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**Committee on Economic, Social and Cultural Rights****General comment No. 26 (2022) on land and economic, social and cultural rights\*****I. Introduction**

1. Land plays an essential role in the realization of a range of rights under the International Covenant on Economic, Social and Cultural Rights. Secure and equitable access to, use of and control over land for individuals and communities can be essential to eradicate hunger and poverty and to guarantee the right to an adequate standard of living. The sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights. In many parts of the world, land is not only a resource for producing food, generating income and developing housing, it also constitutes the basis for social, cultural and religious practices and the enjoyment of the right to take part in cultural life. At the same time, secure land tenure systems are important to protect people's access to land as a means of guaranteeing livelihoods and avoiding and regulating disputes.

2. However, the current use and management of land are not conducive to the realization of the rights enshrined in the Covenant. The most important factors in this trend are the following:

(a) The increased competition for access to and control over land. Long-term trends in high demand for land and rapid urbanization in most parts of the world have had a significant impact on the rights of many, in particular peasants, rural communities, pastoralists, fisherfolk and Indigenous Peoples, as well as persons living in poverty in urban areas;

(b) In cities, the financialization of housing markets has led to competition between different groups for access to and control over land and has encouraged speculation and inflation, affecting the rights of those left behind to an adequate standard of living and to adequate housing;

(c) In rural areas, competition for arable land resulting from demographic growth, urbanization, large-scale development projects and tourism has significantly affected the livelihoods and rights of rural populations;

(d) Land degradation owing to overuse, poor management and unsustainable agricultural practices has caused food insecurity and water degradation and is directly linked to climate change and environmental degradation, escalating the risk of widespread, abrupt and irreversible environmental changes, including massive desertification;<sup>1</sup>

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\* Adopted by the Committee at its seventy-second session (26 September–14 October 2022).

<sup>1</sup> See United Nations Convention to Combat Desertification, *The Global Land Outlook*, 2nd ed. (Bonn, 2022), in which it is highlighted that between 20 and 40 per cent of land worldwide is already degraded.



(e) Measures to mitigate climate change, such as large-scale renewable energy projects or reforestation measures, might contribute to such trends when not adequately managed;

(f) Global trends, including climate change and the resulting increase in internal and cross-border migration, are likely to increase tensions over the access to and use and tenure of land, with negative implications for human rights;

(g) Weak, mismanaged, corrupt or non-existent legal and institutional frameworks for the governance of land tenure exacerbate these problems and lead to land disputes and conflicts, social inequality, hunger and poverty.

3. Concerns relating to access to, use of and control over land have led in recent years to the adoption of a number of international instruments that have significantly influenced national legislation and policy and have been widely endorsed by Governments. In 2004, the Council of the Food and Agriculture Organization of the United Nations (FAO) adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,<sup>2</sup> which contain several provisions relating to access to natural resources, including land and water. 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,<sup>3</sup> which have acquired a high degree of legitimacy owing to, inter alia, the inclusive nature of that Committee. In 2014, the Committee on World Food Security endorsed the Principles for Responsible Investment in Agriculture and Food Systems, which address, inter alia, the human rights implications of agricultural investments.<sup>4</sup> In 2007, in its resolution 61/295, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples and in 2018, in its resolution 73/165, it adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, in both of which the Assembly recognized a right to land for these populations. Indeed, the importance of land for the realization of many human rights has led some scholars, civil society organizations and special rapporteurs to consider land as a human right, with reference to all the rights, entitlements and State obligations relating to land. One example is the basic principles and guidelines on development-based evictions and displacement, which were drawn up by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living.<sup>5</sup>

4. The present general comment was formulated on the basis of the Committee's experience in its review of State party reports<sup>6</sup> and in the light of its other general comments and its Views and decisions on communications. It is aimed at clarifying States' obligations relating to the impact of access to, use of and control over land on the enjoyment of the rights enshrined in the Covenant, especially for the most disadvantaged and marginalized individuals and groups. Thus, it is aimed at clarifying the specific obligations contained in the Covenant that relate to land, particularly in the context of the rights enshrined in articles 1–3, 11, 12 and 15.

## II. Provisions of the Covenant relating to land

5. Secure and equitable access to, use of and control over land can have direct and indirect implications for the enjoyment of a range of rights enshrined in the Covenant.

6. First, land is crucial to guarantee the enjoyment of the right to adequate food, as land is used in rural areas for the purpose of food production. Consequently, if land users are deprived of the land they use for productive purposes, their right to adequate food might be

<sup>2</sup> See <https://www.fao.org/3/y7937e/y7937e00.htm>.

<sup>3</sup> See <https://doi.org/10.4060/i2801e>.

<sup>4</sup> See [https://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS\\_Principles\\_Oct\\_2014\\_EN.pdf](https://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf).

<sup>5</sup> A/HRC/4/18, annex I.

