in all land-related processes, as well as the right to consultation in appropriate language and cultural forms.
6. Promote domestic legislation that establishes the principle of free, prior and informed consent of indigenous peoples affected by any legislative and administrative measures on their land.
7. Support participatory conflict resolution procedures for land claims, incorporating customary law and traditional mechanisms for conflict resolution where possible.
8. Support capacity building programmes for indigenous peoples, aimed at strengthening their ability to access the legal system.



© Development Fund (Tone Dalen)

Defining 'indigenous peoples'

There is no universally accepted definition of indigenous peoples, but there is growing consensus on the central elements. The ILO, the UN Working Group on Indigenous Populations, the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights all employ variations on the following:

- Groups whose social, cultural and economic conditions distinguish them from dominant society, and whose status is wholly/partly regulated by their own customs and traditions.
- Self-identification as indigenous.
- A special relationship with the lands and territories that they traditionally inhabit or use.
- Perceived discrimination and marginalisation by dominant cultural groups, particularly with access to natural resources and issues of autonomy and self-determination.

1. Collective ownership of ancestral lands

Indigenous peoples have a fundamental right to collective ownership and possession of the lands they have traditionally occupied and used. This right is recognised in international human rights law and the jurisprudence and recommendations of international legal bodies. Legal recognition and enforcement of this right is crucial to ending poverty and marginalisation of indigenous peoples, and to protecting their human rights. This means:

- Granting indigenous peoples constitutional rights to collective ownership of their lands, territories and natural resources, in accordance with their traditional customs and practices as well as international human rights law.
- Enacting legislation, regulations and special measures to recognise, demarcate and protect indigenous peoples' lands.
- Promoting the establishment of contiguous indigenous territories that are large enough to allow traditional economic, social and cultural practices to function and enable sustainable land use and conservation.

Systematic and enduring discrimination has left indigenous peoples in large parts of the world politically, economically and socially marginalised. To remedy this situation, legal empowerment of indigenous peoples must also become a priority in national development plans and international cooperation.

2. Reversing the extinguishment of rights

The situation of indigenous peoples is often characterised by the seizure of their lands and resources or the extinguishment of their rights. As far as possible, the return of seized lands should be the favoured solution to remedy this injustice.

3. Restricting transferability

Experience shows that indigenous peoples are especially vulnerable in free land markets, as cultural differences, social marginalisation and discrimination prevent them from having equal access to the necessary information, legal expertise and economic know-how. Making indigenous peoples' lands non-transferable reduces their vulnerability to corruption, manipulation and/or violence by outside forces, and prevents the dismemberment and loss of ancestral lands. In the case of indigenous peoples, individual user rights are best secured through legally protecting collective titles. Individuals may not forfeit the rights of the community as a whole. Territorial land titles should therefore be collective, inalienable and non-transferable, as they are based on ancestral ownership and meant to safeguard not only the property rights of current, living members of the group, but also those of future members.

4. Mapping and demarcating

The development of technical rules and procedures for mapping and demarcating indigenous territories in cooperation with indigenous peoples needs strong support. This ensures that customary land tenure systems, livelihood strategies and local priorities and aspirations are taken into account. Administrative procedures for demarcation, titling and registration of indigenous peoples' lands should be simplified. The responsibilities of government agencies to protect and support the management of these territories should be clearly defined, with strong accountability measures to ensure action is taken. For example, although Nicaragua had a procedure for demarcation of lands, only after a judgment of the Inter American Court of Human Rights was action finally taken in the case of the Awas Tigni people.

5. Effective participation of indigenous peoples

Indigenous peoples have the right to decide their own priorities for development, and their active participation must be ensured in all processes that may affect them. This includes active participation of indigenous peoples' representatives at all levels of the processes that are related to formalisation of land rights. Indigenous peoples must be consulted in a proper manner in all matters concerning them. An acceptable consultation process must be carried out in a language and cultural form acceptable to the peoples concerned, the time frame and logistics must be suited to local conditions, and the indigenous peoples must have a real possibility of influencing the outcome. As an example, the Constitutional Court of Colombia has consistently held that any authorisation to exploit natural resources in indigenous territory requires the participation of the indigenous community.

