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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 (2021) on land and economic, social and cultural rights

 Draft prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr[[1]](#footnote-2)\*, [[2]](#footnote-3)\*\*, [[3]](#footnote-4)\*\*\*

 I. Introduction

1. Access to land is an important precondition for the realization of several Covenant rights, particularly the rights to adequate food, water and housing as part of the right to an adequate standard of living, as well as the right to health and the protection against non-discrimination contained in several of the Covenant rights. The sustainable use of natural resources depend 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 the livelihoods of individuals, groups and communities depend on the secure and equitable access to and control over land of those individuals, groups and communities. The question of land tenure systems is becoming increasingly important as the world’s growing population requires ever more food security 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; 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 access to and control over land and the distribution of geographical space. In addition to long-term trends in the high demand for land, the rapid urbanization in most parts of the world often takes place on land that is being used by peasants, rural communities, pastoralists and indigenous communities or as natural reserves and forests.[[4]](#footnote-5)

2. In cities, the competition between different groups for access to and control over land is exacerbated by gentrification of certain urban areas and by the financialization of housing markets,[[5]](#footnote-6) 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 is a result of 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 often fuels 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 that 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 those processes are becoming complicated through weak or non-existent 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 socioeconomic inequality and can lead to conflict and environmental degradation. Populations might be forced to abandon their land when competing users fight for control of those resources. Conflicts over land also are frequent in armed conflicts and in post-conflict countries, where large numbers of people seek to reclaim the land from which they were forcefully removed 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, both internal and cross-border migration, which may well increase in the future, inter alia, as a result of climate change and the other reasons for displacements mentioned here, may enhance tensions over the occupation of land. Many of those 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 relating 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 were adopted by the Council of the Food and Agriculture Organization of the United Nations (FAO) in 2004 and contain a number of provisions relating to access to natural resources, including land and water (guideline 8). The guidelines were adopted by all FAO member States and strengthened the interpretation of the right to adequate food, following the example of the Committee on Economic, Social and Cultural Rights in its general comment No. 12 (1999). In 2012, the Committee on World Food Security endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security[[6]](#footnote-7) and in 2014, it endorsed the Principles for Responsible Investment in Agriculture and Food Systems, which address, inter alia, the human rights implications of agricultural investments.[[7]](#footnote-8) Other relevant soft law instruments have been developed to describe the obligations and responsibilities of States and other actors relating to land use of specific groups.[[8]](#footnote-9) Such soft law instruments provide help in the interpretation of the legally binding obligations of States parties under the Covenant and address 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 those 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 those natural resources under national contexts, States parties should take the governance of such resources into account in the implementation of their obligations relating 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 for the preservation of intact forests, wetlands and grasslands. Consequently, the Committee also recognizes and emphasizes the importance of ecological concerns when it comes to land, including the preservation of biodiversity, and conservation, preservation, protection and restoration of land to maintain its agroecological services.

8. The aim of the present general comment is to clarify the specific obligations contained in the Covenant in relation to land, particularly with regard to 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 conflict, in rural and urban settings, in armed conflict and 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, 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 and to transitional justice issues relating to land. Those systems determine the ways in which individuals, peoples, communities and others can use specific 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 relating to land

9. Secure access to land is a precondition for the enjoyment of several rights under the Covenant. The right to housing, that is, 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 conducted without respecting the requirements established in the Covenant, which the Committee has clarified in its general comments No. 4 (1991) and No. 7 (1997). Those standards were 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 as a component of the right to an adequate standard of living.[[9]](#footnote-10) Access to land in urban areas not only provides space for a shelter; household-related areas, including gardens, can also be places for domestic work in the informal and formal economy, as well as non-domestic work performed in the home. Houses in rural areas are normally built on the plot of land that 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 to guaranteeing the enjoyment of the right to adequate food. The enjoyment of the right to food is endangered 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 (2) (a) of the Covenant provides that States parties, recognizing the connection between the right to be free from hunger and the utilization of natural resources, which include land, should develop or reform agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources, including land. 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, as echoed in paragraph 8.1 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. That 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, the Voluntary Guidelines highlight the importance of “access to productive resources” as a key element for the realization of the right to adequate food, particularly in rural areas, where most of the peasants live and most hunger can be found.[[10]](#footnote-11) The relevance of agrarian reforms to the realization of the right to adequate food was confirmed through the pledges made by FAO member States in the Final Declaration of the International Conference on Agrarian Reform and Rural Development in 2006[[11]](#footnote-12) and the Declaration of the World Summit on Food Security in 2009.[[12]](#footnote-13)

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, particularly with the use of pesticides. Other airborne compounds found on farms, such as dust, fertilizers and plant growth regulators, pollen, animal waste and other microorganisms, 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 Covenant rights may be imperilled, such as rights to food, access to health care 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 that has a particular spiritual or religious significance to them, such as when the land serves as a basis for their 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”.[[13]](#footnote-14) Furthermore, indigenous and other traditional communities rely on the natural resources on their lands for subsistence and the conduct of traditional cultural practices (see para. 24 below).