<sup>6</sup> The Committee has referred to land-related issues in approximately 50 concluding observations since 2001. See, for example, 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.

endangered. Article 11 (2) 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. In the Committee's general comment No. 12 (1999) on the right to adequate food and in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the importance of access to productive resources is highlighted as a key element for the realization of the right to adequate food, particularly in rural areas, where most peasants and pastoralists live and where people are more likely to experience hunger.

7. Second, as access to land provides space for housing, the enjoyment of the right to adequate housing depends largely on having secure access to land. Without such access, people could be subject to displacement and forced eviction, which could violate their right to adequate housing. Secure access to land in rural areas serves the rights to both adequate food and housing, as housing is often built on land used for the purpose of food production.

8. Third, land is also directly linked to the enjoyment of the right to water. For example, the enclosure of communal grounds deprives people from access to water sources that are necessary to meet their personal and domestic needs.

9. Fourth, the use of land may affect the enjoyment of the right to the highest attainable standard of physical and mental health. For example, land use that relies on pesticides, fertilizers and plant growth regulators or that results in the production of animal waste and other microorganisms has contributed to various respiratory diseases.

10. Fifth, land is closely and often intrinsically related to the enjoyment of the right to take part in cultural life owing to the particular spiritual or religious significance of land to many communities, for example, when land serves as a basis for social, cultural and religious practices or the expression of cultural identity.<sup>7</sup> This is particularly relevant for Indigenous Peoples and for peasants and other local communities living traditional lifestyles.

11. Sixth, land is also closely linked to the right to self-determination, enshrined in article 1 of the Covenant, the importance of which was emphasized in Declaration on the Right to Development (1986). The realization of self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.<sup>8</sup> Indigenous Peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends only if they have land or territory in which they can exercise their self-determination.<sup>9</sup> The present general comment deals only with the internal self-determination of Indigenous Peoples, which has to be exercised in accordance with international law and respecting the territorial integrity of States.<sup>10</sup> Thus, according to their right to internal self-determination, the collective ownership of lands, territories and resources of Indigenous Peoples shall be respected, which implies that these lands and territories shall be demarcated and protected by States parties.

<sup>7</sup> African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, communication No. 276/03, Decision, forty-sixth ordinary session, 11–25 November 2005, para. 241; Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, paras. 148–149 and 151, and *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, paras. 131–132; and Human Rights Chamber for Bosnia and Herzegovina, *The Islamic Community in Bosnia and Herzegovina v. The Republika Srpska*, Case No. CH/96/29, Decision, 11 June 1999, paras. 182 and 187.

<sup>8</sup> Human Rights Committee, general comment No. 12 (1984), para. 1.

<sup>9</sup> United Nations Declaration on the Rights of Indigenous Peoples, preamble and arts. 10 and 26.

<sup>10</sup> *Käkkäläjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017).

### III. Obligations of States parties under the Covenant

#### A. Non-discrimination, equality and groups or persons requiring particular attention

12. Under articles 2 (2) and 3 of the Covenant, States parties are required to eliminate all forms of discrimination and to ensure substantive equality.<sup>11</sup> Accordingly, States parties shall undertake regular reviews to ensure that domestic laws and policies do not discriminate against people on any prohibited grounds. They should also adopt specific measures, including legislation, aimed at eliminating discrimination against both public and private entities in relation to rights under the Covenant in land-related contexts. In particular, women, Indigenous Peoples, peasants and other people working in rural areas deserve special attention, either because they have been traditionally discriminated against in terms of access to, use of and control over land or because of their particular relationship to land.

##### 1. Women

13. Women are among those who are disproportionately affected by poor access to, use of, control over and bad governance of land, threatening their rights under the Covenant and potentially leading to discrimination, including intersectional discrimination. In several of its concluding observations, 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.<sup>12</sup> In its general comment No. 16 (2005), the Committee 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).<sup>13</sup> In its general comment No. 12 (1999), the Committee 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).<sup>14</sup>

14. For women, land is a pivotal resource for meeting subsistence needs and for accessing other goods and services, such as credit. Furthermore, land is 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 and increases access to sexual and reproductive health services. 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, and 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.<sup>15</sup> Thus, in cases of agrarian reform or any redistribution of land, the right of women,

<sup>11</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), paras. 7–8.

<sup>12</sup> With regard to discrimination in relation to access to land, particularly access and ownership, see, for example, [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, for example, [E/C.12/ZAF/CO/1](#). Regarding traditional and customary law and practice depriving women of their inheritance and property rights, see, for example, [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, for example, [E/C.12/NER/CO/1](#).

<sup>13</sup> 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).

<sup>14</sup> See also Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), in which that Committee recognized rural women's rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights and emphasized that States parties should take all measures necessary to achieve the substantive equality of rural women in relation to land and natural resources (paras. 56–57).

<sup>15</sup> International Center for Research on Women, *Property Ownership & Inheritance Rights of Women for Social Protection – The South Asia Experience* (Washington, D.C., 2006), pp. 12 and 100. See

regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed. States should also monitor and regulate customary law, which in many countries has an important role in governing land, to protect the rights of women and girls who are affected by traditional inheritance rules of male primogeniture.

