

# Interpreting the Human Right to Land within the International Covenant on Economic, Social and Cultural Rights

Input into Proposed CESCR General Comment on Land

## 1. Introduction and background

1. Human population growth, urbanization, greenfield development, urban renewal/beautification projects, the reservation and acquisition of land for public and private purposes, the expansion of large-scale/industrial agriculture, extractivism, the impacts of climate change, land-grabbing and the depletion of soils and living species have given rise to increasing concerns about the economic, social and cultural rights dimensions of land. All these developments and processes increasingly have been subjects of the Committee's review of States parties' performance of the International Covenant on Economic, Social and Cultural Rights (hereinafter, Covenant), whereas public administration of land has affected Covenant rights. The Committee also has noted experiences of States party at respecting, protecting and fulfilling Covenant rights through agrarian reform, land adjustments and conversions, remedy and reparations, including transitional justice processes, legislation, programs, projects, budgets and institutional arrangements. Cases include urban land reforms and redistribution in the pursuit of temporary special measures (affirmative action),<sup>1</sup> economic justice, social justice,<sup>2</sup> spatial justice,<sup>3</sup> environmental justice,<sup>4</sup> distributive justice,<sup>5</sup> the habitat approach,<sup>6</sup> security of tenure,<sup>7</sup> and poverty eradication.<sup>8</sup>
2. Since the adoption of the Covenant, land has become an issue of increasing conflict, and competition and disputes over land have become common.<sup>9</sup> The Committee is especially concerned about unequal access to land; the concentration of land tenure, including ownership, as a feature of unprecedented global disparity in wealth and income; and unsettled claims over indigenous peoples' and other local communities' lands and related natural resources, as sources of confrontation and conflict.
3. The concerns of States and their constituent stakeholders about the impacts of large-scale land acquisitions for diverse purposes, human-caused and natural disasters, protracted crises, as well as the global sustainable development agenda have sparked deliberation, leading to the development of a series of *lex feranda* instruments in the global policy sphere concerning land administration. These include, *inter alia*, the adoption of the 2007 United Nations Declaration on the Rights of Indigenous Peoples; the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011–2020, the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Rio+20 (2012), the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024, the Small Island Developing States (SIDS) Accelerated Modalities of Action (SAMOA) Pathway (2014), the 2015 Sustainable Development Agenda toward 2030, the 2015 Paris Agreement on climate change, the 2015 Framework for Action for Food Security and Nutrition in Protracted Crises, the Sendai Framework for Disaster Risk Reduction (2015–30), 2030 Agenda for Sustainable Development (2015), World Humanitarian Summit (2016), the 2016 New Urban Agenda and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (201X).

4. The Committee also takes account of land's prominence in the foregoing UN Conference on the Human Environment (1972), the Vancouver Declaration and Action Plan (1976), the Rio Declaration on Environment and Development (1992), the Programme of Action of the International Conference on Population and Development (1994), the World Summit for Social Development (1995), the Beijing Platform for Action (1995), Habitat II (1996) and the World Summit on Sustainable Development (2002).
5. The element of land is essential to other covenanted human rights, and has become a regular subject of concern for treaty bodies and mechanisms across the Human Rights System.<sup>10</sup> Likewise, ESC human rights related to land have concerned the Committee's throughout its mandated functions: (1) monitoring and reviewing the performance of the treaty by individual States and (2) interpreting the domestic, extraterritorial, individual and collective obligations in application of the Covenant.<sup>11</sup> This General Comment consolidates the relevant theory and practice to provide guidance to State parties to fulfil their treaty obligations consistent with the Covenant in the treatment of the essential element of land.

#### **Universality (of a human right to land)**

6. Land constitutes an essential feature and legal criterion for a State in public international law.<sup>12</sup> Thus, land forms a core of the territorial State, its population as its tenure holders and right bearers, and administration of the territory by State institutions as the functional duty bearers, including government, as responsible for mediating the needs and interests of the State's population within the common interest. Therefore, land constitutes a principle subject of statecraft, as well as a subject of public and private law.
7. The norms concerning land and human rights have been developed within the frame of State sovereignty over its territory, including land and territorial waters. In public law, sovereignty remains subject to peremptory norms and human rights obligations. That sovereignty vis-à-vis other States, including State parties to the Covenant, also remains consistent with this General Comment.
8. Land is also an essential natural resource that is limited in nature and a public good fundamental to life for human beings as an earth-bound species. The functioning of the human body ultimately relies on a relationship to land by virtue of its coexistence with the physical forces of gravity.<sup>13</sup> No one could live in a prolonged state without being grounded in a gravitational environment.
9. Furthermore, while the dominant electromagnetic frequency of the earth (7.83 Hz)<sup>14</sup> is the same as the dominant frequency of the human brain and extremely close to the frequency of alpha rhythms,<sup>15</sup> the intense negative charge carried by the earth is electron-rich, and the human body's direct physical contact with the land is one of the most potent antioxidants. Human contact with land represents a potential treatment/solution to a variety of degenerative diseases,<sup>16</sup> ranging from chronic stress to autonomic nervous system dysfunction, inflammation, pain, poor sleep, heart rate variability, hyper-coagulable blood and cardiovascular disease,<sup>17</sup> and a primary factor in regulating the endocrine and nervous system.<sup>18</sup> In the age of multiple wireless technologies, the earth still provides the natural signal that human mental and physical existence requires to function in a healthy way, and earthing the human body may be an essential element in the human health equation along with sunshine, clean air and water, nutritious food, and physical activity.<sup>19</sup> On the planet Earth, this grounding is inextricably linked to physical access to land as an indispensable factor of humans' well-being in their primordial habitat and/or built environment.

10. In light of this physical and legal reality, the over-riding principles to be applied in implementing the Covenant (Articles 1–3) provide the logical, practical and legal framework for ensuring that the human being’s right to land is respected, protected and fulfilled. Secure and equitable access, management, use, control and tenure of adequate land constitute a primary element in the realization of other human rights, as mentioned in the discussion of indivisibly below.
11. The realisation of the human right to land is indispensable for leading a life with human dignity, as expressed in the first article of the Universal Declaration of Human Rights. The link among land, life and dignity becomes clearest where and when it is impeded through cases involving any single or combination of conditions, including, but not limited to: discrimination; dispossession; displacement, including forced eviction; denial of equitable use of, and access [to land]; scarcity [of land]; damage or destruction [of land] and/or the means of access [to land]; and/or insufficient capability of persons, social groups and communities to access, use and maintain tenure to adequate land. Various factors also intersect to result in increasing land pressures, including population growth, urbanization, infrastructure projects (e.g., energy, transport and tourism installations), climate change and desertification, natural resource (e.g., mineral, oil, gas and water) extraction of natural resources, the expansion of large-scale and mechanised agriculture, monocultures and biofuel production. The denial of the human right to land in such cases could create the condition of “landlessness,”<sup>20</sup> which, in turn, leads to the deprivation of a bundle of other covenanted rights.
12. As a subject of individual human rights, everyone requires a relationship with land to sustain physical life, as well as the enjoyment of access, use, secure tenure, control or other benefit from land as a means toward the realization of a bundle of human rights. These include, inter alia, the individual and personal human rights to food, water, sanitation, adequate housing, work/livelihood through decent work, security of person and the home, health, culture, participation and a clean and healthy environment.
13. As a subject of collective human rights, land is an element inherent in the realisation of participation in culture and public life, freedom of association, and a clean and healthy environment in association with others. The collective dimensions of the human right to land involve secure joint and collective tenure, as well as the inalienable rights to self-determination and freedom from discrimination, as both specific human rights and over-riding principles enshrined in the first three articles of the Covenant.
14. From the dual perspective of individual and collective human rights to land, that essential element of land is often the first link in the chain of production toward the realization of other human rights, in particular ESCR. Therefore, not only does every citizen in a State party, but every inhabitant of the planet holds a stake in the State party’s administration of land.
15. Moreover, land is a prerequisite for the realization of several economic, social and cultural human rights (ESCRs) and, by its nature, endowed with economic, social and cultural functions, in addition to its environmental/ecological function.<sup>21</sup> Consequently, land is an inherent subject of the Covenant, as all persons rely directly or indirectly on secure access, use and tenure of land for the realization of ESCRs, as recognized in foregoing General Comments.<sup>22</sup> Land is increasingly recognized explicitly as an indispensable element and subject of sustainable development by the international community in global instruments, including those cited above. That recognition of the common human relationship to land reinforces the appreciation of land as a universal human need.

16. The human right to land is common to, while also differentiated in all urban, peri-urban and rural contexts. Within the universality of a human need and, thus, human right to land, particular populations maintain a special relationship with, and need for land also as a specific requisite to the fulfilment of their identity, livelihood through decent work and/or well-being. The culture, identity, self-determination, livelihood through decent work and/or means of subsistence for such land-based people begin and end with the land. Land deprivation for such land-linked communities, societies and peoples, including indigenous, tribal, forest, peasant, and other local communities, may constitute a gross violation of human rights, as in the case of forced evictions.<sup>23</sup>
17. Both expressions of land as a universal human need and human right, as well as the special relationship of certain human populations to the basic element and resource of land, underscore the function of land as a common good and resource. This reality of land as a human right makes land both an individual and collective accessory to the realization of other covenanted rights, highlighting the importance of articulating clear and consistent State party human rights obligations in relation to land as a distinct human right, as well as essential element for the realization of other rights guaranteed in the Covenant.