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 recognized the increasing pressure that competition for access to and control over land puts on the realization 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 undertake to ensure the 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 to 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 temporary special measures to ensure that disadvantages groups have 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 peoples who depend 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 and 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. States therefore have an obligation 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 that is often discriminated against in the governance of land tenure, and thus requires specific attention. In many countries, women and girls are among those who are disproportionately affected by the adverse impact of violations and abuses of Covenant obligations relating to land and they are vulnerable to intersectional discrimination. In its concluding observations on a number of States parties, the Committee has drawn special attention to discrimination against women, with regard to security of land tenure; access to, use of and control over land; marital property; inheritance; and exclusion from decision-making processes, including in the context of communal forms of land tenure.[[17]](#footnote-18) The Committee, in its general comment No. 16 (2005), noted that 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 (para. 28).[[18]](#footnote-19) In its general comment No. 12 (1999), it recognized the importance of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land (para. 26). The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 21 (1994), stipulated that in countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed (para. 27). 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 enhance women’s engagement in household decision-making and 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 women’s exposure to violence, in part because women who have security in access to tenure can flee domestic violence more easily by seeking access to protection,[[22]](#footnote-23) but also by making women’s households more secure, by enhancing women’s self-confidence and self-esteem and their role in decision-making, and by allowing them 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.[[24]](#footnote-25) Consequently, women may still represent a significant minority in the total number of holders of titles. Therefore, while it is important to recognize 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 relating 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 users might be overseen. In that regard, States parties should 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, as well as prior to evictions from land. States parties must ensure, inter alia, the regular and effective production and dissemination of relevant information relating to all those processes. Such processes should be transparent, organized in the relevant languages, widely publicized and grant access to all relevant documents. Affected persons need to be contacted prior to any decision that might affect their livelihood rights. That includes the freedom to receive and impart such information, the conduct of meaningful consultation and participation in negotiations, decision-making and management processes relating to land as described in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (para. 3B.6). The standards for indigenous peoples recognized in the international legal developments in relation to indigenous peoples and also in those Voluntary Guidelines (para. 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.

 C. Obligations of States parties under the Covenant as relating to land

 Obligation to respect

19. States parties should 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 the right to housing. That 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 Voluntary Guidelinesin 2012 in order to clarify the fact that legitimate tenure rights holders include not only those with formal land titles, but also those with customary, collective or traditional tenure rights that might not be recognized by law. States should refrain from any infringement of legitimate tenure rights, as such infringements would be inconsistent with the Covenant.

20. Notwithstanding the type of land tenure system(s) put in place, States parties should take 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, illegal land dispossession, appropriation, harassment and other threats. In addition, States parties should take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with the persons and groups concerned.[[27]](#footnote-28) Considering that most land tenure systems are based on the rights of individuals with respect to land, States parties should recognize 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. That includes 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.[[28]](#footnote-29)

21. Land registration and land administration should be carried out without any discrimination, including discrimination 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 carried out systematically and in a way that ensures 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, through public rules, establish the definition of user rights that are legitimate, in line with all the relevant Covenant provisions and with the definitions contained in the Voluntary Guidelines.

22. Land administration should 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 should be supported in using those services and their access to justice should be guaranteed. Such support should cover legal support, including affordable legal aid and other support measures, particularly for 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, conflicts of interests.

23. International law recognizes the right of indigenous peoples over the lands and territories that they have traditionally occupied.[[29]](#footnote-30) International human rights law provides for the respect and protection of 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 organization. The requirements applicable to indigenous peoples have now been extended to at least certain traditional communities that maintain a similar relationship to their ancestral lands centred on the community rather than the individual.[[30]](#footnote-31) Therefore, indigenous peoples have the right to have their lands demarcated, and relocation is allowed only under narrowly defined circumstances and, in principle, with the prior, free and informed consent of the groups concerned. Laws and policies should 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.[[31]](#footnote-32) Regional human rights courts have contributed to strengthening the rights of indigenous peoples to their lands and territories.[[32]](#footnote-33) 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 restitution thereof or to obtain other lands of equal extension and quality”.[[33]](#footnote-34)