15. However, laws and social customs such as those providing that, upon the death of a man, his land belongs to his sons and not his widow or daughters, remain in place, despite their flagrant violation of women's rights under the Covenant.<sup>16</sup> Ensuring that women enjoy the rights enshrined in the Covenant on an equal basis to men requires the removal of traditional land regulations and structures that discriminate against women. This could be achieved by a combination of traditional and modern land governance regimes.<sup>17</sup>

## 2. Indigenous Peoples

16. The right of Indigenous Peoples over the lands and territories they have traditionally occupied is recognized in international law. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples (arts. 25–28)<sup>18</sup> both recognize Indigenous Peoples' right to land and territory.<sup>19</sup> These sources of international human rights law provide for respect for and the protection of the relationship that Indigenous Peoples have with their lands, territories and resources, requiring States to demarcate their lands, protect those lands from encroachment and respect their right to manage the lands according to their internal modes of organization. The spiritual relationship of Indigenous Peoples to land is linked not only to spiritual ceremonies but also to every activity on land, such as hunting, fishing, herding and gathering plants, medicines and foods. Thus, States parties should ensure Indigenous Peoples' right to maintain and strengthen their spiritual relationship with their lands, territories and resources, including waters and seas in their possession or no longer in their possession but which they owned or used in the past. Indigenous Peoples have the right to have their lands demarcated, and relocation should be allowed only under narrowly defined circumstances and with the prior, free and informed consent of the groups concerned.<sup>20</sup> 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.<sup>21</sup> Regional human rights courts have contributed to strengthening the rights of Indigenous Peoples to their lands and territories.<sup>22</sup> Both the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights have taken the view that Indigenous Peoples who have unwillingly lost possession of their lands without

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also Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78.

<sup>16</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78.

<sup>17</sup> African Union, African Development Bank and Economic Commission for Africa, *Framework and guidelines on land governance in Africa* (Addis Ababa, 2010), para. 3.1.3.

<sup>18</sup> See also the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, guideline 9.

<sup>19</sup> See also [A/HRC/45/38](#).

<sup>20</sup> Arts. 10–11, 19, 28–29 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples refer to the necessity to seek Indigenous Peoples' free, prior and informed consent on measures affecting them. This operates as a safeguard for the collective rights of Indigenous Peoples. See [A/HRC/39/62](#).

<sup>21</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 28 and 32.

<sup>22</sup> Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 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 Vandenhoe, eds. (Antwerp, Intersentia, 2007). See also African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, Judgment, 26 May 2017.

their free and prior consent after a lawful transfer to third parties “are entitled to restitution thereof or to obtain other lands of equal extension and quality”.<sup>23</sup>

17. In recent jurisprudence of regional human rights courts, some of the rights applicable to Indigenous Peoples concerning land have been extended to some traditional communities that maintain a similar relationship to their ancestral lands, centred on the community rather than the individual.<sup>24</sup>

### 3. Peasants and other people working in rural areas

18. Access to land has particular importance for the realization of the rights of peasants and other people working in rural areas worldwide.<sup>25</sup> For peasants, access to land and other productive resources is so important for the realization of most rights under the Covenant that it implies for them a right to land. Articles 5 and 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognize this right to land for peasants and other people working in rural areas, which include agricultural workers, pastoralists and fisherfolk. This right can be exercised individually and collectively. It includes the right to have access to, sustainably use and manage land to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.<sup>26</sup> States should take measures to support peasants to use the land in a sustainable manner, to maintain soil fertility and its productive resources, and to ensure that their methods of production do not endanger the environment for others, in terms of aspects such as access to clean water and preservation of biodiversity.

19. If disputes over land arise between Indigenous Peoples or peasants, States shall provide mechanisms for the adequate settlement of those disputes, making every effort to satisfy the right to land of both groups.<sup>27</sup> Both groups depend to a large extent on access to communal lands or to collective ownership. Respect for Indigenous Peoples’ self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources.<sup>28</sup> There are also other groups, including peasants, pastoralists and fisherfolk, for whom access to communal lands or the commons for gathering firewood, collecting water or medicinal plants or for hunting and fishing is essential. Customary forms of property may provide security for people who depend on commons and for whom formal property rights are generally not an appropriate solution. However, ill-conceived attempts to formalize customary tenure rights through titling schemes and the enclosure of communal lands might exclude such people from access to resources on which they depend, affecting the right to food, the right to water and other rights enshrined in the Covenant. Consequently, States have an obligation to guarantee secure access to legitimate land users without discrimination, including those who depend on collective or communal land.

## B. Participation, consultation and transparency

20. Participation, consultation and transparency are key principles for the implementation of obligations arising from the Covenant, including in relation to land. Individuals and

<sup>23</sup> Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment, 29 March 2006, para. 128; and African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, para. 209. The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 23 (1997), also highlighted that compensation “should as far as possible take the form of land and territories” (para. 5).

