**Comments on the draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities**

By Landesa Center for Women’s Land Rights

January 2017

This submission is respectfully offered to the Committee by the Landesa Center for Women’s Land Rights, an initiative of Landesa, a leading international non-governmental organization committed to the power of land rights as a pathway to eliminate extreme poverty, reduce conflict, and build more gender-equal and just societies, with experience in over 50 countries. We welcome the opportunity to submit comments on the draft General Comment on State Obligations in the Context of Business Activities to provide key general observations and propose specific textual changesto better highlight the critical importance of land rights and secure tenure, and to ensure that business activities do not impede the realization of rights under the International Covenant on Economic, Social and Cultural Rights.

1. **General Comments**
2. **Business Activities and Land Rights**

The draft Comment references land only once (para. 15) despite the increasing impact of business activities on the land rights of the world’s poorest and most vulnerable populations. According to the World Bank, agriculture is the main source of income and employment for 70% of the world’s poor living in rural areas,[[1]](#endnote-1) who primarily lack legal rights to the land they rely on for their livelihood and identity. Secure land rights have been linked to multiple Covenant rights, such as the rights to economic livelihood (Art. 1), equality (Arts. 2.2, 3), an adequate standard of living (Art. 11.1), housing (Art. 11.1), food security (Art. 11.2), education (Art. 13), health (Art. 12.1), cultural life (Art. 15), freedom from violence, and participation in decision-making at all levels. The Committee has acknowledged and elaborated on the relationship between land and the Covenant’s substantive rights in at least seven of its 23 General Comments.[[2]](#endnote-2)

Business activities involving land can have substantial negative impacts on these rights.[[3]](#endnote-3) In issuing Concluding Observation to States Parties, this Committee has increasingly flagged violations to the “right to land and to natural resources” and raisedpointed concerns about the impact of business activities on the land rights of vulnerable populations, such as women, customary land owners, and indigenous peoples.[[4]](#endnote-4)The Committee instructed home and host states of business actors to codify due diligence in contractual obligations to ensure free prior and informed consultations with and consent of concerned communities, in particular women,[[5]](#endnote-5) and to adopt and adhere to the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs).[[6]](#endnote-6)

Multinational companies acquiring land in low income countries have significantly impacted rural livelihoods. According to a 2016 Land Matrix Initiative report, the large majority of the 1,204 concluded deals recorded in low- and middle-income countries targeted prime agricultural land.[[7]](#endnote-7) As the draft Comment points out, governments have seized land from communities to make it available to investors and business. They have also granted concessions to private sector actors, failed to effectively regulate land speculation that deprived communities and individuals of just compensation, widened inequalities between rural communities and domestic elites[[8]](#endnote-8) and fed corruption by land administration officials.[[9]](#endnote-9) Acquisition of land, and land administration more generally, is marked globally by a high level of corruption.[[10]](#endnote-10) Consequently, companies and individuals seeking to acquire large parcels of land might target countries where land rights are less likely to be formally recognized or enforced.[[11]](#endnote-11) The draft Comment should likewise account for the estimated 65% of the world’s land held under customary or communal tenure but rarely recognized by formal law rendering the population who live and depend on such land bereft of protections in the context of business activities on or affecting such lands.[[12]](#endnote-12)

The sole reference to land in the draft Comment only cites compulsory acquisition of land by States for business purposes. The Committee should incorporate other modes of land rights violations, including land speculation, corruption related to land transactions, and other forms of elite capture or extra-legality that favor business activities at the expense of rights holders with regard to land.

**2. Women’s Land Rights**

While the draft Comment mentions gender concerns in the context of extractive investments, resettlement, and compensation (Paragraphs 9, 11), it focuses nearly exclusively on violence against women. The draft does not adequately address gendered impact of livelihood replacement, participation in pre-investment consultations, access to benefits from investments, and redress for violations due to business conduct. Business activities and large-scale land projects often affect women more adversely than men. Women – who make up the bulk of agricultural workers in Asia and Africa – must bear the burden when their crops and livelihood strategies are lost. They are more likely to lose access to land and common resources, less likely to receive proceeds from the sale of crops within their household, and less likely to be offered employment as a result of an investment.[[13]](#endnote-13) These disparities mean that States Parties must carefully consider gender implications when establishing requirements for private sector actors.