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 the meaningful participation of all members, including women and young people, in decisions regarding the distribution of user rights. Ensuring access to natural resources, as concerns the Covenant, cannot be limited to specific protections granted to the lands and territories of indigenous peoples. Among those groups are those that depend on the commons. Fisher folk need access to fishing grounds, yet strengthening individual property rights might entail fencing 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 world’s 120 million pastoralists or agropastoralists reside.[[34]](#footnote-35) In addition, throughout the developing world, many rural households still depend on gathering 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 those groups, as cutting them off from the resources on which they depend would 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 land users’ legitimate tenure 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 be justified only in the most exceptional circumstances.[[35]](#footnote-36) The relevant authorities must ensure that forced evictions 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.[[36]](#footnote-37) That 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.[[37]](#footnote-38) 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.[[38]](#footnote-39) 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, those circumstances must allow for access to the broader needs of a livelihood. The standards for alternative accommodation must require that the accommodation be safe and that it provide accessible access to public services, including education, health care, community engagement and livelihood opportunities. Every effort must 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 minimizing, the need to resort to evictions.[[39]](#footnote-40) States parties should not under any circumstances use forced evictions and demolition of property as punitive measures.[[40]](#footnote-41) In all cases, effective legal remedies or procedures should be provided to those who are affected by eviction orders.

27. Where the State owns or controls land, it should ensure that the 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 changes in land use and for 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, paying particular attention 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 they 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 relating to transfer of existing tenure rights, including voluntary or involuntary transactions as a result of investments, land consolidation policies or other land-related readjustment and redistribution measures.

30. States parties should develop laws and policies to guarantee that land-based investments are done in a responsible manner. That requires early participation of all affected parties and fair regulation of transfer processes. In all those processes, affected persons or groups should have access to complaint mechanisms that allow them to challenge decisions of local governments, investment boards or other relevant parties before the start of implementation and up to the payment of fair compensation. Ex-ante impact studies need to be conducted to identify potential harm and options to mitigate it. 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.[[41]](#footnote-42)

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 standard of living, under article 11 of the Covenant, from risks that could derive from large-scale transactions in tenure rights. Large-scale land investments risk violating Covenant rights because they normally affect a large number of smallholders, whose informal land use titles are often poorly recognized.[[42]](#footnote-43) Such safeguards could include ceilings on permissible land transactions and the requirement that transfers exceeding a certain level 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.

32. The obligation to protect entails a positive duty to take legislative and other measures to provide clear standards for non-State actors such as business entities and private investors in the context of large-scale land acquisitions and leases at home and abroad, among others.[[43]](#footnote-44) States parties should adopt a legal framework requiring business entities to exercise human rights due diligence[[44]](#footnote-45) 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 protect those institutions and corporations from liability or provide them with immunity from activities that endanger Covenant rights.[[45]](#footnote-46)

33. In recent years, titling has been encouraged to protect land users from eviction by the State and from encroachment by private actors, particularly large landowners or investors. That 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 him or her 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 recognized 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 for more fluid transfer of property rights and a lowering of transaction costs in those markets. Those 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 conflict rather than more clarity, and in less security rather than improved security.[[46]](#footnote-47)

 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 marginalized sectors of society, who depend on them to realize their economic, social and cultural rights, such as the rights to food, housing and an adequate standard of living.[[47]](#footnote-48) 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”.[[48]](#footnote-49) Special attention should be given to pastoralists and indigenous peoples with regard to 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. As the African Commission on Human and Peoples’ Rights suggested in its Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, States parties should also “ensure that compensation for public acquisition of property fairly balances the rights of the individual and the wider interests of society. In general, the compensation should be reasonably related to the market value of the acquired property. However, in certain circumstances public interest may require less than market value compensation or, exceptionally, none at all” (para. 55 (e)).

35. The international community has acknowledged the importance of agrarian reform. For instance, in the Final Declaration adopted at the International Conference on Agrarian Reform and Rural Development in 2006, FAO member States agreed on the principle of the “establishment of appropriate agrarian reform mainly in areas with strong social disparities, poverty and food insecurity exist, as a means to broaden sustainable access to and control over land and related resources”.[[49]](#footnote-50) More equitable distribution of land can have a significant impact on poverty reduction.[[50]](#footnote-51) In addition, more equitable access to land by the poor in rural areas contributes to social inclusion and economic empowerment.[[51]](#footnote-52) It improves food security, since it makes food more available and affordable, providing a buffer against external shocks.[[52]](#footnote-53) 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.[[53]](#footnote-54) 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. Policy options to support the economic success of those family farmers should include education, support in access to credits, help in using marketing opportunities and the pooling of machines. Policies should be formulated in a way that enables beneficiaries to benefit from the land they acquire and does not incentivize them to sell the land in order to support their minimum needs. Redistribution of land and agrarian reforms should pay particular attention to access to land by young people, and respect and protect collective and customary tenure of land.

