**Submission to the United Nations Committee on Economic, Social and Cultural Rights on the Draft General Comment on Land and Economic, Social and Cultural Rights.**

Submitted by Community Land Scotland[[1]](#footnote-1)

**Introduction**

Community Land Scotland welcomes the opportunity of input to the Draft General Comment and commends the Committee on taking the initiative to provide further important interpretation. We are of the view that the substance of the Draft General Comment will be supportive and helpful to our work in Scotland, and the following observations are designed to further strengthen the Comment.

Community Land Scotland is the representative body for the growing number of community land owning interests in Scotland and has over 100 members owning in aggregate over 500,000 acres of land.

Scotland is experiencing significant growth in interest in communities taking collective action to own land and built assets to further their economic, social and cultural life. Communities being able to own land and other assets in the interests of their sustainable futures and as a means of social inclusion and citizenship face many challenges because of Scotland’s land tenure systems.

Scotland’s experience is that land rights issues are as relevant to communities in urban as in rural settings. Recent independent research commissioned by Community Land Scotland captures examples of communities now leading actions in both urban and rural settings in response to climate change and the potential to do significantly more is only limited by access to land across Scotland[[2]](#footnote-2).

Scotland has one of the most concentrated patterns of land ownerships anywhere, with some 0.025% private owners owning 67% of Scotland’s private rural land[[3]](#footnote-3). A number of those owners are foreign nationals or otherwise do not mainly live on the land they own. Such owners will generally have little social or cultural connection to the land, holding it principally for investment or pleasure reasons. Scotland’s land market is largely unregulated.

In effect, local land ***monopolies***exist by virtue of the ***scale*** of the holding or ***concentration*** of ownership over smaller landholdings, for example island communities where an entire island may be privately owned by a single individual. The heavily concentrated nature of ownership patterns results in unequal access to land as an economic, social and cultural asset. Demand for land by small-scale agriculturalists or urban communities is not able to be met.

An emerging negative feature of the land market is acting against local communities furthering their economic, social and cultural rights with large expanses of land in Scotland being marketed[[4]](#footnote-4) for its carbon storage (carbon offsetting) potential and for the access land ownership brings for state subsidy for such purposes.

What Scotland is experiencing is the ***commodification/financialization* *of the climate emergency* *through the acquisition of land***. The motivation for land transactions in this market might embrace, *inter alia*: mainstream environmental and climate action; enhancing marketing and branding to build market share among climate conscious customers; forest and peatland assets being purchased in order to offset continuing carbon emissions elsewhere within an enterprise as a contribution to or in place of ending corporate emissions; speculative action to reduce future potential carbon tax liabilities; and accessing lucrative state subsidies for climate mitigation and adaptation measures.

The way land markets in Scotland operate principally serves the interests of wealthy private individuals[[5]](#footnote-5) or corporations and this developing dimension is fuelling an acceleration of long-standing land price inflation[[6]](#footnote-6). The beneficial owners in private ownerships are not always known to local communities with ***transparency arrangements*** requiring to develop further. Private or corporate ownerships for climate purposes ***act against achieving a just transition***[[7]](#footnote-7)***through the climate emergency***, one which would deliver more equal outcomes. The circumstances emerging are analogous to those described in the Draft General Comment at paragraph 2 in relation to the `grabbing’ of land for housing and agriculture, but in this case for climate reasons.

Scotland is unlikely to be unique but may be at the leading edge of this developing market trend internationally. The carbon sequestrating capacity of the land is being acquired by wealthy individuals or corporates and acting against local communities accessing this potential as a means to advance their economic, social and cultural rights. Additionally, there is no framework for ***benefit sharing with communities*.**

As a result, local communities which do not have the financial means to compete in the market are effectively excluded from accessing the land and thus also denied access to state investment available for climate management and other purposes which would be retained locally and help build more sustainable places. The operation of the largely unregulated land market in these respects if effect ***discriminates* *against local communities*** being able to fully pursue the progressive realisation of their economic, social and cultural rights.

It is the experience of Community Land Scotland that the benefits that come with community land ownership are superior to any sort of tenure rights and there is strong evidence that where communities in rural and urban settings in Scotland own their land and built assets it represents the greatest advantage in furthering ESC rights, and embraces managing land for climate mitigation and adaptation purposes[[8]](#footnote-8).