<sup>24</sup> Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment, 15 June 2005, paras. 132–133, and *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 86.

<sup>25</sup> For an example of the importance of land for peasants’ civil and political rights, see *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016).

<sup>26</sup> Human Rights Council resolution 39/12, annex, art. 17 (1).

<sup>27</sup> On the need to harmonize the right to land of peasants and Indigenous Peoples, see Inter-American Court of Human Rights, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment, 6 February 2020.

<sup>28</sup> A/HRC/45/38. See also *Käikkäläjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017).

communities shall be properly informed about and allowed to meaningfully participate in decision-making processes that may affect their enjoyment of rights under the Covenant in land-related contexts, without retaliation.<sup>29</sup> Equal access to sufficient and transparent information for all parties involved in decision-making is key for human rights-based participation in decision-making. States parties should develop relevant laws, policies and procedures to ensure transparency, participation and consultation in relation to decision-making affecting land, including in relation to land registration, land administration and land transfers, as well as prior to evictions from land. Decision-making processes should be transparent, organized in the relevant languages, without barriers and with reasonable accommodation for all involved.

21. Decision-making processes should be widely publicized and include procedures to grant access to all relevant documents. Affected persons need to be contacted prior to any decision that might affect their rights under the Covenant. The international legal standard for Indigenous Peoples is that of free, prior and informed consent,<sup>30</sup> which needs to be a process of dialogue and negotiation where consent is the objective. Indigenous Peoples shall not only be involved in decision-making processes, but shall also be able to actively influence their outcome. Consent is required for relocation, as stated in article 10 of the United Nations Declaration on the Rights of Indigenous Peoples. The right to participate is meaningful only when its use does not entail any form of retaliation.

## C. Specific obligations of States parties

### 1. Obligation to respect

22. The obligation to respect requires that States parties do not interfere directly or indirectly with the rights enshrined in the Covenant relating to land, including the access to, use of and control over land. The obligation to respect means not doing any of the following: (a) interfering with land users' legitimate tenure rights,<sup>31</sup> in particular by evicting occupants from land on which they depend for their livelihoods; (b) evicting by force and demolishing property as punitive measures; (c) committing any discriminatory acts in the process of land registration and land administration, including on the basis of marital status, legal capacity or access to economic resources; or (d) committing any act of corruption with regard to tenure administration and tenure transfers. The obligation to respect also entails respecting existing access to land of all legitimate tenure holders and respecting decisions of concerned communities to manage their lands according to internal modes of organization.

23. 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, particularly by not evicting occupants from the land on which they depend for their livelihoods. Forced evictions are *prima facie* incompatible with the requirements of the Covenant.<sup>32</sup> The relevant authorities shall ensure that evictions are only carried out in accordance with legislation that is compatible and in conformity with the Covenant and in accordance with the general principles of reasonableness and proportionality between the

<sup>29</sup> Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005), para. 37, and general comment 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" (Niamey, 2017), pp. 26–27; and Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 3B (6).

<sup>30</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 9.9.

<sup>31</sup> The term "legitimate tenure right holder" was developed during the negotiations of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in 2012 in order to clarify the fact that legitimate tenure right 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.

<sup>32</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 1.

legitimate objective of the eviction and its consequences for the evicted persons.<sup>33</sup> 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 limitations on the enjoyment of the rights under the Covenant are permitted. Firstly, the limitation shall be determined by law. Secondly, it shall promote the general welfare or "public purpose" in a democratic society. Thirdly, it shall be suited to the legitimate purpose cited. Fourthly, the limitation shall be necessary, in the sense that it is the least restrictive measure to fulfil the legitimate purpose. Lastly, the benefits of the limitation in promoting the general welfare shall outweigh the impact on the enjoyment of the right being limited.<sup>34</sup> States parties shall clearly define the concepts of public purpose in law, in order to allow for judicial review. States parties shall introduce and implement national legislation that explicitly prohibits forced evictions and sets out a framework for eviction and resettlement processes to be carried out in line with international human rights law and standards.<sup>35</sup>

24. Where people have been relocated and given alternative accommodation, alternative housing shall be safe and provide security of tenure, enabling access to public services, including education, health care, community engagement and livelihood opportunities.<sup>36</sup> Every effort shall 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.<sup>37</sup> In all cases, effective legal remedies or procedures shall be provided to those who are affected by eviction orders.

25. Where the State owns or controls land, it should ensure that the legitimate land tenure rights of individuals and communities, even within customary tenure systems, are recognized and respected. Collective systems of use and management of land, be they traditional systems, cooperatives or other forms of common management, should 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 in accordance with human rights obligations. Local communities that have traditionally used the land should be prioritized in the reallocation of tenure rights.