36. States should use the maximum of available resources to progressively realize 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 realize such access. Article 11 (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. That implies that States have a duty to support agrarian reform schemes that ensure adequate access to land, particularly for small-scale farmers who depend on access to land for their livelihoods.[[54]](#footnote-55) Policies and laws should be accompanied by adequate, gender-sensitive support measures, developed through participatory processes and should aim to make agrarian reforms sustainable. Such policies and laws should include adequate safeguards against land reconcentration following reform, such as land ceiling laws and legal safeguards to protect the collective and customary tenure of land.

37. States parties should engage in long-term regional planning in order to maintain the environmental functions of land. They should prioritize and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources.[[55]](#footnote-56) They should also, inter alia, facilitate the sustainable use of natural resources by recognizing, 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. That 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 should be obliged 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.[[56]](#footnote-57)

 D. Extraterritorial obligations

38. Extraterritorial obligations are of particular significance to the implementation of Covenant obligations relating to land. Land transfers are quite often financed or fostered by international actors, be they 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 encountered an increasing number of references to the negative impact on individuals’, groups’ and indigenous peoples’ access to productive resources as a result 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 those considerations, States parties should take the 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.[[57]](#footnote-58)

 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. It also requires them 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.[[58]](#footnote-59) That applies to all forms of projects implemented by development agencies or financed by development banks. A recognition of that obligation, particularly relating to investments in land, are the safeguards policies developed by the World Bank and other international development banks.[[59]](#footnote-60) 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 compensation. In order to mitigate or prevent such situations, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security were developed and the International Finance Corporation (IFC) performance standards were updated in 2012,[[60]](#footnote-61) as were the respective World Bank safeguards, thereafter. Moreover, States parties that are members of international financial institutions, notably the World Bank, the International Fund for Agricultural Development 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 relating 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 and public pension funds, and private-public partnerships,[[61]](#footnote-62) should ensure that they do not reduce the ability of other States to comply with their Covenant obligations. States parties must conduct human rights impact assessments prior to making such investments and must regularly assess and revise them. Such assessments must be conducted with substantive public participation and the results should be made public and inform measures to prevent, cease and remedy any human rights violations or abuses.[[62]](#footnote-63)

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 have an adverse impact on access to productive resources in other countries.[[63]](#footnote-64)

 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. That is also the case in the context of land acquisitions and other business activities which have an impact on the enjoyment of access to productive resources, including land. States parties should ensure that the investors domiciled in other countries 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. That 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.[[64]](#footnote-65)

 Extraterritorial obligation to fulfil

43. States should take steps through international assistance and cooperation under article2 (1) of the Covenant, with a view to progressively achieving the full realization of Covenant rights relating to land, which would also benefit peoples and communities outside their territories. Support should include technical cooperation, financial assistance, institutional capacity-building, 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 recognition of their legitimate user rights. Policies should avoid leading to land concentration or a commodification of land, and should be aimed at improving the access of particular disadvantaged and vulnerable groups and increasing their 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 efforts to ensure that land policies are sustainable and are or will become an integral part of official land use planning and States’ broader spatial planning.

 IV. Specific topics of relevance 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 relating 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, the 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. It is noteworthy that addressing land disputes and conflicts might be a key to building resilience and sustaining peace.[[65]](#footnote-66) Thus, States should make all efforts possible to prevent land dispossession during armed conflicts. If dispossessions do nevertheless occur, States are obliged to establish restitution programmes to guarantee to all refugees and internally displaced persons the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.[[66]](#footnote-67) 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 considerations: (a) protection of land tenure for populations in vulnerable situations should be incorporated in all human rights early warning systems; (b) humanitarian interventions should be articulated with measures to prevent land dispossession; (c) 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;[[67]](#footnote-68) and (d) States should 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 property, but all forms of land tenure, including customary tenure, as those at higher risk of being dispossessed of their land may not be the formal owners.

47. Land restitution programmes should include measures to guarantee the right of refugees or internally displaced persons 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.[[68]](#footnote-69) States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce all land restitution claims. They 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 paid to dealing 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 secondary occupants; if their eviction is necessary, it should be implemented with genuine consultation and States should, if necessary, provide them with alternative accommodation and social services to guarantee them an adequate standard of living.