In this context the interpretive comment being currently developed by the CESCR is of vital importance in giving greater clarity for State parties policy makers on their obligations under the ICESCR and helps provide confidence to State parties to act across a range of domestic fronts to strengthen the rights of communities to progressively realise their economic, social and cultural rights under the Convention.

**Specific suggestions to develop and strengthen the general comment.**

Community Land Scotland would urge the Committee to consider the following specific matters to further strengthen the development of the general comment:

* To explicitly recognise the threat to local community ESC rights through the commodification/financialization of the climate emergency and the legitimacy of State parties including climate mitigation and adaptation as among the matters where protective measures including legislation can be legitimately taken.
* To strengthen the references that ceilings on land holdings is warranted when concentration of ownership can act to limit a more equal distribution of land assets and the progressive realisation of economic, social and cultural rights of local communities.
* To make clear it is legitimate for State parties to take legislative and other actions to address the effects of currently existing land ownership monopolies in order to help develop a more equal distribution of land assets to further ESC rights; and that it is legitimate that land ownership can be considered within the range of existing States’ arrangements to protect against the effects of monopolies.
* To make clear that State parties can legitimately consider adopting specific measures including legislation to regulate land market operations in ways that act against *de facto* discrimination in local communities attaining ownership of land and that requiring large scale land coming to market to be lotted into smaller units.
* To include specific reference to the legitimacy of States intervening in land markets including legislating to protect or secure land for local community use in fulfilling their ESC rights.
* To reference that it would be legitimate for State parties to take action including legislation to secure benefit sharing arrangements for local communities from activities generating economic benefits from a natural resource asset base (eg carbon sequestration, wind and water energy potential) where private ownership dominates a locality and confers economic benefits not otherwise available to a local community.
* To emphasise that complete transparency around the beneficial owners of land is an essential pre-requisite for balanced governance arrangements around land and State parties requiring full transparency is a legitimate area for action.

Community Land Scotland

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1. [www.communitylandscotland.org.uk](http://www.communitylandscotland.org.uk) [↑](#footnote-ref-1)
2. <https://www.communitylandscotland.org.uk/wp-content/uploads/2021/03/Community-Landowners-the-Climate-Emergency_Report.pdf> [↑](#footnote-ref-2)
3. Charles Warren*, Managing Scotland’s Environment*, (Edinburgh University Press), Edinburgh, 2009, pp 48-49. [↑](#footnote-ref-3)
4. <https://www.savills.co.uk/insight-and-opinion/savills-news/312011-0/a--new-era-for-the-scottish-estate---with-a-surge-in-green-buyers>

<https://www.savills.co.uk/blog/article/300694/rural-property/woodland-carbon--the-answer-to-green-growth-post-pandemic-.aspx>

<https://www.galbraithgroup.com/blog/scottish-estatesthe-changing-face-of-the-modern-estate-buyer>

<https://www.savills.co.uk/research_articles/229130/309215-0>

<https://www.pressandjournal.co.uk/fp/opinion/columnists/david-ross/3014725/fairness-key-amid-surge-of-green-lairds/> [↑](#footnote-ref-4)
5. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjDtqHus_vxAhUPQUEAHa4YDAcQFjAAegQIBxAD&url=https%3A%2F%2Ftheferret.scot%2Ftag%2Fanders-povlsen%2F&usg=AOvVaw1VZTPJHeWkbJg1SnsbjnsH>

“Who runs Scotland” References to Anders Povlsen Scotland’s largest private landowner [↑](#footnote-ref-5)
6. <https://www.ros.gov.uk/about/news/2021/property-market-report-2020-21> Pages 42 and 43 show significant increase in forestry sales. [↑](#footnote-ref-6)
7. <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/03/transition-commission-national-mission-fairer-greener-scotland/documents/transition-commission-national-mission-fairer-greener-scotland/transition-commission-national-mission-fairer-greener-scotland/govscot%3Adocument/transition-commission-national-mission-fairer-greener-scotland.pdf> Pages 32 to 35. [↑](#footnote-ref-7)
8. https://www.communitylandscotland.org.uk/wp-content/uploads/2021/03/Community-Landowners-the-Climate-Emergency\_Report.pdf [↑](#footnote-ref-8)