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**Committee on Economic, Social and Cultural Rights**

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**Substantive issues arising from the implementation of the**

**International Covenant on Economic, Social and Cultural Rights**

General Comment No. 26 on Land and Economic, Social and Cultural Rights

Draft prepared by the Rapporteurs[[1]](#footnote-2), Rodrigo Uprimny and Michael Windfuhr

I. Introduction

1. Access to land is an important precondition for the realisation of several Covenant rights, particularly the rights to adequate food, water and housing as part of the right to an adequate standard of living, and the right to health, the protection against non-discrimination in several of the Covenant Rights. The sustainable use of natural resources depends largely on how individuals, peoples, communities and others have access to land and how land use is governed. Eradication of hunger and poverty, and guaranteeing livelihoods of individuals, groups and communities depend on their secure and equitable access to and control over land. The question of land tenure systems becomes increasingly important as the world’s growing population requires food security ever more, and as environmental degradation and climate change reduce the availability and quality of land. Furthermore, land is not only a resource for producing food, generating income and developing housing, however, in many parts of the world, it also constitutes the basis for various social, cultural and religious practices, as well as the means for guaranteeing security. Recent years have shown increased competition for having access to and control over land and the distribution of geographical space. Beside long-term trends for the high demand for land are the rapid urbanisation in most part of the world that often takes place on the land that is being used, by peasants, rural communities, pastoralists and indigenous communities, or being used for as natural reserves and forests.[[2]](#footnote-3)

2. In cities, the competition between different groups for having access to and control over land is exacerbated by gentrification of certain urban areas as well as by the financialization of housing markets[[3]](#footnote-4), which encourage speculation and inflation. In rural areas, competition for arable land is the combined result of demographic growth, urbanization and the sprawl of urban areas, pressures resulting from large-scale development projects, and the use of land for tourism and other purposes. Land degradation due to unsustainable agronomic practices and other unsustainable land management practices in general as well as climate change, combined with a growing demand for agricultural commodities for food, bioenergy, fibre and feedstock. The growing demand for land is often fuelling the tensions between large scale industrial agriculture, often for export commodities, and small scale agriculture to meet the needs of local communities, and further encourages speculation over land. Against this background, concerns have been expressed about the impacts of "land grabs" and other processes of land concentration often fuelled by fears about the volatility of agricultural prices. All these processes are becoming complicated through weak or absent legal and institutional frameworks for the governance of tenure and through corruption in land administration.

3. The lack of protection of tenure rights increases vulnerability, hunger, poverty and socio-economic inequality, and can lead to conflict as well as environmental degradation. Population might be forced to abandon their land when competing users fight for control of these resources. Conflicts over land also are frequent in armed conflicts as well as in post-conflict countries, where large numbers of people seek to reclaim the land that they had been forcefully removed from due to conflicts and later meet the opposition of "secondary occupants", who occupied their lands for many years with the expectation of being able to stay permanently. Furthermore, migration both internal and across borders, which may increase in the future inter alia as a result of climate change and the other reasons for displacements mentioned here, may enhance tensions about the occupation of land. Many of these conflicts are fuelled when land governance is weak, where tenure is not, or only insufficiently, documented, and where planning fails to clarify long term use patterns and tenure security.

4. Concerns related to land governance and their implications have led in recent years to the adoption of a number of international instruments which, although not legally binding, have been highly influential for legislative and policies developments and widely endorsed by governments. The Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (The 2004 Guidelines) were adopted by the Member States of the Food and Agriculture Organization of the United Nations (FAO) in 2004, which contain a number of provisions related to access to natural resources, including land and water (Guideline 8). [[4]](#footnote-5) This text was adopted by all FAO Members states and strengthened the interpretation of the right to adequate food following the Committee on Economic, Social and Cultural Rights in its General Comment No. 12. In 2012, the Committee of World Food Security (CFS) adopted the Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (VGGT)[[5]](#footnote-6) and similarly, the CFS adopted in 2014 the Principles for Responsible Investments in Agriculture and Food Systems, which address inter alia the human rights implications of agricultural investments.[[6]](#footnote-7) Other relevant soft law instruments have been developed to describe obligations and responsibilities of States and other actors related to land use of specific groups[[7]](#footnote-8). Such soft law instruments provide help in the interpretation of legally binding obligations of States parties under the Covenant and are addressing a broad range of Covenant rights.

5. In many social contexts, the value of land cannot be reduced to an economic asset: access to and ownership of land should also be seen as a source of social inclusion and social citizenship. Besides, the various prerogatives associated with land (including the right to use land, to sell it, to mortgage it to obtain a loan, to rent it to others, to exploit it, etc.) can be combined in various ways. Full ownership of land (bundling all these prerogatives together in the hands of a single "proprietary owner") is not the only mechanism for distributing land rights or tenure security, nor is it the mechanism that is most universally relied upon. Therefore, States parties should guarantee that in all land governance processes, policies and institutions, land is not treated as a mere commodity but that its role as a social and cultural good is recognized.

6. Governance of tenure is linked to access to and management of other natural resources, such as water and mineral resources. While recognizing the existence of different models and systems of governance of these natural resources under national contexts, States parties should take the governance of such resources into account in the implementation of their obligations related to land.

7. Land is also a fundamental component of ecosystems. Land use should be sustainable in order to maintain the long term social, economic and environmental functions that land provides to human beings. A stewardship approach is vital and needed to protect common ecosystem resources, including intact forests, wetlands and grasslands. Consequently, the Committee also recognises and emphasises the importance of ecological concerns when it comes to land, including the preservation of biodiversity, as well as conservation, preservation, protection and restoration of land to maintain its agro-ecological services.

8. This General Comment intends to clarify the specific obligations imposed by the Covenant in relation to land, as concerns in particular articles 1, 2, 11 and 12, especially the protection of land tenure and the rights of land users, the increase in safety of access to land, including the question of land as a source of conflicts, in rural and urban settings, in armed conflicts as well as in post-conflict situations. While the Covenant does not affirm a self-standing "right to land", a number of its provisions are relevant to the governance of land tenure. How individuals, peoples, communities and business actors gain access to land is defined and regulated by States through systems of tenure, in their various dimensions, from the demarcation of land and territories, the registration, administration and titling, to the protection of land users, and from the regulation of land transfers to the adoption of agrarian reform schemes involving land redistribution as well as to transitional justice issues related to land. These systems determine the ways in which individuals, peoples, communities and others can use which resources, for how long, and under what conditions. They are not necessarily based on written laws; they can also be based on customs and traditional practices.

II. Provisions in the Covenant related to land

9. Secure access to land is a precondition for the enjoyment of several rights under the Covenant. The right to housing i.e. the availability, accessibility and affordability of housing. may be violated where people are evicted from land where they had built housing, whether informally or not. Such evictions can be done without respecting the requirements established by the Covenant, that the Committee clarified in general comments No. 4 (1992) and No. 7 (1997). These standards have been further developed in the basic principles and guidelines on development*-*based evictions and displacement presented in 2007 by the Special Rapporteur on the right to adequate housing.[[8]](#footnote-9) Access to land in urban areas is providing not only space for a shelter; household related areas and potentially a garden can also be a place for domestic work in the informal and formal economy as well as non-domestic work done in contexts at home. Houses in rural areas are built normally on the land plot which is also used for production purposes. The loss of such land therefore often affects the right to housing, the right to food or access to employment.