48. In many post-conflict situations, land restitution programmes, even if successful, might be insufficient to prevent new conflicts and to guarantee Covenant rights to refugees and internally displaced persons. It is not uncommon for refugees and internally displaced persons to have already been living in poverty before they were dispossessed and for there to have been deeply rooted inequalities in land tenure before the armed conflict, especially affecting women, who tend to be excluded from land rights. In such circumstances, land restitution or compensation alone are insufficient as they would not remove those persons from poverty or reduce social and gender inequality in land tenure. In such contexts, reparations for victims of internal displacement or violence should go beyond restitution. They should be transformative reparations,[[69]](#footnote-70) in the sense that they should include policies and measures aimed at reducing inequality and improving those persons’ standard of living. Specific measures should be taken to improve gender equality in land tenure, for instance, by giving preference to women when granting land rights. In addition, States should make efforts to ensure that land restitution programmes include 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 realization of Covenant rights in land-related contexts. Such processes should involve qualitative and disaggregated quantitative data collected by local communities and others, be inclusive and participatory, and pay particular attention to marginalized 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 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; and in the selling or leasing out of land to investors by the Government or 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”.[[70]](#footnote-71) 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.[[71]](#footnote-72) States should do so, particularly through consultation, participation and respect for the rule of law and the principles of transparency and accountability.[[72]](#footnote-73)

 D. Peasants’ rights

52. Access to land has 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 realization of several Covenant rights that it functionally equates with a right to land. In that respect, in December 2018 the General Assembly adopted the United Nations Declaration on the Rights of Peasants and Other PeopleWorking in Rural Areas. Article 17 covers the right to land for peasants and other people living in rural areas, including the right to have access to, sustainably use and manage land. Those rights should ensure that those 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 take measures to support peasants to use the land in a sustainable way, to maintain soil fertility and its productive resources and to avoid endangering the environment for other individuals, ensuring their access to clean water and the preservation of biodiversity.

 E. Human rights defenders

53. The situation of human rights defenders is particularly difficult in conflicts over land.[[73]](#footnote-74) The Committee has regularly received reports of threats and attacks aimed at those seeking to protect their Covenant rights or those of others, often in the form of harassment, criminalization, defamation and killings, particularly in the context of extractive and development projects.[[74]](#footnote-75) In accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 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 the aim 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. Sea level rise has an impact on coastal zones for housing, agriculture and access to fisheries. The rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods will affect access to land.[[75]](#footnote-76) 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 an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change, to register all affected persons and to use the maximum available resources to address the impacts of climate change, particularly on disadvantaged groups.

55. Since climate change impacts all countries, including those that may have contributed to it the least, those countries that have historically contributed most to climate change and those that are currently the main contributors to it 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. They must also respect the free, prior and informed consent of indigenous peoples.[[76]](#footnote-77)

 V. Remedies

56. States parties should ensure that they have effective administrative and judicial systems in place to implement policy and legal frameworks relating to land, and that their administrative and judicial authorities act in accordance with the State’s obligations under the Covenant. That includes taking 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.[[77]](#footnote-78) Access to justice is key; States parties must guarantee that even in remote areas, it is accessible and affordable, particularly for disadvantaged and marginalized groups. Remedies should be adequate to address the needs of victims of violations, giving them access to all relevant information and adequate redress and compensation, including, when appropriate, restitution of land and return of refugees and internally displaced persons. 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.[[78]](#footnote-79)

57. States parties should build the capacity of their administrative and judicial authorities to 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.[[79]](#footnote-80) States parties should recognize and cooperate with customary and other established forms of dispute settlement where they exist, ensuring that they provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, in accordance with human rights.[[80]](#footnote-81) For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.[[81]](#footnote-82)

1. \* The present document was submitted after the deadline so as to include the most recent information. [↑](#footnote-ref-2)
2. \*\* The footnotes in the present document are being circulated in the English only. [↑](#footnote-ref-3)
3. \*\*\* The Co-Rapporteurs appreciate the contribution made by Olivier De Schutter, who was one of the co-rapporteurs to the inception and development of the draft general comment while he was on the Committee until May 2020. [↑](#footnote-ref-4)
4. See <https://ourworldindata.org/urbanization>. The Department on Economic and Social Affairs has estimated that in 2050, more than two thirds of the world (more than 7 billion people) will live in urban areas. See https://population.un.org/wup. [↑](#footnote-ref-5)
5. See A/HRC/34/51. [↑](#footnote-ref-6)
6. The guidelines have acquired a high degree of legitimacy due to the inclusive nature of the Committee on World Food Security. [↑](#footnote-ref-7)
7. See [www.fao.org/3/a-au866e.pdf](https://unitednations-my.sharepoint.com/personal/philippa_fletcher_un_org/Documents/Documents/CURRENT%20DOX/www.fao.org/3/a-au866e.pdf). Principle 5 is entitled “Respect tenure of land, fisheries and forests, and access to water”. See also United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 17.