Legislation should be introduced to allow indigenous persons to use their native language in all relations with the authorities. Government officials also need to be adequately trained, together with other land administration stakeholders, in indigenous issues, including customary law and traditional land tenure systems.



Collective tenure in constitutional law: case studies

The constitutions of Colombia and Brazil both recognise the collective right of indigenous peoples to their territories, and the duty of the State to demarcate and legally establish indigenous territories. (See, respectively, Articles. 329 and 231 of these constitutions) Whereas Colombia recognises ownership rights, the Brazilian State retains ownership of the land, but grants eternal and exclusive user rights to indigenous groups. In both cases, indigenous lands are declared inalienable, meaning that they may not legally be removed, in whole or in part, from the possession and control of an indigenous community. These land rights include the natural resources found on the territory, except sub-soil resources and, in the case of Brazil, hydrological resources. The jurisprudence of the Constitutional Court of Colombia on these issues is recommended reading, for it demonstrates the linkage between domestic law and international human rights law.

The national park Bukit Duabelas on Sumatra, Indonesia was created to protect the culture and livelihood of the indigenous orang rimba people.”

© Alain Compost/KKI/WARSI

Community mapping and demarcation projects in the DRC

In an effort to have their land and user rights recognised and respected, indigenous peoples and other forest-dependent communities in the Democratic Republic of the Congo engage in community mapping of their traditional territories and use of forest resources. Combining modern GPS technology with local knowledge of their traditional and current land use and socio-economic practices, participatory mapping projects can be important instruments in strengthening the land claims of indigenous peoples. Governments and development agencies should support participatory initiatives like this, as they serve to empower marginalised communities in their encounters with majority society.

6. Consent

Any legislative and administrative measures affecting indigenous peoples must depend upon the free, prior and informed consent of the peoples concerned. This covers all policies and activities affecting their communities, lands and natural resources, including water and sub-soil resources. Norway must also adopt policies to ensure that Norwegian companies do not infringe on the land and resource rights of indigenous peoples.

7. Conflict resolution

Participatory conflict resolution procedures need to be established for land claims, incorporating customary law and traditional mechanisms for conflict resolution wherever possible. Such mechanisms are crucial to preventing conflicts and ensuring peaceful coexistence between indigenous peoples and neighbouring groups.

8. Access to justice and organisational support

Capacity building programmes for indigenous peoples, aimed at strengthening their ability to access the legal system and successfully claim their rights, should be further promoted and supported. Such training should include procedures for obtaining formal collective titles to their territories, technical procedures for mapping and demarcation, and legal and administrative training. In addition, Norway should provide support for institutional strengthening of indigenous peoples' organisations.

Indigenous peoples in international human rights law

Indigenous peoples' survival as groups depends fundamentally on their access to their traditional territories. Their rights to cultural, social and economic integrity, to maintain their identity and to lead the form of life of their choice, cannot be fulfilled without protecting their lands and environment. The rights of indigenous peoples can be found in instruments of existing international law, such as:

- ILO Convention 169;
- the American Convention on Human Rights and case law of the Inter-American Court of Human Rights.
- the Convention on the Elimination of All Forms of Racial Discrimination (and General Comment 23);
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the Convention on the Rights of the Child;
- the Rio Declaration on Environment and Development;
- the Convention on Biological Diversity;

and in the emerging norms and standards such as:

- the proposed Organization of American States declaration; and
- the draft United Nations declaration on the Rights of Indigenous Peoples.