### **Indivisibility and interdependence**

18. The increasingly evident importance of land as a human right arises from the recognition that land's combined economic, social, cultural and environmental functions make it indispensable to the State party's respect, protection and fulfilment of covenanted individual and collective human rights, including those cited above.
19. The role of land as both an individual and a collective human right is seen in relationship to the human right to adequate housing, whereas adequate housing includes land as an indispensable element.<sup>24</sup> While providing a definition for the human right to adequate housing, General Comment No. 4 refers to "the right of all to a secure place to live in peace and dignity, including access to land as an entitlement."<sup>25</sup>
20. Where adequate housing may be on an upper floor of a multi-storey building, a detached house on the ground, or even in the form of a house-boat, the denial of access and use of the corresponding land support the structure and enabling access to it would constitute a violation of the human right to adequate housing. An interdependent relationship between adequate housing and land is apparent also, even where a tenure holder's share in a parcel of land (e.g., at the foundation of a multi-storey building) cannot be singly identified, subdivided or transferred.
21. The interdependence of the human right to adequate food and nutrition with the human right to land is also apparent in theory and in the Covenant's application.<sup>26</sup> While ensuring adequacy and sustainability of food availability and access, "*availability* refers to the possibilities either for feeding oneself directly from productive land or other natural resources."<sup>27</sup> The right to food applies also to nonproducers, whereas everyone consuming food has a stake in the productive use of land, as it is often the first link in the food-production chain, involving a division of labour and social production and distribution of food within a State, as well as across borders, if appropriate.
22. Although a human right to land is not explicit in the Covenant, water has been recognized, nonetheless, as a common human need and human right by virtue of its nature inherent in the realization of other codified human rights, including the right to life and to human rights under the Covenant,<sup>28</sup> made explicit in General Comment No. 15 of the Committee. The human right to land bears similar characteristics, not least in its indivisibility with the human right to land.

Access, use, secure tenure and control of land are often requisites to accessing vital water. General Comment 15 provides that no household should be denied the human right to land on the grounds of their housing or land status<sup>29</sup> and observes, in particular, indigenous peoples' right to access water resources on their ancestral lands.<sup>30</sup>

### **Normative Content of the Human Right Land**

23. The human rights approach to land under the Covenant is primarily a subject of equity, which is the consequential outcome of the State party applying the Covenant's over-riding principles (see **General Obligations** below).
24. The human right to land is realized when every person, individually and/or collectively, enjoys access to, use of and secure tenure over land necessary and sufficient to achieve an adequate standard of living; to have a place to live in security, peace and dignity; to engage in recreational activities;<sup>31</sup> to participate in public life;<sup>32</sup> and to develop culture in free association with others. In the collective dimension, the human right to land is realized when joint and collective tenure are secure and legally protected. In the wider collective dimension, nations and peoples realize their right to land when they enjoy access to, use of and sovereignty over their ancestral and continuously inhabited land necessary to exercise self-determination within the State party.<sup>33</sup> The Covenant guarantees that "In no case may a people be deprived of its own means of subsistence."<sup>34</sup>
25. The human right to land contains both freedoms and entitlements. The freedoms include the right to maintain access to existing lands necessary for the enjoyment of all human rights, and the right to be free from interference, arbitrary dispossession or denial of access, use, secure tenure, control or other benefit from land necessary for the enjoyment of other human rights. The entitlements include the human being's meaningful participation in, and benefit from a land administration and management system that provides equal opportunity for everyone to enjoy her/his human right to land.

### *Adequacy*

26. Adequacy involves an assessment of quantity, quality and function. The elements of the human right to land must be sufficient and suitable to uphold human dignity, life, livelihood through decent work, social security, housing, food, health and culture, in accordance with Articles 1–3, 6–8, 9, 10, 11, 12, and 15 of the Covenant. The adequacy of land should not be interpreted narrowly, but rather beyond reference to mere spatial attributes, quantity or monetary values and measures. The human rights metric should treat land as a common social and cultural good with corresponding social and cultural function, and not primarily as an economic good with corresponding economic function. Although the Covenants do not specify environmental functions, the development of public law of treaties,<sup>35</sup> *lex feranda* and global policies have identified land as having an environmental function as well. (See also below.)
27. The manner of realizing the human right to land must be sustainable and inter-generational also, ensuring that the human right can be realized for present and future generations.
28. The adequacy of land required to fulfil the human right to land may vary according to particular conditions. However, the following elements of the human right to *adequate* land apply in all circumstances:

### *Availability*

29. The access to, and supply of land for each person must be available in sufficient measure for personal and domestic uses toward the realization of covenanted rights. These normally include the use of land for adequate housing and mobility to access sites, services and sources of livelihood through decent work, including agriculture and other types of production, as appropriate. Land should be sufficient and available for collective uses such as social and cultural activities, recreation, and economic activities requiring land use. Some individuals and groups also may require varying types and dimensions of land due to culture, climate, and conditions necessary for activities related to subsistence. The availability of land may be limited by natural factors. However, the availability of land is ensured when the State party ensures equitable fulfilment of the other adequacy elements of the human right to land.

### *Accessibility*

30. Land, land facilities and services have to be accessible to everyone, without arbitrary discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(a) *Physical accessibility*: Land, and adequate land facilities and services, must be within safe physical reach for all sections of the population, whether in rural, peri-urban or urban contexts. Sufficient, safe, and acceptable land must be accessible to each household within reasonable access to educational, health, cultural and recreational facilities and sources of livelihood through decent work. All land facilities and services must be of sufficient quality, culturally appropriate, and managed sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to one's land, or to related facilities and services. Land and land-related facilities and services must be accessible to all without discrimination, including and, in particular, the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any prohibited grounds;

(b) *Economic accessibility*: Sufficient land, land-related facilities and services must be affordable for all. The direct and indirect costs, charges and fees associated with securing land for the realization of human rights must be affordable, and must not compromise or threaten the realisation of other Covenant-guaranteed rights;

(c) *Information accessibility*: This dimension of accessibility to the human right to land includes freedoms, responsibilities and entitlements to seek, receive and impart reliable information concerning land issues, including land administration, use, control, tenure arrangements and access. Information accessibility aligns with the human right to freedom of expression, in relation to managing and imparting information within the criteria of human rights. Information accessibility also requires the State party to ensure and maintain complete, accurate and publicly available records of land use, tenure and distribution, as well as it concerns various land tenure types and claims throughout the State party's jurisdiction and territory of effective control.

(d) *Accessibility to goods and services*: This dimension of accessibility coincides with elements of the human right to adequate housing, as provided in General Comment No. 4, which interprets the State party's obligation to ensure the availability of services, materials, facilities and infrastructure. It provides that

"All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services and urban/physical planning."<sup>36</sup>

Significant is the recognition of urban/physical planning among the public goods and services required to meet this criterion of the human right to adequate housing. The provision of these

State-supported facilities coincides with the global-policy recognition of the necessity and commitment of States to ensure access to land and to support “social habitat production,” particularly in the pursuit of responsible housing finance.<sup>37</sup>

### *Acceptability*

31. The land required for each personal or domestic use must be of an *acceptable quality*. This implies that land should be environmentally safe; i.e., free from pollutants, radiological and other hazards that constitute a threat to a person’s or community’s health. Furthermore, land should be of an acceptable type for personal or domestic use, particularly in the context of the human right to adequate housing, as it relates to ensuring housing *habitability*.<sup>38</sup> The terms required to realize the human right to land must be acceptable, without violating other human rights. For persons and communities relying on agriculture and other livelihood through decent work dependent on land resources, the land’s soil *quality* and reasonable adequacy of natural and other productive inputs, including water, as required to uphold the quality of the land and must enable the tenure holders to realize their other human rights.
32. *Cultural appropriateness* is a key element of acceptability from the social dimension. The cultural acceptability and function of land call for State parties’ land-administration laws, systems and institutions to mediate the needs and interests of the beneficiaries of the Covenant consistent with cultural norms, practices and preferences related to land, insofar as they do not violate human rights of others.
33. Displacement, resettlement, rehousing and related schemes have demonstrated the importance of cultural compatibilities and sensitivities in the administration of land for housing, agriculture/food, development, social and other community activities, or other purposes aligned with human rights. Cultural acceptability is a subjective quality that cannot be imposed or presumed by external parties. Cultural acceptability in such circumstances can only be achieved through a process ensuring free, prior and informed consent (FPIC) of the party/ies to move, or be moved.
34. The Committee recognizes that the strong communal dimension of certain peoples’ cultural life is integral to their existence, well-being and full development, and includes the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.<sup>39</sup> In particular, indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature a specific territory should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.<sup>40</sup>

### *Security of tenure*

35. Land tenure takes a variety of forms, including rental (public and private), cooperatives, leasehold, owner occupation, collective tenure, adverse possession, and informal settlement, including occupation of land.<sup>41</sup> Tenure arrangements may include registered ownership, intermediate ownership, expectation of ownership, off-register ownership, occupancy, officially recognised rental, unofficial rental, looking after, or borrowing of land.<sup>42</sup> Notwithstanding the type of tenure, all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment, dispossession, and other abuses. Consequently, State parties should take immediate measures aimed at conferring legal security of tenure upon

those persons, households, and communities currently lacking such protection, in genuine consultation with affected persons and groups. (See **Specific Obligations** below.) As in connection with the human rights to water<sup>43</sup> and adequate housing,<sup>44</sup> no one should be subject to discriminatory deprivation on the basis of land tenure type or status.