10. Ensuring secure access to land and related productive resources is crucial for guaranteeing the enjoyment of the right to adequate food. The enjoyment of right to food would be at risk where land users are deprived of the land on which they rely either to produce food for their own consumption, to feed their communities, or to produce for the markets. Article 11 paragraph 2 (a) of the Covenant recognizes the connection between the right to food and the utilization of natural resources, which include land, requiring States to develop or reform agrarian systems in such a way as to achieve the most efficient development and utilization of land and other natural resources. The Committee is of the view that effective agrarian reforms aiming at equitable access to land will ensure the realization of the right to adequate food and that such reforms should include special measures to address the situation of landless persons, indigenous peoples and other disadvantaged and marginalized groups, which is echoed in the 2004 Guidelines (Guideline 8.1). This should be understood as encouraging agrarian reform that leads to a more equitable distribution of land for the benefit of smallholders in small-scale agriculture. Moreover they highlight the importance of “access to productive resources” as a key element for the realization of the right to adequate food, particularly for rural areas, where most of the peasants live and most hunger can be found.[[9]](#footnote-10) The relevance of agrarian reforms to the realization of the right to adequate was confirmed through the pledges made by Member States of the FAO at the International Conference on Agrarian Reform and Rural Development (ICARRD) in 2006[[10]](#footnote-11) and the Declaration of the World Summit on Food Security in 2009.[[11]](#footnote-12)

11. The right to water is infringed where communal grounds are enclosed, depriving people from access to water sources necessary to meet their daily needs. The right to health may be affected where land is cultivated by industrial means, in particular with the use of pesticides. Other airborne compounds found on farms, such as dust, fertilizers and plant growth regulators, pollen, animal waste, and other micro-organisms, have been found to contribute to various respiratory diseases. When the loss of access to productive resources reduces income and sufficient social security benefits are not available, several rights of the Covenant may be at risk, such as rights to food, access to healthcare or social services that require payments.

12. The right to take part in cultural life may be threatened by shifts in land use or evictions that deprive people from land, which has a particular spiritual or religious significance to them, e.g. when the land serves as a basis for social, cultural and religious practices or for the expression of their cultural identity. Culture forms a “complex whole which includes a spiritual and physical association with one’s ancestral land, knowledge, belief, art, law, morals, customs and any other capabilities and habits acquired by humankind as a member of society”.[[12]](#footnote-13) Additionally, indigenous and other traditional communities rely on the natural resources of their lands for subsistence and the conduct of traditional cultural practices.[[13]](#footnote-14)

13. In monitoring the implementation of the Covenant by States parties, the Committee has been increasingly confronted with land-related issues in many countries.[[14]](#footnote-15) The Committee recognised the increasing pressure of competition for access to and control over land on the realisation of the rights in the Covenant. In conjunction with ineffective or absent land-governance laws, policies, and urban and rural spatial planning processes, competition for access to and control over land can lead to direct and indirect limitations on the equal access to, use of and control over land and result in insufficient protection against land dispossession and displacement.[[15]](#footnote-16)

III. Obligations of States parties under the Covenant

A. Non-discrimination and equality

14. Under articles 2 (2) and 3 of the Covenant, States parties have the obligation to guarantee equal enjoyment of Covenant rights by all without discrimination. States parties are required to eliminate all forms of discrimination, formal, substantive, direct, indirect and multiple, and take appropriate measures to ensure substantive equality.[[16]](#footnote-17) Accordingly, States parties must not only regularly undertake reviews to ensure that domestic laws and policies do not discriminate on any prohibited grounds, but also adopt specific measures, including legislation, aimed at prohibiting discrimination, including both public and private actors in relation to Covenant rights in land related contexts and take additionally temporary special measures for disadvantages groups to ensure access to relevant goods and services.

15. Two groups are particularly at risk of discrimination in the governance of land tenure, including in the organization of property rights over land, in land registration through inter alia titling processes but also in agrarian reform schemes. First, specific attention should be given to those groups such as indigenous peoples, fisher folk and pastoralists, or landless rural people who depend on access to communal lands or the commons for gathering firewood, collecting water or medicinal plants, or occasional hunting or fishing. Customary forms of property may provide security for those depending on the commons for whom formal property rights are generally not an appropriate solution. However, customary land title can be interpreted or applied in a discriminatory manner. Ill-conceived attempts to "formalize" property rights through titling schemes, as well as the enclosure of communal lands - the privatization of the commons that results from the generalization of individual property rights over land - in order to encourage "development" of such lands by investors, may exclude such people from access to resources on which they depend. It is therefore an obligation of States to guarantee security of tenure for all legitimate land users, particularly those who depend on collective or communal land use schemes.

16. Women are another group discriminated in the governance of land tenure, requiring specific attention. Women and girls are in many countries among those disproportionately affected by the adverse impact of violations and abuses of Covenant obligations related to land and they are vulnerable to intersectional discrimination. The Committee, in its concluding observations on a number of States parties, has drawn special attention to discrimination against women, with regard to security of land tenure; access to, use of and control over land, to marital property; inheritance; and exclusion from decision-making processes, including in the context of communal forms of land tenure.[[17]](#footnote-18) Women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.[[18]](#footnote-19) The Committee, in its general comment no. 12, recognised the importance of “full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land. The Committee on the Elimination of Discrimination Against Women, in its general recommendation no. 21, stipulates the obligation of the States parties to ensure that when undergoing programs of agrarian reform or redistribution of land, the right of women, regardless of marital status, to share such redistributed land on equal terms with men is observed. States should also monitor and regulate customary law, which in many countries represents an important factor governing land, to protect widows and girl rights affected by traditional inheritance rules of male primogeniture[[19]](#footnote-20).

17. For women, land is a pivotal resource for meeting subsistence needs, and for accessing other goods and services, such as credit. Land is also important to enhancing women’s engagement in household decision-making, as well as for their participation in rural institutions that could strengthen their decision-making power and leverage over collective rights and resources. In addition, women’s property ownership improves children’s welfare[[20]](#footnote-21) and increases access to family planning services and prenatal care.[[21]](#footnote-22) It also reduces the exposure of women to violence, in part because women who have security in access to tenure can flee domestic violence more easily through seeking access to protection,[[22]](#footnote-23) but also by making women’s household more secure, by enhancing women's self-confidence and self-esteem and her role in decision-making, and by allowing her to garner more social, familial and community support.[[23]](#footnote-24) However, laws and social customs, such as those providing that upon the death of the husband the land belongs to the sons and not to the widows or daughters, remain in place, in flagrant violation of women’s rights. As a result, women still represent a significant minority in the total number of holders of titles.[[24]](#footnote-25) Therefore, while it is important to recognise customary land tenure arrangements, tackling discrimination in land rights requires the blending of tradition and modernity in land rights regimes by removing traditional structures that discriminate against women, while building on and enhancing indigenous tenure arrangements, including the documentation and codification of informal land rights regimes, where appropriate. [[25]](#footnote-26)

B. Participation, Consultation and Transparency

18. Participation, consultation and transparency are key principles for the implementation of covenant obligations related to land. Individuals and communities must be informed and meaningfully participate in decision-making processes that may affect their enjoyment of Covenant rights in land related contexts,[[26]](#footnote-27) otherwise their legitimate rights as land user might be overseen. In this regard, States parties shall develop relevant laws, policies and procedures to ensure participation and consultation in all land related policies. Participation and transparency are relevant to land registration, land administration and land transfers also prior to evictions from land and States parties must ensure, among others, the regular and effective production and dissemination of relevant information related to all these processes. Processes should be organized in applicable languages, widely publicized and transparent, and grant access to all relevant documents. Affected persons need to be contacted prior to any decision that might affect their livelihood rights. this includes the freedom to receive and impart such information; the conduct of meaningful consultation and participation in negotiations, decision-making and management processes related to land as described in the VGGT.[[27]](#footnote-28) The standards for indigenous peoples recognized in the international legal developments in relation to indigenous peoples and also in the VGGT (9.9) is that of free, prior and informed consent. Participation rights are only meaningful, when their use does not entail any form of retaliation.