 7 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 17. See also United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the international labour Organization (ILO). [↑](#footnote-ref-8)
8. [↑](#footnote-ref-9)
9. A/HRC/4/18, annex I. [↑](#footnote-ref-10)
10. Peasants are currently estimated to represent almost a third of the world’s population. Around 75 per cent of hunger and malnutrition can be found in rural areas. See Committee on World Food Security, High Level Panel of Experts on Food Security and Nutrition, *Investing in smallholder agriculture for food security* (Rome**,** 2013). [↑](#footnote-ref-11)
11. International Conference on Agrarian Reform and Rural Development, Final Declaration (ICARRD 2006/3). [↑](#footnote-ref-12)
12. World Summit on Food Security (WSFS 2009/2). [↑](#footnote-ref-13)
13. African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, decision, forty-sixth ordinary session, 11–25 November 2005, para. 241. [↑](#footnote-ref-14)
14. The Committee has referred to land-related issues in the concluding observations it has adopted concerning approximately 50 States parties since 2001. [↑](#footnote-ref-15)
15. See, e.g., E/C.12/IND/CO/5, E/C.12/KHM/CO/1, E/C.12/MDG/CO/2 and E/C.12/TZA/CO/1-3. [↑](#footnote-ref-16)
16. Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), paras. 7–8. [↑](#footnote-ref-17)
17. With regard to discrimination in relation to access to land, particularly access and ownership, see, e.g., E/C.12/GIN/CO/1, E/C.12/CMR/CO/4, E/C.12/MLI/CO/1, E/C.12/NER/CO/1, E/C.12/ZAF/CO/1 and E/C.12/CAF/CO/1. Concerning the very small number of women who own land, see, e.g., E/C.12/ZAF/CO/1. Regarding traditional and customary law and practice depriving women of their inheritance and property rights, see, e.g., E/C.12/BEN/CO/3, E/C.12/CMR/CO/4, E/C.12/ZAF/CO/1, E/C.12/NER/CO/1 and E/C.12/CAF/CO/1. Regarding patriarchal attitudes and attitudes based on stereotypes, see, e.g., E/C.12/NER/CO/1. [↑](#footnote-ref-18)
18. See also Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, arts. 15–16, 18 and 19 (c). [↑](#footnote-ref-19)
19. E/C.12/1/Add.106, paras. 27 and 50. [↑](#footnote-ref-20)
20. Cheryl Doss, “The effects of intrahousehold property ownership on expenditure patterns in Ghana”, *Journal of African Economies*, vol. 15, No. 1 (March 2006). [↑](#footnote-ref-21)
21. Kathleen Beegle, Elizabeth Frankenberg and Duncan Thomas, “Bargaining power within couples and use of prenatal and delivery care in Indonesia”, *Studies in family planning*, vol. 32, No. 2 (June 2001). [↑](#footnote-ref-22)
22. Greta Friedemann-Sánchez, “Assets in intrahousehold bargaining among women workers in Colombia’s cut-flower industry”, *Feminist Economics*, vol. 12, Nos. 1–2 (2006). [↑](#footnote-ref-23)
23. International Center for Research on Women, *Property Ownership & Inheritance Rights of Women for Social Protection – The South Asia Experience* (2006), pp. 12 and 100. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78. [↑](#footnote-ref-24)
24. Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78. [↑](#footnote-ref-25)
25. African Union, African Development Bank and Economic Commission for Africa, “Framework and guidelines on land governance in Africa” (Addis Ababa, AUC-ECA-AfDB Consortium, 2010), para. 3.1.3. [↑](#footnote-ref-26)
26. Committee on Economic, Social and Cultural Rights, general comments No. 16 (2005), para. 37, and No. 21 (2009), para. 16 (c). See also African Commission on Human and Peoples’ Rights, “State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment” (2017), pp. 26–27. [↑](#footnote-ref-27)
27. Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (a). [↑](#footnote-ref-28)
28. Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009), para 36. See also Inter-American Court of Human Rights, *Xákmok Kásek Indigenous Community v. Paraguay*, Judgment of 24 August2010, para 86, and *Sawhoyamaxa Indigenous Community v. Paraguay*,Judgment of 29 March 2006, para 118; African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*,paras. 252–268;and African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, Application No. 006/2012, Judgement of 26 May 2017, paras. 195–201. [↑](#footnote-ref-29)
29. ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), United Nations Declaration on the Rights of Indigenous Peoples, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, guideline 9, and A/HRC/9/9, para. 41. [↑](#footnote-ref-30)
30. Inter-American Court of Human Rights, *Moiwana Community v. Suriname*,Judgment of 15 June 2005, paras. 132–133, and *Saramaka People v. Suriname*,Judgment of 28 November 2007, para. 86. [↑](#footnote-ref-31)