### *Location*

36. Land that is adequate for the realization of human rights must be in a location that allows access to, and enjoyment of adequate housing, livelihood through decent work, food and nutrition, health care, schools, cultural centres and other social facilities. This is true in both urban and rural areas, where the combined level of effort, and temporal and financial costs of accessing a place of decent work can put excessive financial demands upon households living in impoverished conditions. Similarly, the available land having the effect or purpose of realizing related human rights should not be polluted nor proximate sources of pollution such that threaten the inhabitants' human rights to health and to a safe and healthy environment.
37. The location element of the human right to land is significant as a measure to ensure that relocation, resettlement, rehousing and other eviction-and-displacement schemes do not derogate the location element in the allotment of replacement land.
38. This element also clarifies the options available to the State party toward realizing the human right to land in such cases; i.e., if moving the land allocation to the enabling facilities and services of the State is not imminent, then the State should ensure reasonable access to the enabling facilities and services of the State in the new land allocation *a priori*.

### *Process rights and accessory rights*

39. The elements of the human right to land include also those process and accessory human rights guaranteed under the International Covenant on Civil and Political Rights.<sup>45</sup> These include, *inter alia*, human rights to access justice, fair trial, information, freedom of movement and residence, freedoms of opinion, expression, association and peaceful assembly, and participation in public life. A breach that violates these covenanted human rights may cause and/or result from the violation of the human right to land.
40. As the human right to land is grounded in equity under the over-riding implementation principles and specific rights guaranteed in the Covenant, the acceptability factor also rests on the effective functioning of process mechanisms within the State, operating principles of temporary special measures (affirmative action), economic justice, social justice, spatial justice, environmental justice, distributive justice, the habitat approach, security of tenure and poverty eradication.

## **Sources in law**

### ***Sources of the human right to land in international law***

#### ***Lex Feranda Instruments***

41. A decade after the adoption of the Covenant, the First UN Conference on Human Settlements (1976) recognized the importance of equitable land to adequate housing in The Vancouver Declaration and Action Plan,<sup>46</sup> dedicating section D. "Land" to commitments of Member States in: (1) land resource management; (2) control of land use changes; (3) recapturing land value (*plusvalía*); (4) public ownership; (5) patterns of ownership; (6) increase in usable land; and, (7) information needs.<sup>47</sup> The Preamble recognizes that:

"Land, because of its unique nature and the crucial role it plays in human settlements, cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the

market. Private land ownership is also a principal instrument of accumulation and concentration of wealth and therefore contributes to social injustice; if unchecked, it may become a major obstacle in the planning and implementation of development schemes. Social justice, urban renewal and development, the provision of decent dwellings-and healthy conditions for the people can only be achieved if land is used in the interests of society as a whole.”<sup>48</sup>

42. The Vancouver Action Plan also recognizes that:

“The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes and their land, or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles<sup>49</sup> and the Universal Declaration of Human Rights.”<sup>50</sup>

43. The renewal of the global human settlements policy at Habitat II (1996) consolidated UN Member States’ commitment to maintaining “equitable human settlements,” envisioning land rights as indivisible with other human rights in practice.<sup>51</sup>

44. Habitat II emphasized the elements of accessibility and secure tenure in relation to land, as well as the need for the State to ensure governance of land such that ensures the human rights adequacy of land as strategic prerequisites for the provision of adequate shelter for all, and for the development of sustainable human settlements affecting both urban and rural areas. In addition to the progressive realization of the human right to housing, States at Habitat II committed themselves to these actions toward “breaking the vicious circle of poverty.”<sup>52</sup>

45. Habitat III, in 2016, produced a New Urban Agenda that further envisaged

“cities and human settlements that [f]ulfil their social function, including the social and ecological function of land, with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination...”<sup>53</sup>

46. Within the field of human rights and food security, the Committee on World Food Security (CFS) has recognised that land is an important source of social inclusion and a component of social citizenship in many societies. The 2012 *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*<sup>54</sup> promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, and provide a useful framework for States consistent with international law.<sup>55</sup>

#### *Land and Covenant Rights*

47. Article 11, paragraph 1, of the Covenant specifies rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing.”<sup>56</sup> While a specific “right to land” is not articulated within the Covenant, as was recognized in General Comment No. 15 (2002) concerning the human right to land, the use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive.<sup>57</sup>

48. Previous General Comments and Concluding Observations of the Committee have referred to land as an element of other human rights. CESCR General Comment No. 4, “The right to adequate housing” (1991)<sup>58</sup> and General Comment No. 7 (1997), “forced evictions,”<sup>59</sup> enunciate the importance of land as an element of the human rights inherent in the field of human settlements.

49. Therefore, exercising a human right to land as similarly “indispensable for, the realization of the right to an adequate standard of living,” General Comment No. 4 affirms the obligations of State

party is fulfilled vis-à-vis a human right to land, recognizing its direct relevance to those groups whose identity, well-being and/or livelihood through decent work is based on a physical [and often an extraphysical] relationship to the land.

50. CESCR General Comment No. 12 (1999) on the Right to Adequate Food<sup>60</sup> recognizes the *availability* of adequate and nutritious food as an indispensable element that enables the possibilities either for feeding oneself directly from productive land or other natural resources.
51. CESCR General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health and General Comment No. 15 (2002) on the Human right to land contain a recognition of land's link to health. They point out how development-related activities that lead to the displacement of indigenous peoples from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.<sup>61</sup>
52. CESCR General Comment No. 15 (2002) on the human right to land affirms that no household should be denied the human right to water on the grounds of its housing or land status. For example, indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. The Committee has affirmed that States should provide resources for indigenous peoples to design, deliver and control their access to water,<sup>62</sup> which would entail their design, delivery and control of their related land access.
53. CESCR General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights provides that implementing Article 3 of the Covenant in relation to Article 11(1) requires 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. Implementing Article 3 in relation to article 11(2) "also requires States parties, inter alia, to ensure that women have access to, or control over, means of food production," which habitually includes land.<sup>63</sup>
54. CESCR General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life notes the human rights of indigenous peoples to "their cultural institutions, ancestral lands, natural resources and traditional knowledge,<sup>64</sup> and on the right to development."<sup>65</sup>

#### **Sources of the human right to land in domestic law**

55. The Constitutions and legal practice certain transitional States are explicit in the formulation of rights to land consistent with the Covenant. The Brazilian Constitution explicitly recognizes land as a subject of a property right within its social function, in fact, mandating the government, under certain conditions, to expropriate such land for priority social purposes if it has been demonstrated not to fulfil its social function. Regulations, such as tax structures and urban planning standards, are directed to ensure that land fulfils its social function in the Brazilian<sup>66</sup> and Colombian<sup>67</sup> constitutions. Agricultural land is guaranteed to fulfil its social function in both the Ecuadoran<sup>68</sup> and Brazilian<sup>69</sup> constitutions.
56. The Ecuadoran Constitution's Article 57 recognizes and guarantees the collective land rights of indigenous communes, communities, peoples and nations "in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights." Article 60 extends similar recognition and guarantees for Afro-descendant citizens.<sup>70</sup>

57. Article 376 addressed the common social and environmental function of land and local government measures required to enforce the right to housing, habitat and environmental conservation. This article also forbids private benefit from speculative land use practices by changing the use from rural to urban or public to private.<sup>71</sup>
58. In the Bolivian Constitution, the State recognizes and protects the community or collective land, while fulfilling a social, economic and social functions, as appropriate.<sup>72</sup> It further guarantees that the State shall provide to rural indigenous peoples, intercultural indigenous communities, Afro-Bolivian and rural communities who do not have sufficient lands, in accordance with state policy concerned with the ecological and geographic realities, as well as the population's social, cultural and economic needs.
59. The Bolivian Constitution also notes the environmental and ecological functions of land, and provides for land to be used "according to its criteria and principles of cultural harmony with nature."<sup>73</sup>
60. The land endowment shall be carried out according to the policies of sustainable rural development and the right of women to access, distribution and redistribution of land, without discrimination based on civil status or marital union.<sup>74</sup> Bolivia's constitution enshrines the obligation of the State to promote policies aimed at eliminating all forms of discrimination against women in access, ownership and inheritance of land.<sup>75</sup>
61. While Egypt's 2014 Constitution refers to human rights generally as a subject of national values, university curriculum and police duties, does not enshrine any human rights, nor does it address the human right to land, specifically. However, its Article 63 relates to a common violation of the human right to land, providing that:

"All forms and types of arbitrary forced displacement of citizens shall be prohibited and shall be a crime not subject to statute of limitations. The State shall ensure the citizens' right to adequate, safe and healthy housing in a manner that preserves human dignity and achieves social justice."
62. The Constitution of Kenya (2010) provides that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals, whether classified as public, community or private land.<sup>76</sup> Public land shall vest in, and be held by either the national government or a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission.<sup>77</sup> Community land, whether registered or unregistered, vests in, and is held by communities identified on the basis of ethnicity, culture or similar community of interest. Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held. Community land shall not be disposed of, or otherwise used, except by way of legislation specifying the nature and extent of the rights of members of each community individually and collectively.<sup>78</sup>
63. The Kenyan Constitution further stipulates that private land may be freehold or leasehold tenure, but that non-citizens have the right to land by leasehold only.<sup>79</sup> The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land-use planning.<sup>80</sup> Meanwhile, the Constitution directs Parliament to enact legislation ensuring that investments in property benefit local communities and their economies.<sup>81</sup>

64. The Supreme Court of India has called upon the State to provide security of tenure to marginalized groups such as pavement dwellers.<sup>82</sup> The South African Constitutional Court and the European Court of Human Rights also have recognized the State's obligation to ensure security of tenure and protection against eviction for the urban poor and inhabitants of informal settlements.<sup>83</sup>

### **General obligations**

65. Covenant obligations apply to all organs of the state Party. All the central, regional and local spheres of government and/or local authorities bear common-but-differentiated obligations under the Covenant to respect, protect and fulfil the human right to land within their respective jurisdictions.<sup>84</sup> The State obligations under the Covenant likewise apply to all institutions, representatives or agents of the State party.
66. As under any treaty, the Covenant's States parties assume simultaneous individual, collective, domestic and extraterritorial obligations. The seven explicit over-riding principles laid out in the Covenant's first three Articles are foundational to the structure and methodology of the Covenant, and indispensable to its implementation, monitoring and review functions. Each and all of these functions are indispensable in the particular context of the human right to land.
67. Within the equitable administration of land by the State party—that is, all spheres of government and organs of the state—should develop and apply a Covenant-based, human rights definition of land, including all tenure categories of land, to guide measures to respect, protect and fulfill the human right to land within its jurisdiction and territory of effective control.

### *Self-determination*

68. Under Article 1 of the Covenant, States parties have the obligation to ensure that its respect, protection and fulfilment of economic, social and cultural rights align with the inherent and inalienable human right of nations and peoples to self-determination. By virtue of that right, the State must operationalize economic, social and cultural human rights so that all nations and peoples freely can determine their political status, and freely pursue their economic, social and cultural development. Article 1 also provides that:

“[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

This Covenant provision also echoes long-standing peremptory norms of international law requiring that States not recognize, provide assistance to, cooperate or transact with illegal situations that obstruct the exercise of self-determination in the territory of a people whose said right is recognized under international law.<sup>85</sup>

### *Non-discrimination*

69. The Committee previously has underlined that discrimination in the exercise of the economic, social and cultural rights is frequently found in the housing and lending sectors involving land.<sup>86</sup> Under Articles 2 and 3 of the Covenant, States parties have the obligation to guarantee the enjoyment of Covenant rights to all, without discrimination.<sup>87</sup> The requirement to eliminate formal as well as substantive forms of discrimination<sup>88</sup> includes a duty to prohibit discrimination by non-State entities in the exercise of economic, social and cultural rights.

70. Among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, indigenous peoples particularly in relation to the development, utilization or exploitation of lands and natural resources,<sup>89</sup> peasants, fisherfolks and other people working in rural areas, and ethnic or religious minorities where they are politically disempowered. Persons with disabilities are also often disproportionately affected by the negative impacts of business activities, in particular because they face particular barriers in accessing accountability and remedy mechanisms. As noted by the Committee on previous occasions, asylum-seekers and undocumented migrants are at risk of facing discrimination in the enjoyment of Covenant rights due to their precarious situation, and under Article 7 of the Covenant, migrant workers are particularly vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments.<sup>90</sup>
71. Certain segments of the population face a greater risk of suffering intersectional and multiple discrimination.<sup>91</sup> For instance, investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burdens related to resettlement for, women and girls.<sup>92</sup> In the course of such investment-linked evictions and displacements, indigenous women and girls also face discrimination due to their gender and because they identify as indigenous peoples. In addition, women are overrepresented in the informal economy and are less likely to enjoy labour-related and social security protections.<sup>93</sup>
72. Furthermore, despite some improvement, women continue to be underrepresented in corporate decision-making processes worldwide.<sup>94</sup> Therefore, the Committee recommends that States parties address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by applying General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities,<sup>95</sup> and consulting the Guidance on National Actions Plans on Business and Human Rights.<sup>96</sup> States parties should also take appropriate steps, including through temporary special measures, to improve women's representation in the labour market, including at the upper echelons of the corporate hierarchy.
73. In some countries, environmental racism manifests in socially marginalized or racial minority communities being subjected to disproportionate exposure of pollutants and/or the denial of access to sources of ecological benefits such as clean air, water, adequate land and natural resources. Within an international context, environmental marginalization may prevail in disadvantaged ecological and trade relationships between industrialized nations and the Global South, often associated with colonialism, neoliberalism and globalization. Instances of environmental racism can include exposure to toxic waste, the exportation and dumping of wastes, flooding, pollution from heavy industrial or natural resource extraction developments, lack of utilities such as clean water, or exclusion from land administration and natural resource-related decision making. Certain State parties may be the authors or subjects of environmental racism in cases whereby governments allow corporations to export dirty technologies, dangerous chemicals or waste materials banned by domestic laws to developing countries, with lax environmental policies and safety practices, otherwise known as "pollution havens." Such practices often violate the human right to land by negatively affecting the economic, social, cultural and environmental functions of land.
74. Property status, as a prohibited ground of discrimination, is a broad concept that includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it. As stated, in connection with General Comment 15,

no household should be denied the human right to land on the grounds of their housing or land status<sup>97</sup>

### *Gender Equality*

75. Under Article 3 of the Covenant, States parties have the obligation to ensure the practice of gender equality such that men and women realize the equal right to the enjoyment of all economic, social and cultural rights. The Committee has interpreted the obligations of States parties within this over-riding principle of Covenant implementation, including by providing examples of states Parties' obligation with regard to specific Covenant rights, including the provision of Temporary Special Measures, where appropriate.<sup>98</sup> CEDaW has complemented the treaty-based guidance for States with specificity as to Temporary Special Measures for rural women, historically subject to discrimination in their exercise of the human right to land.<sup>99</sup>
74. In many parts of the world, women's human right to land continue to be systematically denied.<sup>100</sup> Despite the fact that globally women represent a large proportion of small scale farmers and are in some regions the majority, women are often not recognized as farmers. Gender inequality in land systems remains a pervasive problem, and intersectional discrimination—for example, due to ethnicity, rurality, and/or poverty—often compounds the barriers that women face in accessing, utilizing and controlling land in rural, peri-urban and urban areas. Women's rights to land are denied in law, as well as in practice, entrenching women's poverty and reinforcing women's unequal position within their families, communities and societies, both socially and economically.<sup>101</sup>
75. Even when women are able to access land, they often end up losing it, because of changes to marital and personal status, and specifically through discriminatory civil codes, marriage or inheritance laws.<sup>102</sup> Single women, as well as those whose marriages are customary and, therefore, not formally recognized also typically have more tenuous rights to land. In many countries, the result of gender-biased statutory laws, customary law, traditions, and social norms and attitudes is that women cannot or do not use, access, control, own, rent, lease, or inherit land and property without consent from a man, usually a male relative (husband, father, son, brother, etc.). Similarly, government services and benefits related to land and agriculture (e.g., extension services and agricultural-input subsidies) are also often tied to land registration, which is typically done in the name of the "head of household," most often designated as male. This results in social exclusion that constrains a woman's ability to participate fully and equally with men in their homes and communities and renders them vulnerable to forced eviction from their land when a relationship ends. Land-grabbing and the sale of formerly communal lands to private and foreign investors also has made women's access to land even more challenging and has rendered women particularly vulnerable to displacement and its adverse impacts.
76. The Committee has stated that women have a right to own, use or otherwise control land on an equal basis with men, and to access necessary resources to do so,<sup>103</sup> and has highlighted women's equal inheritance rights within the context of its Concluding Observations on States parties.<sup>104</sup> The Committee also has noted that the capacity of women to own land may not be restricted on the basis of marital status or any other discriminatory ground.<sup>105</sup> The Committee has highlighted the need for States parties to give particular attention to preventing discrimination in access to food, or resources for food such as land, including by guaranteeing full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land.<sup>106</sup>
77. In the same connection, realizing access to, use and control of land, as well as the social, economic and economic functions of land, are often essential to the realization of the human

right to decent work, as well as the Covenant's over-arching implementation principles of non-discrimination and gender equality. General Comment No. 12 on the right to food provides that:

"This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work [that] provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries on rights in land (including forests)."<sup>107</sup>

78. To combat the multiple barriers that exist to the enjoyment of land rights by women, States parties should adopt a multi-pronged approach that, *inter alia*:
- (a) Ensures that national laws, including civil codes; personal status, family and marriage law; property law; housing and/or land law; are effectively consolidated and harmonized so that there are consistent and coherent legal and policy frameworks protecting women's rights to land and other productive resources;<sup>108</sup>
  - (b) Brings customary land tenure and administration systems, where applicable, in line with international human rights standards on gender equality which protect women's equal rights to land;<sup>109</sup>
  - (c) Raises awareness (for example, via television, radio, print media, and the Internet) about women's land rights with women as well as men, local and traditional communities and their leaders, the judiciary and land administration officials;
  - (d) Builds the capacity of land institutions to protect women's land rights and ensures that such institutions are held accountable for their delivery of programmes and the impact on women's rights to land.
  - (e) Provides information, legal literacy and legal aid to women to claim their land rights<sup>110</sup> and ensures that all justice mechanisms, including religious and customary mechanisms, respect, protect and fulfil women's rights to land and other productive resources, and that the relevant authorities are held accountable when they fail to do so;<sup>111</sup>
  - (f) Expedites processes of land reform, to ensure that obstacles to land ownership faced by women are removed, and to provide funds to combat discrimination in women's access to land;<sup>112</sup>
  - (g) Applies the standard of free, prior and informed consent (FPIC) to women affected by land concessions, and enter into prior and meaningful consultations with the communities concerned before granting concessions for the economic exploitation of lands, and fulfil the obligation to obtain their FPIC, including and in particular that of women and customary landowners;<sup>113</sup>
  - (h) Ensure women's equal access to loans and credits, and ensure temporary special measures when required, in order to enable women to gain access to land and other productive resources regardless of marital status;<sup>114</sup>
  - (i) Ensures that land budgeting reflects an integrated gender perspective and tracks how budgets respond to gender equality commitments and targets;<sup>115</sup>
  - (j) Promotes the redistribution of land to marginalised landless women, and ensures that titles to land/housing under all state schemes and initiatives are provided in the names of the adult women of the household.

- (k) Provides for the full participation of women, based on their informed, active, meaningful and effective engagement in the formulation of land-related laws, policies and programmes, as well as in land governance bodies and decision making;<sup>116</sup> and
- (l) Prioritizes collection of gender-sensitive data and sex-disaggregated data on access to, use and control of land and other productive resources and also ensure disaggregation of data on other relevant grounds, such as gender and indigenous identity or gender and disability.<sup>117</sup>

79. Inextricable from the Covenant-implementation formula also are the over-riding principles in Article 2.1, under which each State party to the Covenant commits to undertake steps

“individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

#### *Rule of Law*

- 80. States parties have the obligation to all within their jurisdiction and/or effective control to prevent and remedy violations of the Covenant rights in the context of land administration and trade by individuals and entities under their jurisdiction through the rule of law. This includes the duty to give effect to the Covenant in the domestic legal order.<sup>118</sup> The Covenant also grounds the States parties’ obligations in the rule-of-law field, where public services may be subcontracted to private parties,<sup>119</sup> whether in law enforcement, access to justice and fair trial, or correction functions that may affect human rights, including non-derogable rights.<sup>120</sup> The State party remains the primary responsible legal personality with the duty to legislate, adjudicate, enforce, monitor, evaluate and review the administration of land in alignment with the ESCR obligations of the Covenant, realizing both their preventive and remedial effects.
- 81. The provisions of the Covenants, other Human Rights Treaties and the Vienna Convention on the Law of Treaties, where applicable, support the role, function and accessibility of mechanisms to resolve land disputes, including specialized land courts. The State must ensure that individual clients and local communities have effective access to such mechanisms, including judicial mechanisms that operate human rights at the local level.<sup>121</sup>

#### *Progressive Realization*

- 82. The progressive realization of the human right to land may involve policy instruments, financial tools, technical means and/or administrative fixes to ensure land is governed and administrated within the Covenant’s over-riding principles of implementation, as well as to ensure the continuous improvement of living conditions, without retrogression. The Committee has stated that a government’s obligation to continuously improve conditions conducive to the realization of economic, social and cultural human rights means that resources allocated to their realization should increase proportional to any overall increase in resources. This mean, with respect to the government’s budget, that allocations and expenditures on economic and social rights-related areas should increase at least at the same rate as the overall budget. However, progressive realization depends on a combination of factors, including increased efficiency and effectiveness, as well as regular evaluation of performance outcomes through a process of policy and performance review and improvement.
- 83. The negative obligation of the State to ensure progressive realization means that the State must not take retrogressive measures (backward steps) that would diminish the possibility to realize the human right to land. As provided in Article 11, “the right of everyone to an adequate

standard of living for himself and his family” includes “the continuous improvement of living conditions.”

#### *Maximum of Available Resources*

84. The State’s public budgets and revenue sources should be sufficient and applied to improve access, availability, locations, cultural appropriateness, servicing, administration, adjudication, environmental protection and distribution of land. Inefficient revenue collection is a widespread problem, one that undercuts many governments’ claims to lack adequate resources to realize human rights. Inefficient tax collection, tax breaks or unfavourable trade and investment agreements may be result from a government’s lack of capacity and/or in inadequate political will to enhance revenue collection. With greater political will and enhanced capacity, a government may be able to greatly improve its fiscal position without changing its tax structure, rather by other processes that enhance revenue collection.
85. Allocations are a critical element within a public budget that indicates the amount that the government intends to spend for a designated purpose. While allocations are a critical element of a budget, on their own they provide limited insight into a government’s compliance with its human rights obligations. Even though policies and plans, as well as expenditures, enable a more-complete understanding of allocations in a budget, it is nonetheless possible to gain useful insights into the government’s compliance with the State’s Article 2.a obligations by focusing on the allocations.
86. Where the general obligations of non-discrimination and maximum of available resources intersect, Article 2 prohibits both formal and substantive discrimination. The State should analyse its allocations to ensure that they do not (1) treat population groups inequitably, or differentiate on any prohibited basis of discrimination, or (2) affect different groups substantively different, although they might seem equitable on their face. Some of the most-common forms of discrimination in the formulation and execution of public budgets are those based on gender, ethnicity, religion, language, geographical location and socio-economic status. Discrimination often could be multi-dimensional, because, for example, ethnic minorities are often disproportionately poor, and women are typically the poorest of the poor. CEDaW has noted that, “[e]ven when they exist, laws and policies that consider rural women’s situation and foresee special measures to address it are often not implemented.”<sup>122</sup>

#### *International Cooperation and Assistance*

87. Operationalizing the over-riding principle of international cooperation and assistance consistent with Covenant implementation frames the discussion of extraterritorial obligations to respect, protect and, where appropriate, fulfil the human right to land. Arising from this obligation is the State’s duty to ensure its own conduct and that of legal and moral persons within the State party’s jurisdiction and effective control align with Covenant human rights, as well as its corresponding duty to regulate external parties accordingly.
88. In the context of increased globalization of economic activities and privatization, the Committee has pointed out the importance of States parties’ obligations to ensure that transnational businesses affecting the realization of economic, social and cultural rights—in particular, those assuming roles in the administration and use of public goods and services—ensure the progressive realization of Covenant rights, including the human right to land, and avoid retrogression in their enjoyment by all.

89. The State obligation to protect in the case of corporate capture, protecting the human right to land calls for safeguarding low-cost adequate housing and affordable land tenure, while preventing the transfer of control or other liquidation of such social assets to private corporations.

### Specific obligations

90. Globally, the lives of all human beings are impacted by inadequate land-use policies and practices; land pollution and degradation; the decline in the productive capacity of land; the loss of land, particularly arable land and coastal areas, due to climate change, infrastructure and other projects, and population growth. States parties and their successive governments increasingly and urgently have to adopt and implement effective measures to realize the human right to land, without discrimination, as set out in this General Comment. This obligation echoes General Comment No. 4 on “the right to housing,” which provides: “Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”<sup>123</sup> The Committee further advises that, “within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”<sup>124</sup>
91. The State party’s obligation to respect, protect and fulfil Covenant rights requires the State to avoid, prevent and remedy violations of the human right to land. These three types of obligations apply to all organs of the State party, whether the particular national or sub-national sphere of government, institution, representative or agent exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character within the territorial unit of the State.<sup>125</sup> As with all human rights, respect, protection and fulfilment of the human right to land are required also as a constant of State obligation in all situations, including peace time, states of emergency, conflict, occupation, war and disaster.