B. Obligations of States parties under the Covenant as related to Land

Obligation to respect

19. States parties shall recognize and respect existing access to land of all legitimate tenure right holders given that secure access to productive resources such as land is crucial to realize their right to food and their right to housing, which requires safe access to a place for shelter and home based formal sector employment economic activities as well as domestic economic activities. The term “legitimate tenure rights holder” was developed during the negotiations of the VGGTin 2012 in order to clarify that legitimate tenure rights holders do not only encompass those with formal land titles but also those with customary, collective or traditional tenure rights that might not be recognized by law. States shall refrain from any infringement of legitimate tenure rights. That would be inconsistent with the Covenant.

20. Notwithstanding the type of land tenure system(s) put in place, States parties should take the measures to ensure that all persons possess a reasonable degree of security in relation to their relationship with land, and to protect the legitimate tenure rights holders from eviction, and illegal land dispossession and appropriation harassment and other threats. In addition, States parties should take immediate measures aimed at conferring legal security of land tenure upon those persons and households who currently lack such protection, through genuine consultation with the individuals and groups concerned.[[28]](#footnote-29) Considering that most land tenure systems are based on the rights of individuals with respect to land, States parties should recognise and protect communal dimensions of tenure, particularly in relation to indigenous peoples, peasants and other traditional communities, who have a material and spiritual relationship with their traditional lands indispensable to their existence, well-being and full development, including the collective rights of access to, use of, and control over lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.[[29]](#footnote-30)

21. Land registration and land administration shall be done without any discrimination, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. The legal recognition and allocation of tenure rights to individuals without gender discrimination, families and communities should be done systematically and in a way that those living in poverty and other disadvantaged groups have the full opportunity to acquire legal recognition of their current access rights. States parties should identify all existing tenure rights and rights holders, not only those on written records. States parties should establish, through public rules, the definition of user rights that are legitimate, in line with the all relevant Covenant provisions and with the definition of the VGGT.

22. Land administration shall be based on accessible and non-discriminatory services implemented by accountable agencies whose actions are reviewed by judicial bodies. Such services should be accessible and provided promptly and effectively. Disadvantaged and marginalized individuals and groups shall be supported in using these services and their access to justice guaranteed. Such support should cover legal support such as affordable legal aid and other support measures, particularly to those living in very remote areas. States parties should prevent corruption with regard to tenure administration and tenure transfers by adopting and enforcing anti-corruption measures addressing inter alia conflict of interests.

23. International law recognizes the right of indigenous peoples over the lands and territories that they have traditionally occupied. [[30]](#footnote-31) International human rights law respects and protects the relationship of indigenous communities with their lands, territories and resources, requiring States to demarcate their lands, protect them from encroachment, and respect the right of the communities concerned to manage the lands according to their internal modes of organisation. The requirements applicable to indigenous peoples have now been extended to at least certain traditional communities that entertain a similar relationship to their ancestral lands centred on the community rather than on the individual.[[31]](#footnote-32) Therefore, indigenous peoples have the right to have their lands demarcated, and relocation is only allowed under narrowly defined circumstances and, in principle, with the prior, free and informed consent of the groups concerned. Laws and policies shall protect indigenous peoples from the risk of state encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production.[[32]](#footnote-33) Regional human rights courts have also contributed to strengthening of the rights of indigenous peoples to their lands and territories.[[33]](#footnote-34) Both the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights have taken the view that members of indigenous communities, who have unwillingly lost possession of their lands after a lawful transfer to innocent third parties, “are entitled to the restitution thereof or to obtain other lands of equal extension and quality.”[[34]](#footnote-35)

24. States parties should also recognize the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems and should respect existing forms of self-governance of land. It is important that traditional institutions for collective tenure systems ensure meaningful participation of all members, including women and youths in decisions regarding the distribution of user rights. The respect of the access to natural resources under the Covenant cannot be reduced to the specific respect granted to the lands and territories of indigenous peoples. Among these groups are those who depend on the commons. Fisher folk need access to fishing grounds; to them, the strengthening of individual property rights may entail that they will be fenced off the land that gives them access to the sea or to rivers. Pastoralists also form a particularly important group in Sub-Saharan Africa where almost half of the 120 million pastoralists or agro-pastoralists worldwide reside. [[35]](#footnote-36) In addition, across the developing world, many rural households still depend on the gathering of firewood for cooking and heating, and on commonly owned wells or water sources for their access to water. The formalization of property rights and the establishment of land registries should not further worsen the situation of all these groups, because cutting them off from the resources on which they depend threaten their livelihood.

25. States should provide all persons with a reasonable degree of tenure security that guarantees legal protection against forced evictions. More generally, the Covenant imposes on States a duty to abstain from interfering with legitimate tenure rights of land users' rights, in particular by evicting occupants from the land on which they depend on for their livelihoods. Forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances.[[36]](#footnote-37) The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality between the legitimate objective of the eviction and its consequences for the evicted persons.[[37]](#footnote-38) This obligation arises from the interpretation of the State party’s obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.[[38]](#footnote-39) Thus, in order for an eviction to be justifiable, it must meet the following requirements: firstly, the limitation must be determined by law; secondly, it must promote the general welfare or “public purpose” in a democratic society; thirdly, it must be suited to the legitimate purpose cited; fourthly, the limitation must be necessary, in the sense that if there is more than one measure that could reasonably be expected to serve the purpose of the limitation, the least restrictive measure must be chosen; and lastly, the benefits of the limitation in promoting the common good must outweigh the impacts on the enjoyment of the right being limited. [[39]](#footnote-40) States parties should clearly define the concepts of public purpose in law, in order to allow for judicial review

26. Where people have been relocated and given alternative accommodation, these circumstances must allow for access to the broader needs of a livelihood: The standards for alternative accommodation must include that the accommodation is safe and provides accessible access to public services, including education, health care, community engagement and livelihood opportunities. All efforts need to be made not to break up communities given their crucial role in supporting and sustaining neighbour networks and livelihood support. Prior to carrying out any evictions or shifts in land use which could result in depriving individuals of access to their productive resources, States parties should ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimising, the need to resort to evictions.[[40]](#footnote-41) States parties should not under any circumstances use forced evictions and demolition of property as punitive measures.[[41]](#footnote-42) In all cases, effective legal remedies or procedures should be provided to those who are affected by eviction orders.

27. Where land is owned or controlled by the State, it should ensure that legitimate tenure rights of individuals and communities in relation to that land, even those with customary tenure systems, are recognized, respected and protected. When such resources are collectively used and managed, the related systems of collective use and management should also be identified, recognized and registered. Policies aimed at granting tenure rights of publicly owned land to landless peasants should follow broader social and environmental objectives consistent with human rights obligations. Local communities that have traditionally used the land should be considered in the reallocation of tenure rights.

28. Informal tenure exists in many States, often as a consequence of overly complex legal and administrative requirements for land use change and land development. States parties should put in place laws and policies that allow for the recognition of such informal tenure, through participatory, gender-sensitive processes, giving particular regards to tenants, peasants and other small-scale food producers.

Obligation to protect

29. States parties should protect access to land of legitimate tenure rights holders by ensuring that people are not arbitrarily evicted and that their access rights to land are not otherwise extinguished or infringed by third parties. States parties should also ensure that legitimate tenure rights are protected in all processes of transfer of existing tenure rights and associated duties that are realized through voluntary or involuntary ways markets, transactions as a result of investmen ts, of land consolidation policies and other readjustment approaches and redistributive reforms.