## 2. Obligation to protect

26. The obligation to protect requires States parties to adopt measures to prevent any person or entity from interfering with the rights enshrined in the Covenant relating to land, including the access to, use of and control over land. States parties shall protect access to land by ensuring that no one is forcibly evicted and that their access rights to land are not otherwise infringed by third parties. States parties should also ensure that legitimate tenure rights are protected in all processes relating to transfer of these rights, including voluntary or involuntary transactions because of investments, land consolidation policies or other land-related readjustment and redistribution measures.

27. Notwithstanding the type of land tenure systems put in place, States parties shall take measures to ensure that all persons possess a reasonable degree of security in relation to their relationship with land and to protect 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

<sup>33</sup> *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 13.4.

<sup>34</sup> *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

<sup>35</sup> For further reference, see the basic principles and guidelines on development-based evictions and displacement.

<sup>36</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991).

<sup>37</sup> A/HRC/13/33/Add.2, annex, principle 2; and 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.



persons and groups concerned.<sup>38</sup> States parties should also 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 that is 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 that they have traditionally owned, occupied or otherwise used or acquired.<sup>39</sup> Legal frameworks should therefore avoid the increased concentration of land ownership and privileges within land tenure systems, including when the motivation to change the legal framework stems from international agreements.<sup>40</sup>

28. States parties should develop laws and policies to guarantee that land-based investments are made in a responsible manner. That requires the early participation of all affected parties and the fair regulation of transfer processes. In all land-related investment processes, affected persons or groups shall have access to complaint mechanisms that allow them to challenge decisions of local governments, investment boards or other relevant parties before the start of the investment and up to the payment of fair compensation. Human rights impact assessments shall be conducted to identify potential harm and options to mitigate it. Principles for responsible investors and investment need to be determined by law and shall be enforceable. Responsible investments shall respect legitimate tenure rights and shall not harm human rights and legitimate policy objectives such as food security and the 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.<sup>41</sup>

29. States parties should have safeguards and policies in place to protect legitimate tenure rights from risks that could derive from large-scale transactions in tenure rights. Large-scale land investments risk violating rights under the Covenant because they often affect many smallholders, whose informal land use titles are often not recognized.<sup>42</sup> Such safeguards could include ceilings on permissible land transactions and the requirement that transfers exceeding a certain level should be approved at the highest level of Government or by the national parliament. States should consider the promotion of a range of production and investment models that do not result in large-scale displacements from land, including models encouraging partnerships with local tenure rights holders.

30. 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, especially in the context of large-scale land acquisitions and leases at home and abroad.<sup>43</sup> States parties shall adopt a legal framework requiring business entities to exercise human rights due diligence<sup>44</sup> in order to identify, prevent and mitigate the negative impact on rights enshrined in the Covenant caused by their decisions and operations.

<sup>38</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (a).

<sup>39</sup> 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, 24 August 2010, para. 86, and *Sawhoyamaxa Indigenous Community v. Paraguay*, para. 118; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (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*, paras. 195–201.

<sup>40</sup> 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", p. 25, para. 18.

<sup>41</sup> African Union, African Development Bank and Economic Commission for Africa, "Guiding principles on large scale land-based investments in Africa" (Addis Ababa, 2014).

<sup>42</sup> *Ibid.*, chap. 2.

<sup>43</sup> 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.

<sup>44</sup> African Union, African Development Bank and Economic Commission for Africa, "Guiding principles on large scale land based investments in Africa".

31. In recent years, titling has been encouraged to protect land users from eviction by the State and encroachment by private actors, particularly large landowners, and by 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 land users from expropriation, while at the same time enabling them to sell the land. The impact of titling has been mixed. Clarification of property rights was intended to provide security of tenure, to allow dwellers in informal settlements to be recognized as owners and 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 conflicts rather than more clarity and may also result in less security rather than improved security, with a negative impact on rights under the Covenant, in particular the right to an adequate standard of living. States shall ensure that any titling process that involves determining competing claims to land protects the rights of those most at risk of marginalization and discrimination, while addressing historical injustices.

### 3. Obligation to fulfil

32. The obligation to fulfil requires that States adopt legislative, administrative, budgetary and other measures and establish effective remedies aimed at the full enjoyment of the rights under the Covenant relating to land, including the access to, use of and control over land. States parties shall facilitate secure, equitable and sustainable access to, use of and control over land for those who depend on land to realize their economic, social and cultural rights. This is especially important for those who are landless or live in poverty, especially women and those who are marginalized.<sup>45</sup>

33. Land registration and land administration shall be carried out without any discrimination, including discrimination on the basis of a 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 shall be carried out systematically, without discrimination on the basis of gender, family and community and in a way that ensures that those living in poverty and other disadvantaged and marginalized individuals and groups have every opportunity to acquire legal recognition of their current tenure rights. States parties should identify all existing tenure rights and rights holders, not only those in written records. States parties shall, through public rules, establish the definition of land user rights that are legitimate, in line with all the relevant Covenant provisions and with the definitions contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

34. 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 those services and their access to justice shall be guaranteed. Such support should cover legal assistance, including affordable legal aid, particularly for those living in very remote areas. States parties should prevent corruption regarding tenure administration and tenure transfers by adopting and enforcing anti-corruption measures addressing, inter alia, conflicts of interests.