31. United Nations Declaration on the Rights of Indigenous Peoples, arts. 28 and 32. [↑](#footnote-ref-32)
32. Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, paras. 151 and 164. For a discussion of the case law of the Inter-American bodies in that 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*, Margot E. Salomon, Arne Tostensen and Wouter Vandenhole, eds. (Antwerp, Intersentia, 2007); and African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya*. [↑](#footnote-ref-33)
33. Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of 29 March 2006, para. 128; and African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, para. 209. [↑](#footnote-ref-34)
34. Reportedly, the largest pastoral/agropastoral populations (seven million each) are in Somalia and the Sudan, followed by Ethiopia (four million). See [www.fao.org/3/bp197e/bp197e.pdf](http://www.fao.org/3/bp197e/bp197e.pdf). [↑](#footnote-ref-35)
35. Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 1. [↑](#footnote-ref-36)
36. *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 13.4. [↑](#footnote-ref-37)
37. *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4. [↑](#footnote-ref-38)
38. See also A/HRC/4/18, annex I, para. 21. [↑](#footnote-ref-39)
39. A/HRC/13/33/Add.2, annex, principle 2; African Commission on Human and Peoples’ Rights, *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-40)
40. Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), paras. 12–13. [↑](#footnote-ref-41)
41. African Union, African Development Bank and Economic Commission for Africa, “Guiding principles on large scale land based investments in Africa” (2014). [↑](#footnote-ref-42)
42. Ibid., chap. 2. [↑](#footnote-ref-43)
43. African Commission on Human and Peoples’ Rights, *Social and Economic Rights Action Centre and the Center for Economic and Social Rights v. Nigeria*, decision, thirtieth ordinary session,
13–27 October 2001. [↑](#footnote-ref-44)
44. African Union, African Development Bank and Economic Commission for Africa, “Guiding principles on large scale land based investments in Africa”. 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 overindebtedness. [↑](#footnote-ref-45)
45. African Commission on Human and Peoples’ Rights, “State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and theenvironment”, p. 25, para 18. [↑](#footnote-ref-46)
46. Toulmin, C. and J. Quan (eds.) (2000) *Evolving Land Rights, Policy and Tenure in Africa* (London: DFID–IIED–NRI). [↑](#footnote-ref-47)
47. African Commission on Human and Peoples’ Rights, “*State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment*, pp. 12–13, sect. III (g)–(h). [↑](#footnote-ref-48)
48. FAO, Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, guideline 8.1. [↑](#footnote-ref-49)
49. International Conference on Agrarian Reform and Rural Development, Final Declaration,
para. 29 (2). [↑](#footnote-ref-50)
50. M.R. El-Ghonemy, “Land reform development challenges of 1963–2003 continue into the twenty-first century”, *Land Reform, Land Settlement and Cooperatives*, vol. 2 (2003); and Veronika Penciakova, “Market-led agrarian reform: a beneficiary perspective of *Cédula da Terra*”, Working Paper Series No. 10–100 (London, London School of Economics and Political Science, 2010). [↑](#footnote-ref-51)
51. Julian Quan, “Land access in the 21st century: issues, trends, linkages and policy options”, Livelihood Support Programme Working Paper No. 24 (Rome: FAO, 2006). [↑](#footnote-ref-52)
52. Carter, M.R., “Designing land and property rights reform for poverty alleviation and food security’, *Land Reform, Land Settlement and Cooperatives*, vol. 2 (2003). [↑](#footnote-ref-53)
53. Klaus Deininger and Hans Peter Binswanger, “The evolution of the World Bank’s land policy: principles, experience and future challenges”, *The World Bank Research Observer*, vol. 14, No. 2 (1999), p. 248. [↑](#footnote-ref-54)
54. Research has highlighted an inverse relationship between the size of production units and productivity per hectare. See Amartya Kumar Sen, “An aspect of Indian agriculture”, *The Economic Weekly*, vol. 14, Nos. 4–6 (1962), and “Peasants and dualism with or without surplus labor”, *Journal of Political Economy*, vol. 74, No. 5 (1966); and Robert Eastwood, Michael Lipton and Andrew Newell, “Farm size”, in *Handbook of Agricultural Economics*, vol. 4, Prabhu L. Pingali and Robert E. Evenson (eds.) (Amsterdam, Elsevier, 2010). [↑](#footnote-ref-55)
55. FAO, 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-56)