30. States parties should develop laws and policies to guarantee that land based investments are done in a responsible manner. This requires early participation of all affected parties, fair regulation of transfer processes. All such processes shall offer access to complaint mechanisms for affected persons or groups, allowing them to challenge decisions of local governments, investment boards or other relevant parties before the start of implementation up to the payment of a fair compensation. Ex-ante impact studies need to be conducted to identify potential harms and options to mitigate them. Principles for responsible investors and investment need to be determined by law and must be enforceable. Responsible investments should respect legitimate tenure rights and do no harm to human rights and policy objectives such as food security and sustainable use of natural resources. States parties should provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights in their national contexts.[[42]](#footnote-43)

31. States parties should have safeguards and policies in place to protect legitimate tenure rights, particularly those relevant to the protection of the right to an adequate standards of living (art. 11) from risks that could derive from large scale transactions in tenure rights. Large scale land investments involve risk of violating Covenant rights because they normally affect a large number of small holders, who are often poorly recognized as informal land use titles.[[43]](#footnote-44) Such safeguards could include ceilings on permissible land transactions and that transfers exceeding a certain scale should be approved by the national parliament. The Committee recommends that States consider the promotion of a range of production and investment models that do not result in large scale land displacements, such as through partnerships with local tenure rights holders etc.

32. The obligation to protect entails a positive duty to take legislative and other measures to provide for clear standards for non-State actors such as business entities and private investors in the context of large-scale land acquisitions/leases at home and abroad and relevant activities.[[44]](#footnote-45) States parties should adopt a legal framework requiring business entities to exercise human rights due diligence[[45]](#footnote-46) in order to identify, prevent and mitigate the negative impacts caused by their decisions and operations on Covenant rights. Legal frameworks should therefore avoid an increased concentration of land ownership and privileges within land tenure systems. States should refrain from entering into international agreements with other States or international finance institutions that protects these institutions and corporations from liability or provides them with immunity from activities contrary to Covenant rights.[[46]](#footnote-47)

33. In recent years, titling has been encouraged to protect land users from eviction by the State and from encroachment by private actors, in particular by large landowners or investors. This process, sometimes referred as "formalization", consists of demarcating the land effectively occupied and used by each land user (and generally recognized under customary law) increasingly using digital techniques, and attributing a deed protecting the land user from expropriation, while at the same time enabling them to sell the land. The impact of titling has been ambiguous. Clarification of property rights was intended to provide security of tenure, to allow dwellers in informal settlements to be recognised as owners or to protect small farmers from being evicted from their land. It was also justified by the need to establish a market for land rights, allowing a more fluid transfer of property rights, a lowering of transaction costs in these markets. These two objectives may be contradictory since commodification of property rights can be a source of exclusion and increase insecurity of tenure. Therefore, States should adopt laws and policies to guarantee that titling programmes are not implemented solely to support the sale of land and the commodification of land tenure. If such laws or regulations are missing, titling of pre-existing, customary forms of tenure may result in more conflicts rather than in more clarity, and in less security rather than in improved security.[[47]](#footnote-48)

Obligation to fulfil

34. States parties must facilitate secure, equitable and sustainable access to, use of and control over land for those who are landless or live in poverty, especially women and marginalised sections of society, who depend on them to realise their economic, social and cultural rights, such as the rights to food, housing and adequate standard of living.[[48]](#footnote-49) Where necessary, States should “carry out land reforms and other policy reforms […] to secure efficient and equitable access to land and to strengthen sustainable pro-poor growth.”[[49]](#footnote-50) Special attention should be given to pastoralists and indigenous peoples, as regards their relation to lands and natural resources and land reforms emanating from and required to overcome past colonial and apartheid dispossessions. In principle, deprivation of land rights, all processes of land restitution and land reform must be accompanied by fair and prompt compensation. States parties also should, as also suggested by the African Commission in its Guidelines on implementation of economic social and cultural rights, “ensure that compensation for public acquisition of property fairly balances the rights of the individual and the wider interests of society”. While in general the compensation should be reasonable and relate to the market value of the acquired property, there are certain circumstances in which public interest may require that less than market value compensation or, exceptionally, none at all.[[50]](#footnote-51)

35. The international community has acknowledged the importance of agrarian reform, as in the conclusions adopted at the 2006 ICARRD conference, “mainly in the areas where strong social disparities, poverty and food insecurity exist, as a means to broaden sustainable access to and control over land and related resources”[[51]](#footnote-52). A more equitable distribution of land can have a strong impact on poverty reduction.[[52]](#footnote-53) In addition, a more equitable access to land by the poor in rural areas contributes to social inclusion and economic empowerment.[[53]](#footnote-54) It improves food security, since it makes food more available and affordable, providing a buffer against external shocks.[[54]](#footnote-55) Land distribution schemes should also support small, family-owned farms, which can often use the land in a more sustainable way, and can also contribute well to rural development because they are more labour-intensive. More equitable distribution of land and the development of owner-operated family farms is thus desirable on both efficiency and equity grounds.[[55]](#footnote-56) However, such land redistribution schemes will fail to produce positive impacts when the beneficiaries are not properly supported to enhance their capacity to use the land productively. Education, support in access to credits, help in using marketing opportunities, the pooling of machines etc., there are a number of policy option to support the economic success of these new family farmers. Policies should be formulated in a way that beneficiaries can benefit from the land they acquire and are not incentivized to sell the land in order to support their minimum needs. Redistribution of land and agrarian reforms should give special attention to access to land by youth, and respect and protect collective and customary tenure of land.

36. States should use the maximum of available resources to progressively realise the right to access productive resources for individuals and groups, whose right to an adequate standard of living would otherwise be violated. States parties must take deliberate, concrete and targeted steps to realise such access. Article 11, para. 2 (a) of the Covenant, imposes on States parties the obligation to "improve methods of production, conservation and distribution of food by […] developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources". This implies a duty of States to support agrarian reform schemes ensuring adequate access to land in particular for small-scale farmers who depend on access to land for their livelihoods.[[56]](#footnote-57) Policies and laws should be accompanied by adequate, gender-sensitive, support measures. They should be developed through a participatory processes, and should aim to make agrarian reforms sustainable. Such frameworks should include adequate safeguards against land re-concentration following reform, such as land ceiling laws and legal safeguards to protect the collective and customary tenure of land.

37. States parties should develop long term regional planning in order to maintain the environmental functions of land. They should prioritise and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources.[[57]](#footnote-58) They should also, among others, facilitate the sustainable use of natural resources by recognising, protecting and promoting traditional uses of land, adopting policies and measures to strengthen livelihoods of people based on natural resources and the long-term conservation of land. This includes specific measures to support communities and people to prevent, mitigate and adapt to the consequences of global warming. States should create the conditions for regeneration of biological and other natural capacities and cycles and have to cooperate with local communities, investors and others to ensure that land use for agricultural and other purposes respects the environment and does not accelerate soil depletion and exhaustion of water reserves.[[58]](#footnote-59)

C. Extraterritorial Obligations

38. Extraterritorial obligations are of particular significance to the implementation of Covenant obligations related to land. Land transfers are quite often financed or fostered by international actors, be it public investors such as development banks financing development projects requiring land such as dams, or renewable energy parks, or private investors. In reviews of States parties’ reports, the Committee has been confronted with increasing references to the negative impact on individuals’, groups’ or indigenous peoples´ access to productive resources in consequence of international investment negotiations, agreements and practices, including in the form of public-private partnerships between State agencies and foreign private investors. In light of these considerations, States parties should take necessary steps to prevent human rights violations abroad by non-State actors over which they can exercise influence, without infringing the sovereignty or diminishing the obligations of the host States.[[59]](#footnote-60)