35. States parties shall also recognize the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems and shall respect existing forms of self-governance of land. Traditional institutions for collective tenure systems shall ensure the meaningful participation of all members, including

<sup>45</sup> 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).

women and young people, in decisions regarding the distribution of user rights. Ensuring access to natural resources cannot be limited to the protections granted to the lands and territories of Indigenous Peoples. Other groups depend on the commons, in other words, global public goods. Fisherfolk 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. In addition, throughout the developing world, many peasants and 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 worsen the situation of any of those groups, as cutting them off from the resources on which they depend would threaten their livelihoods.

36. Agrarian reform is an important measure to fulfil rights enshrined in the Covenant relating to land.<sup>46</sup> More equitable distribution of land through agrarian reform can have a significant impact on poverty reduction<sup>47</sup> and can contribute to social inclusion and economic empowerment.<sup>48</sup> It improves food security, since it makes food more available and affordable, providing a buffer against external shocks.<sup>49</sup> Land distribution schemes should also support small, family-owned farms, which often use the land in a more sustainable way and contribute to rural development owing to their labour intensity. However, land redistribution schemes should ensure that the beneficiaries receive proper support to enhance their capacity to use land productively and to engage in sustainable agricultural practices in order to maintain the productivity of the land. Policy options to support the economic success of family farmers should include education on 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 avoids incentives to sell the land to support their minimum needs. Redistribution of land and agrarian reforms should focus particularly on the access to land of young people, women, communities facing racial and descent-based discrimination and others belonging to marginalized groups, and should respect and protect the collective and customary tenure of land.

37. States shall use the maximum available resources to progressively realize the rights under the Covenant relating to accessing productive resources, particularly to assist individuals and groups to access an adequate standard of living. 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 peasants who depend on access to land for their livelihoods.<sup>50</sup> 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

<sup>46</sup> On the importance of agrarian reform, see the Final Declaration adopted at the International Conference on Agrarian Reform and Rural Development of FAO, held in Porto Alegre, Brazil, in 2006 (ICARRD 2006/3), in which member States agreed on the principle of the “establishment of appropriate agrarian reform mainly in areas with strong social disparities, poverty and food insecurity, as a means to broaden sustainable access to and control over land and related resources”.

<sup>47</sup> 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).

<sup>48</sup> Julian Quan, “Land access in the 21st century: issues, trends, linkages and policy options”, Liveliness Support Programme Working Paper No. 24 (Rome, FAO, 2006).

<sup>49</sup> M.R. Carter, “Designing land and property rights reform for poverty alleviation and food security”, *Land Reform, Land Settlement and Cooperatives*, vol. 2 (2003).

<sup>50</sup> Research has highlighted an inverse relationship between the size of production units and productivity per hectare. See, for example, 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).

against land reconcentration following reform, such as land ceiling laws and legal safeguards to protect the collective and customary tenure of land.

38. States parties should engage in long-term regional planning 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.<sup>51</sup> 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 people's livelihoods 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 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 the exhaustion of water reserves.<sup>52</sup>

39. States parties shall put in place laws and policies that allow for the recognition of informal tenure through participatory, gender-sensitive processes, paying particular attention to tenant farmers, peasants and other small-scale food producers.

## D. Extraterritorial obligations

40. Extraterritorial obligations are of particular significance to the implementation of obligations arising from the Covenant relating to access to, use of and control over land. Land transfers are quite often financed or fostered by international entities, including public investors such as development banks financing development projects requiring land, such as dams or renewable energy parks, or by private investors. In reviews of State party reports, the Committee has encountered an increasing number of references to the negative impact on individuals', groups', peasants' 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.

### 1. Extraterritorial obligation to respect

41. The extraterritorial obligation to respect requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the rights under the Covenant in land-related contexts outside their territories. It also requires them to take specific 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.<sup>53</sup> That applies to all forms of projects implemented by development agencies or financed by development banks. The safeguards developed by the World Bank and other international development banks are a form of recognition of that obligation, particularly relating to investments in land.<sup>54</sup> 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 to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security were developed. Furthermore, the International Finance Corporation performance standards and

<sup>51</sup> Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, guideline 8B.

<sup>52</sup> [A/HRC/13/33/Add.2](#), annex, principle 6.

<sup>53</sup> See [E/C.12/BEL/CO/4](#), [E/C.12/AUT/CO/4](#) and [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 [A/56/10/Corr.1](#), pp. 155–168 (on arts. 16–18); and guiding principles on human rights impact assessments of trade and investment agreements.

<sup>54</sup> 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).

the respective World Bank safeguards were updated. 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 rights enshrined in the Covenant relating to land.