Such an approach would also better align the draft comment with General Recommendation No. 34 on the rights of rural women issued by the Committee on the Elimination of Discrimination against Women (CEDAW),[[14]](#endnote-14) which directs States Parties to uphold rural women’s rights with regard to “privatization and commodification of land,”[[15]](#endnote-15) and to protect rural women against eviction and other “negative impacts of acquisition of land by national and transnational companies, [and due to] extractive industries and megaprojects.”[[16]](#endnote-16) CEDAW further calls on states to obtain free and informed consent of rural women prior to approval of activities affecting their land rights, to ensure adequate compensation, and to limit by law “the quantity and quality of rural land offered for sale or lease to companies.”[[17]](#endnote-17)

Covenant rights are protected and strengthened when women’s rights to land in the context of business activities are protected: women’s social status, including decision-making power and participation in cultural life, is enhanced; food security, health, and educational outcomes improve; and climate change impacts are mitigated.[[18]](#endnote-18)

**3. Voluntary Guidelines on the Governance of Land Tenure**

To help clarify state duties around land-related business activities, the draft Comment would benefit from referencing and drawing upon the UN-endorsed 2012 Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.[[19]](#endnote-19) The Guidelines assert that business enterprises “have a responsibility to respect human rights and legitimate tenure rights,” instruct home and host states to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights, and provide specific guidance for compliance and responsible investment in land, including special considerations for indigenous peoples and women (e.g., Guiding Principle 3.2, Sections 9, 12).

1. **Specific Comments**

This section outlines proposed textual additions to the draft Comment.

**1. Land Rights:** Explicitly capture the gravity and impact of business activity on land rights by adding a new paragraph to be inserted in Section A. General Obligations:

“The Committee recognizes that for the majority of the world’s poor, Covenant rights to economic livelihood, an adequate standard of living, adequate housing, adequate food, and participation in economic, social, and cultural life are dependent on the land on which they live and subsist. States Parties should ensure their legislative, policy, and enforcement frameworks and institutions explicitly recognize land rights, particularly for women, customary land holders, communities and indigenous peoples, incorporate corporate and state due diligence throughout the supply chain and around potential land conflicts, and require demonstrated commitment to following the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.”

**2. Livelihoods:** Amend Paragraph 10 to include explicit reference to discrimination in land-based livelihood:

“The Committee has previously underlined that discrimination in the exercise of the economic, social and cultural rights is frequently found in private spheres, including families; in workplaces and labour market; ~~and~~ in the housing and lending sectors, and in subsistence farming and agriculture.”

**3. Women’s Land Rights:** EnhanceParagraph 11 to better capture the direct, harmful effects on women from loss of land due to business activities, especially as women are generally less likely than men to have secure tenure to the land on which they depend for livelihood, shelter, and social security.

“[The] Committee reiterates its grave concern that certain segments of the population face a greater risk of suffering intersectional and multiple discrimination. For instance, investment-linked evictions and displacements often result in physical and sexual violence against women and girls, inadequate compensation for loss of crops and other forms of livelihood, and additional burdens related to resettlement for women and girls, especially when their rights to the land are often unrecognized or diluted by law or practice.”

**4. Role of Traditional Authorities in Land Transactions:** Refine Paragraph 14 to account for traditional authorities who exercise their significant power over land to transact with business entities often for personal gain at the expense of community members.

“In addition, a non-State entity’s activity related to the exercise of government authority may be directly attributed to a State Party if its law empowers the private entity to do so or if the circumstances call for such exercise of government functions in the absence or default of the official authorities, including when customary or traditional authorities exercise power outside of or contrary to the law.”