Extraterritorial obligation to respect

39. The extraterritorial obligation to respect requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the Covenant rights in land related contexts outside their territories and to take concrete measures to prevent their domestic and international policies and actions, such as trade, investment, energy, agricultural, development and climate change mitigation policies from interfering, directly or indirectly, with the enjoyment of human rights.[[60]](#footnote-61) These obligation applies to all forms of projects implemented by development agencies or financed by development banks. A recognition of that obligation, particularly related to investments in land, are the safeguards policies developed by the World Bank and other international development banks.[[61]](#footnote-62) In the wake of the world food crisis in 2007/2008, the number of large-scale investments in land has increased worldwide causing a variety of problems for persons living on or using the land, including forced or involuntary evictions without adequate compensations. To mitigate or prevent such situations, the VGGT were developed[[62]](#footnote-63) and the IFC performance standards were updated in 2012 and later on the respective World Bank safeguards. Moreover, States parties that are members of international financial institutions, notably the World Bank, the International Fund for Agricultural Development (IFAD) and regional development banks, should take steps to ensure that their lending policies and other practices do not impair the enjoyment of the Covenant rights related to land.

40. States parties that promote or carry out land-related investments abroad, including through partially or fully State-owned or State-controlled companies, including sovereign wealth funds or public pension funds, and private-public partnerships[[63]](#footnote-64) should ensure that they do not reduce the ability of other States to comply with their Covenant obligations. States parties must conduct prior human rights impact assessments of such investments and regularly assess and revise them. Such assessments must be conducted with substantive public participation, and their results should be made public and inform measures to prevent, cease, and remedy any human rights violations or abuses.[[64]](#footnote-65)

41. States parties must ensure that the elaboration, conclusion, interpretation and implementation of international agreements, including but not limited to the areas of trade, investment, finance, development cooperation, and climate change, are consistent with their obligations under the Covenant and do not adversely impact on access to productive resources in other countries.[[65]](#footnote-66)

Extraterritorial obligation to protect

42. The extraterritorial obligation to protect requires States parties to establish the necessary regulatory mechanisms to ensure that business entities, including transnational corporations, and other non-State actors that they are in a position to regulate, do not impair the enjoyment of Covenant rights in land-related contexts in other countries, including in the context of land acquisitions and other business activities which impact on the enjoyment of access to productive resources including land. States parties should ensure that the investors, domiciled in them and investing in farmland overseas do not deprive individuals or communities of access to land or associated resources on which they depend for their livelihood. This may imply imposing a due diligence obligation on investors to ensure that the land that they acquire or lease has not been acquired in violation of international norms and guidelines.[[66]](#footnote-67)

Extraterritorial obligation to fulfil

43. According to article2(1) of the Covenant, States should take collective action, including through international cooperation, in order to support people and communities outside of their national territories to increase their Covenant rights in relation to the use of land. Support should include technical cooperation, financial assistance, institutional capacity development inter alia for land administration, knowledge sharing and assistance in developing national tenure policies as well as transfer of relevant technology.

44. The international cooperation and assistance should be focussed on supporting national policies to secure access to land tenure for those without a recognition of their legitimate user rights. Policies should avoid leading to land concentration or a commodification of land, and should be aimed to improve the access of particular disadvantage and vulnerable groups and for increasing security of tenure. Adequate safeguard policies should be in place and persons and groups affected by measures of international cooperation and assistance should have access to independent complaint mechanisms. International cooperation and assistance can facilitate that land policies are sustainable and are or will become an integral part of the official land use planning and the broader spatial planning of states.

IV. Specific topics relevant to the implementation of Covenant rights in land-related contexts

A. Armed conflicts and post-conflict situations

45. There are links between armed conflicts, land and the enjoyment of Covenant rights. Sometimes, land conflicts, especially those related to structural unequal distribution of land tenure coming for example from colonial or apartheid systems, can be one of the root causes or a trigger of the conflict. In other cases, conflicts may lead to forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as peasants, indigenous peoples, ethnic minorities, or women. Finally, addressing land disputes and conflicts might be a key to building resilience and sustaining peace.[[67]](#footnote-68) Thus, States should make all efforts possible to prevent land dispossession during armed conflicts. If dispossessions nevertheless occurs, States are obliged to establish restitution programs to guarantee to all refugees and internally displaced persons (IDPs) the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.[[68]](#footnote-69) States should also address all those land conflicts that might trigger the re-emergence of an armed conflict.

46. Preventive measures to avoid land dispossession during armed conflict should include at least the following mechanisms: protection of land tenure for populations in vulnerable situations should be incorporated in all early human rights warning systems; humanitarian interventions should be articulated with measures to prevent land dispossession; States should create an information system including all those estates at risk of dispossession, not only to prevent dispossession but also to facilitate future land restitution;[[69]](#footnote-70) States should also consider the possibility of freezing the land market in regions in which the risks of internal displacement and land dispossession are high. All such preventive measures should protect not only the property but all forms of land tenure, including customary tenure, as those in higher risk of being dispossessed of their land may not be the formal owners.

47. Land restitution programs should be articulated with the measures to guarantee the right of refugees or IDPs to a voluntary return to their former lands or places of habitual residence, in safety and dignity. If restitution is not possible, States should develop adequate compensation mechanisms[[70]](#footnote-71). States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce all land restitution claims. These programs should cover not only property rights but all forms of land tenure, especially when they are linked to the enjoyment of Covenant rights. Special attention should be dedicated to deal adequately with “secondary occupants”, who are persons in a vulnerable situation who occupy land after the legitimate tenants have fled due to the armed conflict. Due process should be guaranteed to these secondary occupants; if their eviction is necessary, it should be implemented with genuine consultation and States should provide them, if necessary, with alternative accommodation and social services to guarantee them an adequate standard of living.

48. In many post-conflict situations, land restitution programs, even if successful, might be insufficient to prevent new conflicts and to guarantee covenant rights to refugees and IDPs. It is not uncommon that refugees and IDPs were already in poverty before they were dispossessed and that there were deeply rooted inequalities in land tenure before the armed conflict, affecting especially women who tend to be excluded from land rights. In such circumstances, land restitution or compensation alone are insufficient as they would not take these persons from poverty nor reduce social and gender inequality in land tenure. Therefore, in such contexts, reparations for victims of internal displacement or violence should go beyond restitution. They should be transformative reparations[[71]](#footnote-72), in the sense that they should be articulated with policies and measures aimed at reducing inequality and improving the standard of living of these persons. Specific measures should be taken to improve gender equality in land tenure, for instance, through preferring the granting of land rights to women. In addition, States should make efforts to articulate land restitution programs with rural reform policies in technical, financial and educational support to beneficiaries.

B. Assessment and monitoring measures

49. States should ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related Covenant rights. They must regularly monitor the implementation of tenure systems and all policies, laws and measures which affect the realisation of Covenant rights in land-related contexts. Such processes should involve qualitative and disaggregated quantitative data as collected by local communities and others, be inclusive and participatory, with particular attention to marginalised and disadvantaged groups. In countries where collective and customary tenure of land by rural communities is in place, monitoring should include participatory mechanisms to monitor the impact of specific policies on the access to land for people living in the respective communities.

C. Corruption

50. Land administration is one of the areas where corruption can be most pervasive. Corruption occurs and has negative impacts in the demarcation of land and in the rolling out of titling schemes; in the design of land use schemes and the identification of land as “underutilized” or “vacant.”; in the use of “public purpose” or “eminent domain” provisions to justify expropriation from land; in the selling out or leasing out of land to investors, by the government or by community leaders.