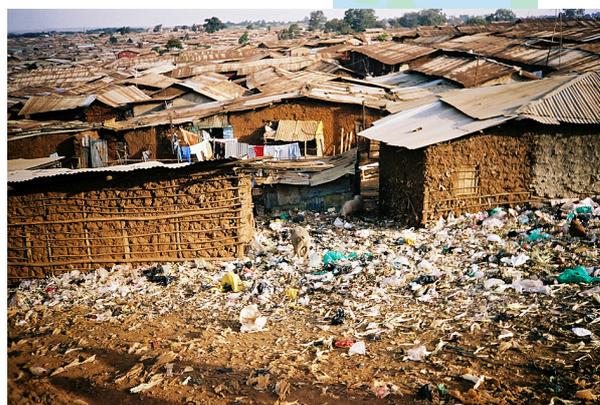
Urban areas

The absence of security of tenure and access to sufficient land in rapidly expanding urban centres in developing countries is a key cause of poverty. It deprives the urban poor of their ability to maintain and expand their livelihoods, protect their homes and social infrastructure from demolition, to access basic services such as water and energy and to ensure environmental sustainability for their localities. The rights to security of tenure and access to land should be at the forefront of the Government of Norway's development cooperation as it relates to land issues in urban areas. Norway can play a leading role in supporting contextually-based, pro-poor and rights-based solutions to ensure security of tenure and access to land for all in urban areas.

Recommendations

ForUM recommends that Norway through its foreign policy, development aid and membership of UN agencies and international financial institutions and CLEP:

1. Support initiatives that ensure that States prevent and remedy forced evictions and that Norway's own practices do not contribute to this form of human rights violation.
2. Promote and support the development of a continuum of land rights and a menu of land tenure options that are appropriate to the needs of the urban poor in each particular situation.
3. Support innovative mechanisms that enable urban centres to acquire sufficient land for low-income housing and small-scale businesses and social infrastructure.
4. Promote the right to participation in, and participatory mechanisms for, city-wide and project planning, as well as flexible and pro-poor urban planning systems.
5. Ensure that the rights and concerns of women and marginalised groups in urban areas attain a central place in development aid and policy.
6. Promote and support the development of small-scale livelihoods through enabling the poor to access sufficient land and security of tenure.
7. Support mechanisms for the recovery of irregularly and illegally allocated land and the prevention of further land-grabbing.
8. Ensure that multilateral and bilateral development efforts are sufficient coordinated and harmonised so that deprived urban areas receive appropriate focus.
9. Ensure that all national/ international actors are held accountable for land-related human rights violations and promote accountability/conflict management mechanisms.



Kibera settlement, Kenya

Access to Secure Tenure and Land

Access to secure tenure and sufficient land are key elements of the right to adequate housing, widely recognised in international human rights law. In 1993, governments accepted at the UN Commission of Human Rights accepted the urgent need “to confer legal security of tenure to all persons currently threatened with forced eviction”. Security of tenure is the key indicator for measuring MDG Target 11 on improving the lives of slum dwellers. In General Comment No. 4 on Right to Housing, the UN Committee on Economic, Social and Cultural Rights said that increasing access to land by landless or impoverished segments of the society “should constitute a central policy goal”. The rights of women and disadvantaged groups to equal access to security of tenure and land are also protected under international human rights law.

1. Forced evictions

The practice of forced evictions in many urban centres, particularly in informal settlements, has increased in recent years due to armed conflict, land-grabbing, infrastructure and development projects, gentrification, and urban redevelopment and ‘beautification’ projects.¹⁴ Forced eviction has been described by the United Nations as a “gross violation of human rights” and its impact on urban society is drastic since it undermines the informal economy, often a major contributor to economic growth and the source of employment, and leads to the destruction of social infrastructure such as schools, health clinics, orphanages and child care centres and social networks. Norway needs to promote initiatives that enable States to ensure protection from forced eviction, such as the South Africa Prevention of Illegal Evictions Act. Judicial and policing institutions need to be reformed and measures to progressively improve security of tenure need to be adopted (*see* point 3 below). Civil society and community organisations require support in their efforts to assist urban residents in raising their awareness of, and taking action on, forced evictions and to engage on the adoption of legislative and other reforms. Governments also require assistance in the design of resettlement schemes when evictions are reasonably unavoidable. Norway must also ensure that its projects or policies, as well as those of international financial institutions or Norwegian-registered corporations, do not result in forced evictions in other countries.