## 2. 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 rights under the Covenant in land-related contexts in other countries. Thus, States parties shall take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence, without infringing on the sovereignty or diminishing the obligations of the host States.<sup>55</sup>

43. In the context of land acquisitions and other business activities that have an impact on the enjoyment of access to productive resources, including land, States parties shall ensure that investors domiciled in other countries and investing in farmland overseas do not deprive individuals or communities of access to the land or land-associated resources on which they depend for their livelihoods. That may imply imposing a due diligence obligation on investors to ensure that they do not acquire or lease land in a way that violates international norms and guidelines.<sup>56</sup>

44. 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, public pension funds and private-public partnerships,<sup>57</sup> should ensure that they do not reduce the ability of other States to comply with their obligations arising from the Covenant. States parties shall conduct human rights impact assessments prior to making such investments and shall regularly assess and revise them. Such assessments shall be conducted with substantive public participation and the results shall be made public and shall inform measures to prevent, cease and remedy any human rights violations or abuses.<sup>58</sup>

45. States parties shall 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 effect on access to productive resources in other countries.<sup>59</sup>

## 3. Extraterritorial obligation to fulfil

46. States should take steps through international assistance and cooperation under article 2 (1) of the Covenant with a view to progressively achieving the full realization of rights under the Covenant relating to land, which would also benefit peoples and communities outside their territories. Support should include technical cooperation, financial assistance and institutional capacity-building for, inter alia, land administration, knowledge-sharing and assistance in developing national tenure policies, as well as the transfer of relevant technology.

<sup>55</sup> E/C.12/2011/1, paras. 5–6.

<sup>56</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 33.

<sup>57</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 12.15.

<sup>58</sup> See 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, *Társaság a Szabadságjogokért v. Hungary*, Application No. 37374/05, Judgment, 14 April 2009, paras. 26 and 35.

<sup>59</sup> 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, 30 June 2005, para. 154; and Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, para. 140.

47. International cooperation and assistance should be focused on supporting national policies to secure access to land tenure for those whose legitimate user rights have not been recognized. Policies should avoid leading to land concentration or commodification of land and should be aimed at improving the access of disadvantaged and marginalized individuals and groups and increasing their security of tenure. Adequate safeguard policies shall be in place, and persons and groups affected by measures of international cooperation and assistance shall 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 issues of relevance to the implementation of rights enshrined in the Covenant in land-related contexts**

### **A. Internal armed conflicts and post-conflict situations**

48. There are links between internal armed conflicts, land and the enjoyment of rights enshrined in the Covenant. 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 and women. It is noteworthy that addressing land disputes and conflicts might be a key to building resilience and sustaining peace.<sup>60</sup> Thus, States should make every effort to prevent land dispossession during internal armed conflicts. If dispossessions do nevertheless occur, States are obliged to establish restitution programmes to guarantee to all internally displaced persons the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.<sup>61</sup> States should also address all those land conflicts that might trigger the re-emergence of an armed conflict.

49. Preventive measures to avoid land dispossession during armed conflict should include at least the following: (a) the establishment of mechanisms for the protection of land tenure for populations in vulnerable situations; (b) the coordination of humanitarian assistance and the implementation of international humanitarian law with measures to prevent land dispossession; (c) the inclusion in information systems of all those estates at risk of dispossession, not only to prevent dispossession but also to facilitate future land restitution; and (d) 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 of it.

50. Land restitution programmes shall include measures to guarantee the right of refugees and 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.<sup>62</sup> States shall 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 rights under the Covenant. Special attention should be paid to dealing adequately with "secondary occupants", who are mostly good faith purchasers, and persons in a vulnerable situation who occupy land after the legitimate tenants have fled owing to armed conflict. In particular, due process shall be guaranteed to secondary occupants; if their eviction is necessary, it shall be implemented with genuine consultation and States shall, if necessary, provide them with

<sup>60</sup> See the guidance note of the Secretary-General entitled "The United Nations and Land and Conflict", issued in March 2019.

<sup>61</sup> 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).

<sup>62</sup> Ibid.

alternative accommodation and social services to guarantee them an adequate standard of living.

51. In many post-conflict situations, land restitution programmes, even if successful, might be insufficient to prevent new conflicts and to guarantee rights under the Covenant to refugees and internally displaced persons, as such populations were often living in poverty and excluded from land rights before the conflict. In these circumstances, land restitution or compensation alone are insufficient as they would not lift refugees and internally displaced persons out of 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,<sup>63</sup> 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 that involve technical, financial and educational support for beneficiaries.

## B. Corruption

52. Land administration is one of the areas in which corruption can be most pervasive. Corruption occurs and has a negative impact 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 Governments.