### Obligations to respect

92. The obligation to respect requires that States parties to refrain from interfering directly or indirectly with the enjoyment of the human right to land. The obligation includes, *inter alia*, to avoid engaging in any practice or activity that denies or limits equitable access, use, administration and control of adequate land; arbitrarily interfering with customary or traditional arrangements of land allocation; unlawfully degrading or polluting land, for example through waste from State-owned facilities, or through use and testing of weapons; and limiting access to, or destroying, land records and land administration services or infrastructure as a punitive measure, for example, during armed conflicts, in violation of international humanitarian law.<sup>126</sup> As provided in Article 1.2 of the Covenant, in no case may a people be deprived of its own means of subsistence, in particular, by any action or omission of State.
93. State parties bear an obligation to refrain from forced eviction of individuals, groups, and communities from their homes and lands, which constitutes a gross violation of human rights, in particular, the human right to adequate housing<sup>127</sup> and, *prima facie*, incompatible with the requirements of the Covenant.<sup>128</sup>
94. States bear the general obligation of immediately applying many aspects of the Covenant, not least to operationalize without delay the over-riding principles of non-discrimination and gender equality. The State party also must take steps as early as possible within available systems to ensure the rule of law, self-determination, the maximum of available resources and international cooperation, while improving that performance progressively, as appropriate.

95. The obligation to respect requires the State and its representatives and agents in every organ of the State not to destroy, or interfere with existing access to land for producing food, for needed housing, livelihood through decent work, or any other human right.
96. The Committee notes that, during armed conflicts, emergency situations and natural disasters, the human right to land embraces those obligations by which States parties are bound also under international humanitarian law and international criminal law. This includes protection of objects whose destruction would threaten civilian populations, such as dams, and those that are indispensable for survival of the civilian population, including land infrastructure such as dikes, drainage installations and supplies, and natural or human-made irrigation systems. This obligation calls for protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians have secure access to adequate land for their housing and means of subsistence. In cases of occupation, international humanitarian law strictly prohibits an occupying Power from altering the legal system pertaining to land and natural resources in an occupied territory.<sup>129</sup>

#### *Obligations to protect*

97. The Covenant guarantees that each person has a corresponding right to economic, social and cultural rights and development *in situ*, whether in the rural or urban context, as long as no parties dominate or exploit others, nor otherwise collude to deprive persons or groups of their human right to land.
98. The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the human right to land. Third parties include individuals, groups, corporations and other entities, as well as agents acting under their authority, real-estate cartels, land mafias and similar agents or organisations, whether formally or informally constituted. This obligation includes, *inter alia*, adopting the necessary and effective legislative, enforcement and other measures to restrain third parties from denying equitable access to, use and secure tenure of adequate land; unregulated market speculation; loan-swapping; pyramid schemes; price fixing; and polluting, degrading, damaging or destroying land resources, including land-related infrastructure.
99. Protecting the human right to land requires the State party to promote conservation, biodiversity and the sustainable use of land and other natural resources.<sup>130</sup> This is to be done by, *inter alia*, adopting policies and measures to protect the natural resources-based livelihoods through decent work and the long-term conservation of land and other natural resources, including through agroecology, especially in light of commitments under the Paris Agreement on climate change. States have the obligation to ensure the conditions for regeneration of biological and other natural capacities and cycles with a view to land protection and preservation.
100. Where land services are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, physical access to, or secure tenure on adequate land. To prevent such abuses, the State party must establish and maintain an effective regulatory system in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.
101. State parties are obliged to provide special protection to those persons and groups who are particularly vulnerable to abuse and violation of the human right to land. These include, but are

not limited to women; children; indigenous peoples<sup>131</sup>; minorities who rely on the land; the urban poor; small-scale producers, including farmers, fishers and pastoralists; forest dwellers and workers; landless persons and communities; human rights defenders; internally displaced persons (IDPs); disaster-affected persons; and refugees. Protection of persons and groups vulnerable to violation of their human right to land involves, in particular, prohibiting, preventing, remedying and, as appropriate, prosecuting forced eviction<sup>132</sup> within the framework of reparations.<sup>133</sup>

102. The State party's obligation to protect land tenure holders begins with the obligation to confer legal tenure security, including an immediate obligation to ensure a minimum degree of tenure to prevent forced eviction.<sup>134</sup>
103. This obligation requires the State to ensure that the rules and mechanisms governing access to land (e.g., land markets, inheritance and tenancy laws, matrimonial property law, customary tenure systems) do not operate in discriminatory ways and do not contribute to, or operate in a way that may lead to concentrating land access to the disadvantage of individuals or groups. The obligation to protect the human right to land involves the State party both recognizing and protecting customary tenure systems consistent with human rights principles.
104. Within States parties' individual, collective, domestic, and extraterritorial obligations with regard to the human right to land is the international law obligation not to recognize, support, cooperate or transact with an illegal situation that denies the human right to land in violation of peremptory norms such as self-determination or the commission of war crimes and/or crimes against humanity, including the serious crime of population transfer.<sup>135</sup>
105. States parties are required to ensure that their actions as members of international organizations do not impair the enjoyment of the human right to land [economic, social and related to land] and other natural resources.<sup>136</sup> Accordingly, States parties that are members of international financial institutions, notably the World Bank Group, the International Fund for Agricultural Development (IFAD) and regional development banks, are required to take steps to ensure that lending policies and practices, credit agreements, trade and investment agreements/policies and other practices of such multilateral financial institutions do not impair or nullify the enjoyment of the right to land and other natural resources.
106. State party must ensure that such non-state actors respect and protect the human rights to participation and self-determination and the applicable international standards on free, prior and informed consent, including in the context of infrastructure projects, such as dams, canals and transport systems.<sup>137</sup> This includes carrying out prior human rights impact assessments (HRIAs), regular monitoring of human rights impacts and ensuring that effective remedies, including reparation, as appropriate, are carried through for those affected.

#### *Obligations to fulfil*

108. States parties must undertake legal and administrative measures to recognize and protect the human right to land by promoting, facilitating and undertaking substantive steps and measures to ensure that no one is deprived of access to, and use of land necessary to achieve the bundle of human rights that enable the realization of equality in dignity.
109. Promotion of the human right to land involves public institutions and the authorities leading public institutions in the central and local spheres of government formally acknowledging the human right and their corresponding obligations under the Covenant and other relevant

domestic, regional and international instruments to ensure everyone's human right to land and its realization toward the fulfilment of all other human rights.

110. The obligation to fulfil the human right to land entails formal recognition of the diverse tenure forms that may exist among the peoples and communities that constitute the State party. Such possessory rights to land run the gamut of tenure arrangements, ranging from occupation and possession to usufruct, rental and leasehold arrangements, freehold and collective arrangements, whether historic or contemporary in origin. This obligation requires the State to recognize and uphold customary tenure systems within the criteria of human rights. An inventory of the continuum of land tenure within a State party is rare, but nonetheless essential to fulfil the human right to land and ward against land-based conflicts between and among peoples and communities, as well as prevent disputes involving State institutions.
111. Improving security of tenure, consistent with the Covenant's over-riding principle of progressive realization (Article 2.1.), prioritizes vulnerable and marginalized persons and groups living in poor urban and rural settlements, including the landless. States, including relevant authorities, should take the following measures:
  - a. Conducting countrywide and city-regionwide assessments of tenure arrangements, covering both rural and urban areas;
  - b. Identifying and mapping insecure settlements and population groups, including the homeless and landless;
  - c. Developing countrywide and city-regionwide strategies for securing tenure and upgrading settlements on various categories of land and with diverse tenure arrangements;
  - d. Adopting or revising legislation to recognize and protect multiple tenure arrangements;<sup>138</sup>
  - e. Reviewing and reforming urban and rural land-use plans and regulations, in order to recognize and maintain diverse tenure systems and ensure secure tenure to those with precarious tenure;
  - f. Prioritizing *in situ* upgrading/rehabilitation of housing.
  - g. Adopting and implementing a human rights-compliant and consensual resettlement and rehousing policy to be applied where *in situ* solutions are materially impossible;
  - h. Facilitating and maintaining participatory settlement mapping, enumerations and tenure registration;
  - i. Establishing fair and effective land-dispute resolution mechanisms;
  - j. Allocating sufficient funds to ministries, municipalities, local governments and authorities to implement these measures;
  - k. Carrying out human rights-based agrarian reform and other rural and urban land-reform schemes. Ensuring adequate and equitable land access and tenure security for small-scale farmers and other producers, including fisherfolk and pastoralists, who depend on access to land for their livelihood through decent works, based on the realization that, with adequate forms of support, small-scale farmers and producers generally achieve the optimum productive use of the land;
  - l. Guaranteeing the tenure rights of indigenous peoples to own, develop, control, access and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without indigenous peoples' full and free prior informed consent, taking progressive steps to return these lands and territories to the indigenous peoples with legally protected tenure.
112. In connection with the above, the Covenant's Article 11, para. 2(a), imposes on States parties the obligation to ensure progressive realization of covenanted rights, including 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.”<sup>139</sup>