2. Menu of tenure options

Many countries are unable to provide improved forms of tenure security due to the lack of applicable land tenure tools. Although most countries have land administration systems that can deliver and enforce individual freehold property titles, such tenure types are often not appropriate for pro-poor land initiatives. For example, formalisation of informal settlements that is based on provision of individual titles can favour wealthier absentee landlords over poorer tenants. It can also result in land speculation as residents are pressured to leave the land, or ‘down-raiding’ as residents sell the land and housing to the middle class and create new informal settlements elsewhere. Experience of slum upgrading in many contexts demonstrates the need to create a continuum of rights, including leasehold, cooperatives, community land trusts and affordable tenant-purchase schemes, all of which can be tailored to the particular context. Norway should promote and support the development of flexible and pro-poor urban planning systems and a menu of appropriate tenure options. This will also require capacity building of national government, local government and civil society, who play a vital supportive role in awareness-raising and assisting communities to take up the different options.

3. Acquiring sufficient land

Most urban centres have not planned for urbanisation and in some countries there is a persistent yet mistaken belief that urban residents can easily return to rural areas. The result is that, with a few notable

¹⁴ See generally M. Langford and J. du Plessis, ‘Dignity in the Rubble? Forced Evictions and Human Rights Law’, COHRE Working Paper, June 2005, www.cohre.org/kenya

Different options for land acquisition

Public acquisition land is possible but this requires sufficient financial resources, efficient bureaucratic processes and consideration of the rights of customary land holders and farmers in peri-urban areas whose land may be the target.

Land banking, where public land is set aside for public purposes, is a popular policy but such systems require very low levels of corruption and land-grabbing.

Land sharing has emerged as an innovative solution, particularly in Asia where owners and occupiers negotiate a regularised sharing of the land.

Land readjustment can be effective, e.g. re-zoning land for urban development, re-blocking existing settlements to improve use of space (as done in Brazilian *favelas*) or land pooling where governments work with landowners to co-develop housing. Readjustment requires respect for the rights of customary and poor peri-urban owners.

Tackling *land speculation* in urban centres and under-utilised land is crucial and releases more land for public purposes.

exceptions, land has not been set aside for future urban development, and very high-density informal housing and businesses have instead mushroomed on public and private land. Ensuring that sufficient land is available is a challenge, as the box below shows, but solutions are available.¹⁵ Norway should therefore support the development of innovative mechanisms for urban centres to acquire sufficient land for low-income housing and small-scale businesses and social infrastructure.

4. Participatory and flexible urban planning

Participation is a human right and a key element of any strategy to improve the land situation in urban areas. Large-scale land projects often fail to achieve their pro-poor objectives due to the lack of effective participation of grassroots groups and civil society in the design, implementation and monitoring of projects. There is also a need for participation in urban-wide planning at the city/town level. The experience of Porto Alegre, Brazil, demonstrates how improved access to secure tenure, water, sanitation, garbage disposal, etc., was driven by participatory planning within the local municipality. Moreover, official urban planning systems often do not allow for flexible approaches to regularising informal settlements. UN-HABITAT notes that the creation of 'special planning zones', where normal urban planning regulations are relaxed are often the most appropriate vehicle to enable the State to regularise and develop land for the poor. Norway needs to support States and civil society in developing new participatory mechanisms for city-wide planning and developing flexible and pro-poor urban planning systems.

5. Rights of women and marginalised groups

In urban areas, women can often be excluded from access to, or ownership of, land. Legislation and programmes are needed to protect women's right to access and inherit various forms of property rights (including tenancy leasehold), particularly upon the death of a spouse, but also if they contract an illness, such as HIV/AIDS, that may carry social stigma. Critically, women need to be informed about their rights to equal ownership and regularisation. Furthermore, slum upgrading programmes need to mainstream gender concerns and ensure that women can co-register their dwellings and land, for example. Tenants face particular challenges in many countries due to weak enforcement of tenancy laws, rental deposits amounting to two to three years rent, and arbitrary rent increases and evictions. Slum upgrading programmes must also ensure tenants are sufficiently protected, participate in the process, and are able to afford any payments for improved land and housing.