\*\*\*

1. World Bank, *Agriculture and Rural Development,* available at <http://data.worldbank.org/topic/agriculture-and-rural-development> (last visited Jan. 15, 2017). [↑](#endnote-ref-1)
2. CESCR, General Comment No. 4 (1991) on the Right to Adequate Housing, at paras. 8(a) and (e); CESCR, General Comment No. 7 (1997) on Forced Evictions, at paras. 2, 3, 7, 9, 15 and 16; CESCR, General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5, at paras. 12, 13 and 26; CESCR, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, at para. 27; CESCR, General Comment No. 15 (2002) on the Right to Water, UN Doc. E/C.12/2002/11, at paras. 16(c)-(d); CESCR, General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4, at para. 28; CESCR, General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c). [↑](#endnote-ref-2)
3. See e.g., CESCR, General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21, at para. 50(c) (calling for protection from exploitation or unjust use of lands and natural resources by transnational corporations). [↑](#endnote-ref-3)
4. See e.g., CESCR, Concluding observations on the third periodic report of Guatemala (Dec. 9, 2014), UN Doc. E/C.12/GTM/CO/3, at paras. 6-7 (“indigenous peoples are still not effectively consulted, nor is their free, prior and informed consent obtained in the decision-making process concerning the exploitation of the natural resources within their traditional lands.”). Id. [↑](#endnote-ref-4)
5. See e.g., CESCR, Concluding observations on the initial report of Uganda (July 8, 2015), UN Doc. E/C.12/UGA/CO/1, at para. 12; CESCR, Concluding observations on the sixth periodic report of Canada (March 23, 2016), UN Doc. E/C.12/CAN/CO/6, at paras. 14-16; CESCR, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (July 14, 2016), at paras. 11-12. [↑](#endnote-ref-5)
6. Concluding observations on the initial report of Uganda, at para. 12. [↑](#endnote-ref-6)
7. Kerstin Nolte, Wytske Chamberlain, Markus Giger. Land Matrix Initiative. *International Land Deals for Agriculture. Fresh insights from the Land Matrix: Analytical Report II,* (2016), at *vi,* hereinafter “Land Matrix,” available at: http://landmatrix.org/media/filer\_public/ab/c8/abc8b563-9d74-4a47-9548-cb59e4809b4e/land\_matrix\_2016\_analytical\_report\_draft\_ii.pdf. [↑](#endnote-ref-7)
8. *Working Paper 04/2011: Corruption in the Land Sector,* (November 8, 2011) at 5, Transparency International/FAO, hereinafter “TI Corruption,” available at: <http://www.transparency.org/whatwedo/publication/working_paper_04_2011_corruption_in_the_land_sector>. Land Matrix at 39. [↑](#endnote-ref-8)
9. Id.at 5. [↑](#endnote-ref-9)
10. Id.at 1. [↑](#endnote-ref-10)
11. *Global Corruption Report: Climate Change,* (June 2, 2011), Transparency International, available at: http://www.transparency.org/whatwedo/publication/global\_corruption\_report\_climate\_change [↑](#endnote-ref-11)
12. *Who Owns the World’s Land: A global baseline of formally recognized indigenous and community land rights,* (September 2015) at *vii*, Rights and Resources Initiative, available at: <http://www.rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf>. This lack of alignment between formal and customary land rights makes it imperative that States Parties consider customary tenure rights when they are drafting legislation or creating other formal requirements for investors, including due diligence requirements or guidelines. Customary tenure systems can support the power imbalance that frequently favors traditional authorities and domestic elites in acquisitions for large-scale land based investments, and also have implications for women’s rights, as men typically hold rights within customary tenure systems. Behrman, J; Meinzen-Dick, R; Quisumbing, A. *The Gender Implications of Large-Scale Land Deals,* (2011), IFPRI, at 6, hereinafter “IFPRI,” available at: https://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference\_papers/LDPI/56\_Behrman\_Meinzen-Dick\_Quisumbing.pdf [↑](#endnote-ref-12)
13. IFPRI at 4-6. [↑](#endnote-ref-13)
14. CEDAW, General Recommendation No. 34 on the rights of rural women (2016), UN Doc. CEDAW/C/GC/34. “Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in accessing land and natural resources. They carry most of the unpaid work burden due to stereotyped gender roles, intra-household inequality, and lack of infrastructure and services, including with respect to food production and care work.” Id. at para. 5. [↑](#endnote-ref-14)
15. CEDAW, General Recommendation No. 34, at para. 11. [↑](#endnote-ref-15)
16. Id.at para. 62(c). [↑](#endnote-ref-16)
17. Id.at paras. 62(d)-(e). [↑](#endnote-ref-17)
18. Landesa, *Women Gaining Ground: Securing Land Rights as a Critical Pillar of Climate Change Strategy* (December 2015), available at: http://www.landesa.org/wp-content/uploads/LCWLR\_WomenGainingGround.pdf [↑](#endnote-ref-18)
19. UN Food and Agriculture Organization (FAO), Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>. The Guidelines stress the link between secure land rights and Covenant rights, characterizing secure and equitable access to and control over land, fisheries, and forest as essential “sources of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.”(Preface). [↑](#endnote-ref-19)