51. States should build up proper accountability mechanisms to prevent corruption on all relevant land policies and should “endeavour to prevent corruption in all forms, at all levels, and in all settings”.[[72]](#footnote-73) States should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and judicial authorities should engage with civil society, user representatives and the broader public to improve services and endeavour to prevent corruption through transparent processes and decision-making.[[73]](#footnote-74) States should do so particularly through consultation and participation, rule of law, transparency and accountability[[74]](#footnote-75).

D. Peasant Rights

52. Access to land has a particular importance for peasants worldwide, in order to realize their livelihood rights. For certain groups, such as peasants, the treatment of their access to land and other productive resources is so important for the realisation of several Covenant rights that it functionally equates with a right to land. In that respect in December 2018 the General Assembly adopted the *Declaration on the Rights of Peasants and Other People Working in Rural Areas*[[75]](#footnote-76). Article 17 covers the right to land for peasants and other people living in rural areas including the right to have access to, to sustainably use and manage land. These rights should ensure that these groups have “an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures”. States should also take measures to support peasants to use the land in a sustainable form, to maintain soil fertility and its productive resources, and to avoid that peasants production endanger the environment for other individuals such as their access to clean water, preservation of biodiversity etc.

E. Human rights defenders

53. The situation of human rights defenders is particularly difficult in conflicts over land.[[76]](#footnote-77) The Committee has regularly noted accounts of threats and attacks aimed at those seeking to protect their Covenant rights or that of others, often in the form of harassment, criminalisation, defamation and killings, particularly in the context of extractive and development projects.[[77]](#footnote-78) Consistent with the Declaration on Human Rights Defenders,[[78]](#footnote-79) States must take all necessary measures to respect human rights defenders and their work, including in relation to land issues, and to refrain from imposing criminal penalties on them or enacting new criminal offences with a purpose of hindering their work.

F. Climate change

54. The impact of climate change on access to land, affecting legitimate user rights, will be severe in many countries. The sea level rise has an impact on coastal zones for housing, agriculture and access to fisheries. The increase of temperature, changing patterns of precipitation as well as the increase of extreme weather events such as droughts or floods will affect access to land.[[79]](#footnote-80) States should cooperate internationally and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. Moreover, States have the obligation to design adaptation policies to climate change at the national level sensitive to all forms of land use change induced by climate change and to register all affected persons and to use maximum available resources to address its impacts, particularly on disadvantaged groups.

55. Since climate change also impacts the countries that may have contributed the least to it, those countries that historically contributed most to climate change and those who contribute mainly today must assist those that are most affected but are hardly able to cope with its impacts, including by supporting and financing land-related adaptation measures. Cooperation mechanisms for climate change mitigation and adaptation measures must provide a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and to meaningful consultation with those affected by such projects, as well as respect the free, prior and informed consent of indigenous peoples.[[80]](#footnote-81)

V. Remedies

56. States parties should ensure effective administrative and judicial systems to implement policy and legal frameworks related to land, and that administrative and judicial authorities act in accordance with States parties’ obligations under the Covenant. This includes measures to provide non-discriminatory, prompt and accessible services to all rights-holders, in order to protect tenure rights and to promote and facilitate the enjoyment of those rights, including in remote rural areas.[[81]](#footnote-82) Access to justice is key and States parties have to guarantee that even in remote areas it is accessibly and affordable particularly for disadvantaged and marginalized groups. Remedies shall be adequate to address the needs of victims of violation with access to all relevant information and adequate redress and compensation, including, when adequate, restitution of land and return of refugees and IDPs. Access to justice should include access to procedures to address the impact of business activities, both in the countries where they are domiciled but also where the violations have been caused.[[82]](#footnote-83)

57. States parties should develop the capacities of administrative and judicial authorities and ensure access to timely, affordable and effective means of resolving disputes over tenure rights through impartial and competent judicial and administrative bodies, particularly in remote rural areas.[[83]](#footnote-84) States parties should recognise and cooperate with customary or other established forms of dispute settlement where these exist, ensuring that they provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, in accordance with human rights.[[84]](#footnote-85) For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.[[85]](#footnote-86)

1. The Co-Rapporteurs appreciate the contribution made by Olivier De Schutter, as one of the co-rapporteurs, to the inception and development of this draft general comment while he was on the Committee until May 2020. [↑](#footnote-ref-2)
2. Ritchie, Hannah [and](https://ourworldindata.org/team) Max Rosener (2019): Urbanisation. <https://ourworldindata.org/urbanization>. The UN Department on Economic and Social Affairs estimated in its latest World Urbanisation Prospects 2018 that in 2050, more than two-thirds of the world (more than 7 billion people) will live in urban areas, see at Web: https://population.un.org/wup. [↑](#footnote-ref-3)
3. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/HRC/34/51). [↑](#footnote-ref-4)
4. FAO (2004): Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security (http://www.fao.org/3/a-y7937e.pdf. ), Guideline- 8 c(Access to resources and assets). [↑](#footnote-ref-5)
5. Committee on World Food Security (CFS) (2012): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security gttp://www.fao.org/tenure/voluntary-guidelines/en/. The VGGT have acquired a high degree of legitimacy due to the inclusive nature of the CFS. [↑](#footnote-ref-6)
6. CFS (2014) Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources <http://www.fao.org/3/a-au866e.pdf>. Principle 5 covers the respect for tenure of land, fisheries, forests and access to water.

   UN-Human Rights Council (2018): United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/HRC/RES/39/12,art. 17.