113. Promoting the human right to land involves promoting the social and environmental functions of land. This requires policies, laws and regulations that appreciate that all land inherently possesses a vital social function that calls for its optimum use to realize social needs within a framework of environmental sustainability and inter-generational equity. States should mediate, balance and ultimately subordinate the treatment of land in private law to its public law requirements, including the human right to land that fulfils its social function. This approach involves the treatment of land not merely as a commodity, but as a social good common to all human rights bearers within the territorial jurisdiction and effective control of all State parties.
114. Measures to realize the State party’s obligation to fulfil the human right to land, aligned with the obligations to fulfil other covenanted rights, would require States, including relevant authorities, to ensure access to secure and well-located housing for the rural and urban poor through, inter alia, the following measures:
- (a) Designing and implementing housing, landlord/tenant, land use and other relevant laws, policies, programmes and projects that realize the human right to land;
  - (b) Conducting /national and local audits of vacant, unclaimed and unutilized land, housing and buildings that potentially could be used to shelter and/or support livelihoods of needy households;
  - (c) Conducting assessments of spatial needs to house the rural and urban poor, including homeless persons, taking into account current and anticipated trends;
  - (d) Allocating available public land for the provision of low-income housing and ‘homestead’ for subsistence livelihood through decent work activities for the landless;
  - (e) Adopting measures to combat speculation and underutilization of private land, housing and buildings;
  - (f) Adopting inclusive urban and rural spatial-planning strategies and regulations;
  - (g) Ensuring the active, free, effective, meaningful and informed participation of those who could be affected, with special attention to women, youth and marginalised groups, taking into account existing power imbalances, and applying the existing international standards on full and free, prior and informed consent;
  - (h) Adopting measures to regulate and stimulate the low-income rental market and collective forms of tenure; and
  - (i) Adopting measures to regulate the housing and real estate finance market and financial institutions.<sup>140</sup>
    - (j) Promoting community-based land administration <sup>141</sup> and land markets that meet community needs,<sup>142</sup> as well as the commitment to involve multiple sectors and partner with civil society and communities in land administration.<sup>143</sup>
115. In order to comply with their obligation to fulfil the human right to land, States parties are required to facilitate secure and sustainable access to, use of, and control over land and related natural resources for individuals and groups who have no sufficient access to those resources, but nonetheless depend on them to realise their economic, social and cultural rights, such as the right to feed themselves, to house themselves and to provide an adequate standard of living for themselves. This includes the obligation to restore lands and natural resources to marginalized

people whose lands and natural resources were unlawfully or arbitrarily taken from them, or who have lost access to productive land necessary for their livelihood through decent work due to natural or human-made disasters. This category of “landless” persons constitutes a large and ever-growing constituency in every region.

116. For those persons and communities dispossessed or displaced through gross violations of human rights, as in the case of forced eviction, the State party bears the duty to ensure their reparation, in accordance with international law.<sup>144</sup>
117. Promoting, facilitating and taking measures and steps to fulfil the human right to land also requires the State party to provide information, targeted training and other means to develop capabilities of all parties concerned to understand and operationalize the human right to land. This obligation can be achieved through a combination of such measures, including:
- (a) Public awareness campaigns and public-service announcements on the human right to land as a method and approach to achieve equity, social cohesion and realize a bundle of other covenanted human rights;
  - (b) Specialized training of public servants, local authorities, lawyers, judges, law enforcement officers, political parties, trade and labour unions, journalists and civil society organizations on the human right to land, its normative content, sources in law, obligations borne by all organs of the state, and the types and consequences of violations of the human right to land; of Designing and implementing housing, landlord/tenant, land use and other relevant laws, policies, programs and projects that realize the human right to land;
  - (c) Conducting research and disseminating knowledge about the diverse types of tenure within the State party, including the equity issues, preventing and avoiding the potential conflicts related to each;
  - (d) Aligning policies and legislation with the principles of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, to ensure that all legitimate tenure rights, including customary rights and informal tenure rights that are not currently protected by law as well as grazing, gathering and usage rights, are recognized and protected by national legislation<sup>145</sup>;
  - (e) Maintaining accurate, comprehensive and up-to-date public records on land tenure throughout the State party;
  - (f) Imparting complete, reliable and user-friendly information on the tenure options and tenure governance structures and functions within the State party;
  - (g) Developing participatory national strategies and plans for realizing land equity and social justice across the State party;
  - (h) Simplifying processes and procedures to obtain legally secure tenure to lands within the legally prescribed criteria across the State party.

#### *Core obligations*

118. In General Comment No. 3 (1990), the Committee confirms that States parties bear a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the human rights guaranteed in the Covenant. In the Committee’s view, at least several core obligations can be identified in relation to the human right to land, having immediate effect, to:

- (a) Ensure a minimum essential access to land, that is sufficient and safe for personal and domestic use to ensure adequate housing;
- (b) Ensure equitable distribution of all available land facilities and services;
- (c) Ensure the right to adequate land and land-related facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- (d) Ensure personal security is not threatened when having to physically access to land;
- (e) Ensure that no one is rendered landless by means, actions, processes or factors, including but not limited to discrimination; dispossession; displacement, including forced eviction; denial (of use, access, etc.); scarcity of land; damage or destruction of land and/or means of access, or insufficient capability to realise their human right to land;
- (f) Adopt and implement a national land strategy and plan of action addressing the whole population and all prevailing types of tenure arrangements; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to land indicators and benchmarks, by which progress toward realising everyone's human right to land can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;
- (g) Monitor the extent of the realization, or the non-realization, of the human right to land;
- (h) Adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;
- (i) Take measures to prevent, treat and control diseases linked to pollution and other degradation of land, in particular ensuring access to adequate sanitation, alternative land in case of detriment to health, adequate housing or livelihood; accountability and liability for wrongful acts leading to land loss, pollution or degradation.

119. The Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical, that enables developing countries to fulfil their core obligations.

### Violations

120. As with human rights, generally, the normative content of the human right to land becomes clearer in cases of its violation. In State party reviews<sup>146</sup> and communications under the Optional Protocol,<sup>147</sup> the Committee continuously has confronted cases involving the deliberate and widespread denial of the human right to land in both developing and developed countries. That denial has led to the deprivation of other covenanted human rights and human needs, often involving the failure of the State to respect, protect and fulfil multiple, indivisible and interdependent economic, social and cultural human rights. Often such cases involve the derogation or violation of process and accessory human rights guaranteed also under the International Covenant on Civil and Political Rights such as access to justice, information, freedom of movement and residence, freedom of opinion, expression, association and peaceful assembly, and participation in public life.<sup>148</sup> These breaches of covenanted human rights may cause and/or result from the violation of the human right to land.

121. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps toward the realization of the human right to land. In accordance with international law, a failure to act in good faith to take

such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its noncompliance with the *Core Obligations* above, which are non-derogable.

122. In determining which actions or omissions amount to a violation of the human right to land, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the human right to land. This follows from Article 11, paragraph 1, which guarantee the right to an adequate standard of living, as well as from Article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources, to ensure progressive realisation and to engage in international cooperation and assistance in accordance with economic, social and cultural rights. A State that is unwilling to apply these principles of Covenant implementation for the realization of the human right to land is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.
123. Violations of the human right to land can occur through acts of commission, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the *Core Obligations* (above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the human right to land, or the adoption of legislation or policies that are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the human right to land.
124. Violations through acts of omission include the failure to take appropriate steps toward the full realization of everyone's human right to land, the failure to have a suitable national policy on land, and the failure to enforce relevant laws, in accordance with the Covenant and this General Comment.
125. While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee's work, may be identified. A violation of the human right to land may come about through acts or processes leading to dispossession or denial of access, use, secure tenure, control or other benefit from land necessary for the enjoyment of other human rights. A violation may result from the interference with related entitlements include the human being's meaningful participation in, and benefit from a land administration and management system that provides equal opportunity for everyone to enjoy her/his human right to land.
126. Violations of the human right to land may result in a condition of landlessness, whereby a person or community is unable to enjoy equitable access to, and use of rural or urban land with secure tenure as needed to fulfil one or more human needs and/or human rights. Those who are landless are those persons or groups whose human right to land has been violated (i.e., living in a state of landlessness) due to any single, or combination of means, actions, processes and factors, including but not limited to discrimination; dispossession; displacement, including forced eviction; denial (of use, access, etc.); scarcity of land; damage or destruction of land and/or means of access, or insufficient capability to realise their human right to land.