56. A/HRC/13/33/Add.2, annex, principle 6. [↑](#footnote-ref-57)
57. E/C.12/2011/1, paras. 5–6. [↑](#footnote-ref-58)
58. See E/C.12/BEL/CO/4, E/C.12/AUT/CO/4, E/C.12/NOR/CO/5; Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), para. 13; A/56/10 and Corrs.1 and 2, pp. 155–168 (on arts. 16–18); and guiding principles on human rights impact assessments of trade and investment agreements. [↑](#footnote-ref-59)
59. Michael Windfuhr, *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, 2017). [↑](#footnote-ref-60)
60. See www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS\_English\_2012\_Full-Document.pdf?MOD=AJPERES&CVID=jkV-X6h. [↑](#footnote-ref-61)
61. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 12.15. [↑](#footnote-ref-62)
62. See and E/C.12/NOR/CO/5; A/HRC/13/33/Add.2; Human Rights Committee, general comment No. 34 (2011), paras. 18–19; and European Court of Human Rights, *Társáság a Szabadságjogokért v. Hungary*, Application No. 37374/05, Judgment of 14 April 2009, paras. 26 and 35. [↑](#footnote-ref-63)
63. Committee on Economic, Social and Cultural Rights, general comments No. 3 (1990), para. 2, No. 15 (2002), para. 35, No. 22 (2016), para. 31, and No. 24 (2017), paras. 12–13; E/C.12/CAN/CO/6; Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016); European Court of Human Rights, *Bosphorus* *Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application No. 45036/98, Judgment of 30 June 2005, para. 154; and Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of 29 March 2006, para. 140. [↑](#footnote-ref-64)
64. Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017). [↑](#footnote-ref-65)
65. See the guidance note of the Secretary-General on the United Nations and land and conflict, issued in March 2019. [↑](#footnote-ref-66)
66. See the principles on housing and property restitution for refugees and displaced persons, endorsed by the Sub-Commission on the Protection and Promotion of Human Rights (E/CN.4/Sub.2/2005/17). [↑](#footnote-ref-67)
67. See [www.worldbank.org/en/results/2015/08/13/colombia-protects-land-and-patrimony-of-internally-displaced-persons](file://conf-share1/conf/Groups/PEPS-Share/Editors/HR%20editors/Fletcher/www.worldbank.org/en/results/2015/08/13/colombia-protects-land-and-patrimony-of-internally-displaced-persons). [↑](#footnote-ref-68)
68. See the principles on housing and property restitution for refugees and displaced persons. [↑](#footnote-ref-69)
69. Rodrigo Uprimny Yepes, “Transformative reparations of massive gross human rights violations: between corrective and distributive jstice”, *Netherlands Quarterly of Human Rights*, vol. 27, No. 4 (2009). [↑](#footnote-ref-70)
70. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 3.1 (5). [↑](#footnote-ref-71)
71. Ibid., para. 5.8. [↑](#footnote-ref-72)
72. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security include recommendations specific to all components of land governance, such as recording of land rights, valuation of land and adoption of land planning schemes. Similarly, the Principles for Responsible Investment in Agriculture and Food Systems refer to the need to comply with “the rule and application of law, free of corruption” (principle 9) and to the United Nations Convention Against Corruption as relevant for the implementation of the Principles. [↑](#footnote-ref-73)
73. Protecting human rights defenders addressing economic, social and cultural rights (A/HRC/31/L.28); and Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. [↑](#footnote-ref-74)
74. See, e.g., E/C.12/VNM/CO/2-4, para. 11, E/C.12/1/Add.44, para. 19, E/C.12/IND/CO/5, paras. 12 and 50, E/C.12/PHIL/CO/4, para 15, E/C.12/COD/CO/4, para. 12, E/C.12/LKA/CO/2-4, para. 10, and E/C.12/IDN/CO/1, para. 28. [↑](#footnote-ref-75)
75. See [www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM\_Approved\_Microsite\_FINAL.pdf](file://conf-share1/conf/Groups/PEPS-Share/Editors/HR%20editors/Fletcher/www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf). [↑](#footnote-ref-76)
76. The 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 the United Nations Framework Convention on Climate Change to ensure coherence. [↑](#footnote-ref-77)
77. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, paras. 6.2 and 6.4. [↑](#footnote-ref-78)
78. Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 49–57. [↑](#footnote-ref-79)
79. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 21.1. [↑](#footnote-ref-80)
80. Ibid., para. 21.3. [↑](#footnote-ref-81)
81. Ibid., para. 9.12. [↑](#footnote-ref-82)