   7 Ibid.,

   United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295). ILO the Indigenous and Tribal Peoples Convention, 1989 (No. 169). [↑](#footnote-ref-7)
7. [↑](#footnote-ref-8)
8. Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18. [↑](#footnote-ref-9)
9. Currently the number of peasants globally is estimated close to a third of world population. Around 75 % of hunger and malnutrition can be found in rural areas. See for figures: CFS High Level Panel of Experts Report 2013: Investing in smallholder agriculture for food security, Rome**.** [↑](#footnote-ref-10)
10. International Conference on Agrarian Reform and Rural Development (ICARRD), 2006/3, pp. 7-9. [↑](#footnote-ref-11)
11. World Summit on Food Security (WSFS 2009/2), Final declaration, art. 18. [↑](#footnote-ref-12)
12. *Centre for Minority Rights Development. v Kenya* 27th ACHPR AAR Annex (Jun 2009 - Nov 2009), (“the *Endorois* case”), para. 241. [↑](#footnote-ref-13)
13. See para. 24 of this General Comment. [↑](#footnote-ref-14)
14. The Committee has adopted concluding observations that mention land-related issues in its review of approximately 50 States parties since 2001. [↑](#footnote-ref-15)
15. See for example CESCR, Concluding Observations (COBs) on India, 2008 (E/C.12/IND/CO/5); Cambodia, 2009 (E/C.12/KHM/CO/1); Madagascar, 2009 (E/C.12/MDG/CO/2); United Republic of Tanzania, 2012 (E/C.12/TZA/CO/1-3). [↑](#footnote-ref-16)
16. E/C.12/GC/20, paras. 7-8. [↑](#footnote-ref-17)
17. The Committee, in its concluding observations, has dealt with issues relating to: (a) discrimination in relation to access to land (access and ownership) (–see for example concluding observations on Guinea (E/C.12/GIN/CO/1), Cameroon (E/C.12/CMR/CO/4), Mali (E/C.12/MLI/CO/1), Niger (E/C.12/NER/CO/1), South Africa (E/C.12/ZAF/CO/1), Central African Republic (E/C.12/CAF/CO/1)); (b) very small number of women who own land (see for example concluding observations on South Africa (E/C.12/ZAF/CO/1)); (c) traditional and customary law and practice depriving women of their inheritance and property rights (see for example concluding observations on– Benin (E/C.12/BEN/CO/3), Cameroon (E/C.12/CMR/CO/4), South Africa (E/C.12/ZAF/CO/1); Niger (E/C.12/NER/CO/1), Central African Republic (E/C.12/CAF/CO/1)); (d) awareness of women’s right to inheritance and land ownership; (e) patriarchal attitudes and attitudes based on stereotypes (see for example concluding observations on Niger (E/C.12/NER/CO/1)). [↑](#footnote-ref-18)
18. E/C.12/2005/4, para. 28. See also Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003), arts 15, 16, 18 and 19(c). [↑](#footnote-ref-19)
19. See concluding observations on Zambia (E/C.12/1/Add.106). [↑](#footnote-ref-20)
20. Doss, C., 'The Effects of Intrahousehold Property Ownership on Expenditure Patterns in Ghana'. *Journal of African Economies*, *15*(1) (2005), 149–180. [↑](#footnote-ref-21)
21. Beegle, K., Frankenberg, E., & Thomas, D. (2001). Bargaining power within couples and use of prenatal and delivery care in Indonesia. *Studies in family planning*, *32*(2), 130–46. [↑](#footnote-ref-22)
22. Friedemann-Sánchez, G. (2006). Assets in Intrahousehold Bargaining Among Women Workers in Colombia’s Cut-Flower Industry. *Feminist Economics*, *12*(1-2), 247–269. [↑](#footnote-ref-23)
23. International Center for Research on Women (2006). Property Ownership & Inheritance Rights of Women for Social Protection – The South Asia Experience Synthesis, pp. 12 and 100. See also para 55-78 of CEDAW’s general recommendation No. 34 (2016) on the rights of rural women (CEDAW/C/GC/34). [↑](#footnote-ref-24)
24. Ibid. [↑](#footnote-ref-25)
25. African Union Commission (AUC), Framework and Guidelines on Land Governance in Africa (2010), Para 3.1.3. [↑](#footnote-ref-26)
26. E/C.12/2005/4, para. 37. E/C.12/GC/21), para. 16(c). See also African Commission on Human and Peoples’ Rights (ACHPR), *Explanatory note to the State Reporting Guidelines on the Contents of the Rights and Obligations under Articles 21 and 24 of the African Charter*’ (2017)), paras. 20-23. [↑](#footnote-ref-27)
27. VGGT Guideline 3b6. [↑](#footnote-ref-28)
28. CESCR General Comment No. 4 on the Right to Adequate Housing (E/1992/23), para. 8(a). [↑](#footnote-ref-29)
29. E/C.12/GC/21, para 36. See also *Xákmok Kásek Indigenous Community v. Paraguay* [2010] IACHR Series C no 214, [2010] (Inter-American Court of Human Rights), para 86; *Sawhoyamaxa Indigenous Community v. Paraguay* [2006] IACHR Series C no 146, [2006], para 118; *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) paras 252-268; *African Commission on Human and Peoples’ Rights v Republic of Kenya*, African Court on Human and Peoples’ Rights, Application No,006/2012, Judgement on merits (2017) paras 195-201. [↑](#footnote-ref-30)
30. ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Declaration on the Rights of Indigenous Peoples (A/RES/61/295). VGGT Guideline 9. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/9/9), para. 41. [↑](#footnote-ref-31)
31. IACHR, *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*, Judgment of June 15, 2005. Series C No. 124, paras. 132-133; and Case of *Saramaka People. v. Suriname,* Judgment of 28 November 2007, para. 86. [↑](#footnote-ref-32)
32. Articles 28 and 32 of the Declaration on the Rights of Indigenous Peoples (A/RES/61/295). [↑](#footnote-ref-33)
33. IACHR, *Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua Case*, judgment of 31 August 2001, Series C No. 70, paras. 151 and 164. For a discussion of the case-law of the Inter-American bodies in this area, see Fergus MacKay, *From ‘Sacred Commitment’ to Justiciable Norms : Indigenous peoples’ rights in the Inter-American system*, *in* Casting the Net Wider : Human Rights, Development and New Duty-Bearers 371 (Margot E. Salomon, Arne Tostensen & Wouter Vandenhole, eds., 2007); *African Commission on Human and Peoples’ Rights v Republic of Kenya* [African Court on Human and Peoples’ Rights] Application No,006/2012, Judgement on merits (2017). [↑](#footnote-ref-34)
34. IACHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of 29 March 2006, para 128; ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276 / 2003, May 2009, para 209. [↑](#footnote-ref-35)
35. Reportedly, the largest pastoral/agro-pastoral populations (of seven million each) are in Sudan and Somalia, followed by Ethiopia with four million. See Nikola Rass, *Policies and Strategies to address the vulnerability of pastoralists in Sub-Saharan Africa*. Pro-Poor Livestock Policy Initiative, (PPLPI), FAO Working Paper No. 37 (2006), *available at* [www.fao.org/ag/AGAinfo/programmes/en/pplpi/docarc/execsumm\_wp37.pdf](http://www.fao.org/ag/AGAinfo/programmes/en/pplpi/docarc/execsumm_wp37.pdf). [↑](#footnote-ref-36)
36. CESCR General Comment No. 7 on the Right to Adequate Housing: forced evictions (E/1998/22), para. 1. [↑](#footnote-ref-37)
37. *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 13.4. [↑](#footnote-ref-38)
38. *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4. [↑](#footnote-ref-39)
39. The Basic Principles and Guidelines on Development-Based Evictions and Displacement, presented in the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Annex 1 (A/HRC/4/18), para. 21. [↑](#footnote-ref-40)
40. A/HRC/13/33/Add.2, Principle 2; ACHPR, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights* (2012), paras 51-55 and 77-79. [↑](#footnote-ref-41)
41. CESCR General Comment No. 7 on the Right to Adequate Housing: forced evictions (E/1998/22), paras. 12-13. [↑](#footnote-ref-42)
42. United Nations. Economic Commission for Africa (2014). Guiding principles on large scale land based investments in Africa. Addis Ababa. [↑](#footnote-ref-43)
43. Ibid., chapter 2, page 4f.. [↑](#footnote-ref-44)
44. *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001), AHRLR 60 (ACHPR 2001). [↑](#footnote-ref-45)