53. States shall build up proper accountability mechanisms to prevent corruption concerning all relevant land policies and should endeavour to prevent corruption in all forms, at all levels and in all settings.<sup>64</sup> 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 wider public to improve services and endeavour to prevent corruption through transparent processes and decision-making.<sup>65</sup> States should do so particularly through consultation, participation and respect for the rule of law and the principles of transparency and accountability.<sup>66</sup>

## C. Human rights defenders

54. The situation of human rights defenders is particularly difficult in conflicts over land.<sup>67</sup> The Committee has regularly received reports of threats and attacks aimed at those seeking to protect their rights under the Covenant or those of others, often in the form of harassment, criminalization, defamation and killings, particularly in the context of extractive

<sup>63</sup> Rodrigo Uprimny Yepes, "Transformative reparations of massive gross human rights violations: between corrective and distributive justice", *Netherlands Quarterly of Human Rights*, vol. 27, No. 4 (2009).

<sup>64</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 3.1 (5).

<sup>65</sup> *Ibid.*, para. 5.8.

<sup>66</sup> 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 respect "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.

<sup>67</sup> See Human Rights Council resolution 31/32 on protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights; and 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.

and development projects.<sup>68</sup> In the context of land, many human rights defenders are also defenders of the environmental functions of land and of the sustainability of land use as a precondition for respecting human rights in the future. 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 shall take all measures necessary 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.

55. The specific measures that States should adopt to safeguard the work of human rights defenders in relation to land are dependent on national circumstances. However, the following measures are of crucial importance: (a) public recognition, by the highest level of Government, of the importance and legitimacy of the work of human rights defenders and a commitment that no violence or threats against them will be tolerated; (b) repeal of any State legislation or any measures that are intended to penalize or obstruct the work of human rights defenders; (c) strengthening of State institutions responsible for safeguarding the work of human rights defenders; (d) investigation and punishment of any form of violence or threat against human rights defenders; and (e) adoption and implementation of programmes, in consultation with potential beneficiaries, that are well resourced and have inbuilt coordination mechanisms that ensure that adequate protection measures are provided to human rights defenders at risk whenever necessary.<sup>69</sup>

#### D. Climate change

56. The impact of climate change on access to land, affecting user rights, is severe in many countries. In coastal zones, sea level rise has an impact on housing, agriculture and access to fisheries. Climate change also contributes to land degradation and desertification. Rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods are increasingly affecting access to land.<sup>70</sup> States shall cooperate at the international level and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. States have these duties also under human rights law, as the Committee has highlighted previously.<sup>71</sup> Moreover, States shall avoid adopting policies to mitigate climate change, such as carbon sequestration through massive reforestation or protection of existing forests, that lead to different forms of land grabbing, especially when they affect the land and territories of populations in vulnerable situations, such as peasants or Indigenous Peoples. Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use.

57. 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 impact of climate change, particularly on disadvantaged groups.

58. Climate change affects all countries, including those that may have contributed to it the least. Thus, those countries that have historically contributed most to climate change and those that are currently the main contributors to it shall assist the countries that are most affected by climate change but are least able to cope with its impact, including by supporting and financing land-related adaptation measures. Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement 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 meaningful consultation with

<sup>68</sup> For example, 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.

<sup>69</sup> E/C.12/2016/2, para. 8.

<sup>70</sup> See Intergovernmental Panel on Climate Change, “Climate Change and Land: summary for Policymakers” (2019).

<sup>71</sup> See HRI/2019/1.



those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples.<sup>72</sup>

## V. Implementation and remedies

59. States should ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related rights under the Covenant. States shall regularly monitor the implementation of tenure systems and all policies, laws and measures that affect the realization of rights enshrined in the Covenant in land-related contexts. Monitoring processes should rely on qualitative and disaggregated quantitative data collected by local communities and others, be inclusive and participatory, and pay particular attention to disadvantaged and marginalized individuals and 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 relevant communities.

60. States parties should ensure that they have administrative and judicial systems in place to effectively 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.<sup>73</sup> Access to justice is key: States parties shall guarantee that even in remote areas, it is accessible and affordable, particularly for disadvantaged and marginalized individuals and groups. Judicial remedies shall also be tailored to the conditions of rural areas and suited to 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. As highlighted in article 28 of the United Nations Declaration on the Rights of Indigenous Peoples, restitution of land is often the primary remedy for Indigenous Peoples.<sup>74</sup> Access to justice shall include access to procedures to address the impact of business activities, not only in the countries where they are domiciled but also where the violations have been caused.<sup>75</sup>

61. States parties shall 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.<sup>76</sup> 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.<sup>77</sup> For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.<sup>78</sup> The respect for and protection and guarantee of secure and equitable access to, use of and control over land are preconditions for the enjoyment of many of the rights enshrined in the Covenant. Effective remedies are crucial for their realization.

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<sup>72</sup> In order to ensure coherence, 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.

<sup>73</sup> 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.

<sup>74</sup> Inter-American Court of Human Rights, *Yakye Axa Indigenous Community vs Paraguay*, paras. 146–148.

<sup>75</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 49–57.

<sup>76</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 21.1.

<sup>77</sup> *Ibid.*, para. 21.3.

<sup>78</sup> *Ibid.*, para. 9.11.