¹⁵ See UN-Habitat, Handbook on Best Practices, Security of Tenure and Access to Land: Implementation of the Habitat Agenda (Nairobi: UN-Habitat, 2003).



Raila Village, Kibera Settlement, Kenya, demolished without warning on 8 February 2004

As regards the form of housing, attention also needs to be given to persons with disabilities, to children – especially orphans of the HIV/AIDS epidemic, who face homelessness and loss of inheritance rights, – and to ethnic minorities, who often struggle to gain equal access to land.

6. Small-scale livelihoods

The informal economy, composed of informal traders, hawkers, small-scale producers and home-based service providers, is one of the largest contributors to economic growth in many developing countries and provides vital employment for the urban poor. Zimbabwe's massive demolition of urban small-scale businesses and housing in 2005 has been a major factor in its economic collapse and worsening poverty. Those working in the informal economy are vulnerable to having their businesses demolished, while others require access to more land or land closer to customers. Norway can support efforts that develop land and tenure programmes to improve the livelihoods of the urban poor.

7. Addressing land-grabbing

As the value of urban land increases, land-grabbing increases in intensity. This can result in large tracts of public land being illegally and irregularly allocated to elite groups. While this land is sometimes used to provide informal housing for the poor, the conditions are exploitative and the poor are often evicted once the value of land increases. Governments need to develop mechanisms to recover irregularly and illegally allocated land and develop sufficient anti-corruption mechanisms to prevent further grabbing of public land. Civil society has a significant role to play in monitoring land-grabbing. Norway can support such efforts.

8. Provision of infrastructure

Although urban residents can sometimes access a range of social services (for example, a central hospital or university) in a city or town, most essential services are out of reach for those in deprived urban areas. Without basic services, land is not sufficiently appropriate for housing and livelihoods, and in many countries the lack

of services leads to a vicious cycle that prevents residents from regularising their occupation. International development has rarely focused on urban access to water, sanitation, energy, healthcare services, clinics, schools and cultural centres, despite the similarity of many poverty indicators in rural and deprived urban areas. Norway could play a leading role in ensuring, as part of the Paris Declaration process, that multilateral & bilateral development efforts are coordinated and harmonised so that deprived urban areas receive appropriate focus and innovative and scalable projects are supported; for example, regularised water kiosk systems and settlement-based health clinics. Significant capacity needs to be built in local government to roll out infrastructure. Civil society and community-based organisations need support to participate in such schemes and ensure that they are implemented.

9. Accountability and conflict management

A key element of a human rights approach is the establishment of formal and informal mechanisms to hold States and other powerful actors responsible for their actions or omissions that violate human rights. This requires accountability mechanisms for actions such as forced eviction or unreasonable cessation of basic services, as well as denial of participation or a lack of action to provide security of tenure. Complaint mechanisms should be established and maintained, such as courts, administrative bodies and project-related grievance procedure. Moreover, support needs to be given to empowering communities with information and advocacy tools and ensuring there is a vigorous media and civil society which can publicly highlight these concerns. In addition, conflict in urban centres and urban development needs to be addressed; many programmes and policies stall or fail because they cannot resolve or address conflict, whether between government and landowners, structure owners and tenants, political or ethnic groupings etc. Mechanisms for identifying conflict must be included at an early stage in programme design and mechanisms should be discussed and developed for overcoming it.

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In recent years there has been a heated debate about formalisation of the property of the poor as a mechanism to combat poverty. However, evidence gathered over the past few decades indicates that this model of formalisation is too simplistic, for it can actually exacerbate poverty and even violate human rights. In this debate, a far greater concern has been the absence of the voices of those whose core interests are at stake.

The Norwegian Forum for Environment and Development (ForUM) supports a broader vision of land rights for the poor. This paper calls on the Government of Norway to bring the idea of legally empowering the poor back to its origins, by focusing on more critical and diverse issues related to collective land rights, agrarian reform, women's land and inheritance rights, indigenous peoples, and urban areas.



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