45. United Nations. Economic Commission for Africa (2014). Guiding principles on large scale land based investments in Africa. Addis Ababa, principle 17. The Committee has also observed that such regulations should also cover the issue that certain credit / microfinancing practices might also deprive people from their land, including by leading to over-indebtedness. [↑](#footnote-ref-46)
46. ACHPR, *Explanatory Note to* *State Reporting Guidelines and Principles on articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (2017), para 18. [↑](#footnote-ref-47)
47. Toulmin, C. and J. Quan (eds.) (2000) *Evolving Land Rights, Policy and Tenure in Africa* (London: DFID–IIED–NRI). [↑](#footnote-ref-48)
48. ACHPR, *State Reporting Guidelines and Principles on articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (2017), para III(g) and (h). [↑](#footnote-ref-49)
49. See FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, guideline 8.1. and 8.10. [↑](#footnote-ref-50)
50. ACHPR, *Principles and Guidelines on Implementation of Economic Social and Cultural Rights* (2012), para 55(e). [↑](#footnote-ref-51)
51. International Conference on Agrarian Reform and Rural Development (ICARRD), 2006/3, p. 47. [↑](#footnote-ref-52)
52. El-Ghonemy, M.R. (2003) ‘Land Reform Development Challenges of 1963–2003 Continue into the Twenty-First Century’, *Land Reform, Land Settlement and Cooperatives*, No. 2, pp. 32–43; Penciakova, V., *Market-Led Agrarian Reform: A Beneficiary Perspective of Cédula da Terra*, London School of Economics Working Paper Series No. 10-100 (March 2010). [↑](#footnote-ref-53)
53. Quan, J., *Land Access in the 21st Century: Issues, Trends, Linkages and Policy Options*, Livelihood Support Programme Working Paper No. 24 (Rome: Food and Agriculture Organisation, 2006). [↑](#footnote-ref-54)
54. Carter, M.R., ‘Designing Land and Property Rights Reform for Poverty Alleviation and Food Security’, *Land Reform, Land Settlement and Cooperatives*, No. 2 (2003), pp. 44–57. [↑](#footnote-ref-55)
55. Deininger, K. and H. Binswanger, ‘The Evolution of the World Bank’s Land Policy: Principles, Experience and Future Challenges’, *The World Bank Research Observer*, 14(2) (1999), pp. 247–76, p. 248. [↑](#footnote-ref-56)
56. Research has highlighted an inverse relationship between the size of production units and productivity per hectare. Sen, A. K. (1962). An Aspect of Indian Agriculture. *Economic Weekly* 14: 243-266; Sen, A. K., (1966). Peasants and Dualism with or Without Surplus Labor. *Journal of Political Economy* 74(5): 425-450. Eastwood, R., Lipton, M. and Newell, A. (2010). Farm size. In P.L.Pingali and R.E. Evenson (eds) *Handbook of Agricultural Economics*, Amsterdam: Elsevier. [↑](#footnote-ref-57)
57. FAO (2004): Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, Guideline 8.10. [↑](#footnote-ref-58)
58. A/HRC/13/33/Add. 2, Annex, principle 6. [↑](#footnote-ref-59)
59. CESCR Statement (E/C.12/2011/1, paras. 5-6. [↑](#footnote-ref-60)
60. See CESCR concluding observations on Belgium (E/C.12/BEL/CO/4), on Austria (E/C.12/AUT/CO/4), Norway E/C.12/NOR/CO/5); CEDAW/C/GC/34, (2016), para. 13; International Law Commission, Report of the Fifty-Third Session, Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10 (2001), arts. 16-18; Guiding principles on human rights impact assessments of trade and investment agreements. [↑](#footnote-ref-61)
61. Windfuhr, M. (2017). Safeguarding Human Rights in Land Related Investments: Comparison of the Voluntary Guidelines Land with the IFC Performance Standards and the World Bank Environmental and Social Safeguard Framework. Berlin: German Institute for Human Rights. [↑](#footnote-ref-62)
62. IFC (2012): Performance Standards on Environ-mental and Social Sustainability. https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS\_English\_2012\_Full-Document.pdf?MOD=AJPERES&CVID=jkV-X6h (last accessed: 04.09.2020) [↑](#footnote-ref-63)
63. VGGT Guideline. 12.15. [↑](#footnote-ref-64)
64. See CESCR concluding observations on Austria (E/C.12/AUT/CO/4) and Norway E/C.12/NOR/CO/5); Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge; Human Rights Committee’ s General Comment No. 34: Article 19: Freedoms of Opinion and Expression, (CCPR/C/GC/34), paras. 18-19; Társáság a Szabadságjogokért v. Hungary, Appl. No. 37374/05, para. 26, 35 (2009). [↑](#footnote-ref-65)
65. See E/C.12/2002/11, para. 35; E/C.12/GC/22; E/C.12/GC/24 paras. 12-13; CESCR concluding observations on Canada (E/C.12/CAN/CO/6); CEDAW/C/GC/34; Bosphorus v. Ireland, App. No. 45036/98 2005 Eur. Ct. H.R. at para. 154; Sawhoyamaxa Indigenous Community v. Paraguay, Judgment, Inter-Am. Ct. H.R. (ser.C), Report No. 146, para. 140 (29 Mar. 2006; CESCR, General Comment No. 3: The Nature of States Parties Obligations (1991), para. 2. [↑](#footnote-ref-66)
66. E/C.12/GC/24. [↑](#footnote-ref-67)
67. See Guidance Note of the Secretary-General: The United Nations and Land Conflict (March 2019). [↑](#footnote-ref-68)
68. See the Principles on Housing and Property Restitution for Refugees and Displaced Persons approved by the UN Sub-Commission on the Protection and Promotion of Human Rights (E/CN.4/Sub.2/2005/17). [↑](#footnote-ref-69)
69. The World Bank, Colombia Protects Land and Patrimony of Internally Displaced Persons (2015), Web: <https://www.worldbank.org/en/results/2015/08/13/colombia-protects-land-and-patrimony-of-internally-displaced-persons>. [↑](#footnote-ref-70)
70. See the Principles on Housing and Property Restitution for Refugees and Displaced Persons approved by the UN Sub-Commission on the Protection and Promotion of Human Rights (E/CN.4/Sub.2/2005/17). [↑](#footnote-ref-71)
71. Uprimny, Rodrigo. “Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice”. *Netherlands Quarterly of Human Rights*. 2009;27(4). [↑](#footnote-ref-72)
72. VGGT Guideline 3.1. [↑](#footnote-ref-73)
73. Ibid., Guideline 5.8. [↑](#footnote-ref-74)
74. The VGGT include recommendations specific to all components of land governance, such as recording of land rights, valuation of land, or adoption of land planning schemes. The Principles for Responsible Investment in Agriculture and Food Systems (as endorsed by the Committee on World Food Security in 2014, Web: http://www.fao.org/3/au866e/au866e.pdf), refer similarly to the need to comply with "the rule and application of law, free of corruption" (Principle 9), and mention the United Nations Convention Against Corruption (A/RES/58/4) as relevant for the implementation of the Principles. [↑](#footnote-ref-75)
75. A/RES/73165; see footnote 6. [↑](#footnote-ref-76)
76. Protecting Human Rights Defenders Addressing Economic, Social and Cultural Rights (A/HRC/31/L.28). Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144). [↑](#footnote-ref-77)
77. *See* for example the Committee’s concluding observations on Viet Nam (E/C.12/VNM/CO/2-4), para. 11; Egypt (E/C.12/1/Add.44), para. 19; India (E/C.12/IND/CO/5), paras. 12 and 50; the Philippines (E/C.12/PHIL/CO/4), para 15; the Democratic Republic of Congo (E/C.12/COD/CO/4), para. 12; Sri Lanka (E/C.12/LKA/CO/2-4), para. 10; Indonesia (E/C.12/IDN/CO/1), para. 28. [↑](#footnote-ref-78)
78. A/RES/53/144. [↑](#footnote-ref-79)
79. IPCC, Intergovernmental Panel on Climate Change (2019): Climate Change and Land. Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse gas fluxes in Terrestrial Ecosystems. Draft, 07 August 2019. See Summary for policy makers: <https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf>, (accessed on 24.09.2020). [↑](#footnote-ref-80)
80. These safeguards should be in line with the practice of the Green Climate Fund and those included in the Environmental and Social Policy of the Adaptation Fund established under the Kyoto Protocol to ensure coherence. [↑](#footnote-ref-81)
81. VGGT Guidelines 6.2 and 6.4. [↑](#footnote-ref-82)
82. E/C.12/GC/24, paras. 49-57. [↑](#footnote-ref-83)
83. VGGT Guideline 21.1. [↑](#footnote-ref-84)
84. VGGT Guideline 21.3. [↑](#footnote-ref-85)
85. VGGT Guideline 9.12. [↑](#footnote-ref-86)