#### *Violations of the Obligation to Respect*

127. A State party may violate the human right to land by any sphere of government, public institution, representative or agent of the State party practicing any prohibited form of discrimination that results in the denial or deprivation of adequate land. The land tenure type or status should never be applied as a pretext for discrimination of Covenant rights.
128. A violation of the State party's obligation to respect the human right to land ensues when any sphere of government, public institution, representative or agent carries out forced eviction of individuals, groups, or communities from their homes and lands as defined in General Comment No. 7 on the right to housing: "forced eviction."<sup>149</sup> The practice of forced eviction constitutes a gross violation of human rights, in particular, the human right to adequate housing.<sup>150</sup>
129. A violation of the State party's obligation to respect the human right to land ensues when any sphere of government, public institution, representative or agent engages in any practice or activity that denies or limits equitable access, use, administration and/or control of adequate land; arbitrarily interfering with customary or traditional arrangements for land allocation; unlawfully degrading or polluting land, for example through waste from State-owned facilities, or through use and testing of weapons; and limiting access to, or destroying, land records and land administration services and infrastructure as a punitive measure, for example, during armed conflicts, in violation of international humanitarian law and this Covenant.

#### *Violations of the Obligation to Protect*

130. A violation of the State party's obligation to respect the human right to land ensues when any sphere of government, public institution, representative or agent of the State party omits, or otherwise fails to prevent a third party from contaminating, depleting, denying and/or inequitably distributing land.
131. A violation of the State party's obligation to protect the human right to land occurs when any of its organs, representatives or agents omits, or otherwise fails to prevent, prosecute or remedy any practice or activity that denies or limits equitable access, use, administration, and control of adequate land; arbitrarily interfering with customary or traditional arrangements for land allocation; unlawfully degrading or polluting land, for example, through waste from State-owned facilities, or through use and testing of weapons; and limiting access to, or destroying, land records and land administration services and infrastructure as a punitive measure, for example, during armed conflicts, in violation of international humanitarian law and this Covenant.

#### *Corruption*

132. Corruption has been defined as "the misuse of entrusted power for private gains," such that "hurts everyone whose life, livelihood or happiness depends on the integrity of people in a position of authority."<sup>151</sup> However, corruption that violates economic, social and cultural rights extends beyond illicit "private" acquisitions by individual natural persons. Rather, corruption could entail any "abuse of the public interest by narrow sectional interests."<sup>152</sup>
133. Land administration is one of the areas where corruption is most significant. Corruption can play a major role in the demarcation of land and in the enumeration of beneficiaries in titling schemes; the design of land use schemes and the identification of land as "underutilized" or "vacant"; land reclamation and distribution of reclaimed land; public-private partnerships that exclude meaningful popular (i.e., community) participation and benefit; the use of "public purpose" or "eminent domain" provisions to justify expropriation from land; privatization schemes; urban and spatial planning; re-zoning; public procurement in land development projects; selling or leasing land to investors by various spheres of government authorities or community leaders.

134. The International Code of Conduct for Public Officials prohibits public servants and government personnel from using “their official authority for the improper advancement of their own or their family's personal or financial interest” or from engaging “in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.”<sup>153</sup> The Code of Conduct provides that:

“Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.”<sup>154</sup>

135. The forms of corruption in the administration of land and related transactions may vary, involving, *inter alia*, nepotism, bribery, informal payment of dividends and “kick-backs,” political favouritism and illicit finance. These and other forms of corruption may constitute violations of the State’s obligation to respect the human right to land, in the case of benefit accruing to State agents and representatives, or violations of the obligation to protect the right, in the case of third-party benefit from an illicit transaction.

#### *Land and Real-estate Fraud*

136. The term “fraud” commonly refers to activities such as theft, corruption, conspiracy, embezzlement, money laundering, bribery and/or extortion. While specific legal definitions vary from country to country, fraud essentially involves a dishonest party using deception as a means to acquire material or other advantage for her/himself, or to create a loss for another party. Land fraud occurs when a fraudster attempts to, or succeeds in inserting changes in the land register through fraudulent activity, with the goal of making some financial or other material gain.
137. Various types of mortgage lending and fraudulent investment also have caused cross-border harm result in a bundle of human rights violations. States and their jurisdictions sometimes provide haven to illegal and corrupt assets accumulated by public officials in the process of violating human rights domestically. Land registration fraud occurs when a fraudster attempts to, or succeeds in inserting changes in the land register through fraudulent activity, with the goal of making some financial gain through criminally acquired property or interest in property. This could include mortgage fraud and other fraud, involving the forgery or other misuse of land-registration or cadastral data.<sup>155</sup>
138. The State party’s obligation to prevent, combat and remedy corruption arises from the Covenant’s over-riding implementation principle “to take steps...to the maximum of its available resources” in implementing the state obligation to respect, protect and fulfil the enshrined rights (paragraph 2.1), in order to achieve the progressive realization of the human right to land. The same article sets out the principle of “international assistance and cooperation, especially economic and technical” in this regard.
139. The UN Convention against Corruption (UNCaC) covers the acts of “public officials,” “foreign public officials” and “officials of a public international organization.”<sup>156</sup> Under the Convention, State parties have an obligation to collaborate with each other, and with relevant international and regional organizations, in promoting and developing the measures to prevent and combat corruption.<sup>157</sup> States also are obliged to:

“prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.”<sup>158</sup>

140. Consistent with the over-riding principles of this Covenant’s implementation, each State party to UNCaC has an obligation, within its domestic legal system, to identify, trace, freeze, seize or confiscate proceeds property, equipment or other instrumentalities, income or benefits obtained through, used in, or destined for corruption, fraud or crime.<sup>159</sup> States parties are obliged to ensure victims are able to pursue legal means to obtain “compensation.”<sup>160</sup> However, in the case of corruption that violates the human right to land, the reparations framework of UNGA resolution A/RES/60/147 may be more relevant and applicable.
141. The failure of a State party to this Covenant to undertake the steps and measures to prevent, prosecute and remedy corruption in the administration of land and related transactions may constitute a violation of the human rights to land, whether by omission or commission, and a breach of the State’s individual, collective, domestic and/or extraterritorial obligation to respect, protect or fulfil that right under the Covenant.

#### *Failure to Regulate Non-state and International Actors*

142. States parties are required to ensure that their actions as members of international organizations do not impede the enjoyment of the right to land, as well as economic, social and related to land and other natural resources.<sup>161</sup> Accordingly, States parties that host, or are members of international financial institutions, notably the World Bank Group, IFAD, regional development banks, United Nations specialised organisations and other development agencies, are required to take steps to ensure that the lending and grant-making policies and practices, credit agreements, trade and investment agreements/policies and other practices of these entities do not derogate or otherwise impair the enjoyment of the right to land and other natural resources as provided in this General Comment.
143. Such non-state and multilateral actors must respect and protect the substantive and process human rights related to their operations, in particular, the human right to land. These include the applicable international standards concerning free, prior and informed consent, including in the context of infrastructure and mega-projects, and major events, involving land allotment or acquisition.<sup>162</sup> Failure to carrying out adequate, prior human rights impact assessments (HRIAs), regular monitoring of human rights impacts and ensuring that effective remedies, including reparation, as appropriate, are carried through for those affected, may lead to violations of the State’s obligation to protect.

#### *Violations of the Obligation to Fulfil*

144. The effective functioning of process mechanisms within the State, operating principles of social justice, spatial justice, environmental justice, the habitat approach, and security of tenure are measures to ensure the substantive fulfilment of the human right to land. The failure to adopt appropriate legislation and policies, and institute programmes, projects, budgets and practices may lead to the violation of the State’s obligation to fulfil the human right to land by omission.
145. In situations where any sphere of national or sub-national government does not have an efficient and effective system for collecting revenue and, at the same time, is not making concerted efforts to improve revenue collection, the State party could fail to meet its obligation to use the maximum of available resources to realise economic, social and cultural human rights progressively. As noted above under **General Obligations: Maximum of Available Resources**,

ineffective revenue collection may belie government claims of lacking adequate resources to realize human rights, including the human right to land, by failing to operationalize the over-riding principles of Covenant.

### **Implementation at the National Level**

146. In accordance with Covenant Article 2, paragraph 1, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. However, the Covenant clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the human right to land as soon as possible. Any national measures designed to realize the human right to land should not interfere with the enjoyment of other human rights.

#### *Legislation, strategies and policies*

147. The State party and its relevant organs should review existing legislation, strategies and policies to ensure that they are compatible with obligations arising from the human right to land, and should repeal, amend or rescind those that are inconsistent with Covenant requirements.

148. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the human right to land. The strategy must:

- (a) Be based upon human rights law and principles;
- (b) Cover all aspects of the human right to land and the corresponding obligations of State parties;
- (c) Define clear objectives;
- (d) Set targets or goals to be achieved and the time frame for their achievement;
- (e) Formulate adequate policies and corresponding benchmarks and indicators.

The strategy also should establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their national human right to land strategies, the State party should avail itself of technical assistance and cooperation of the United Nations specialized agencies (see **Obligations of Actors Other Than States** below).

149. The formulation and implementation of national land administration strategies and plans of action should respect all of the over-riding principles of Covenant implementation. The human right of individuals and groups to participate in decision-making processes that may affect their exercise of the human right to land must be an integral part of any process, policy, programme or strategy concerning land. Individuals and groups should be given full and equal access to information concerning land, land services and the environment, whether held or produced by public authorities or third parties.

150. The national land administration, strategy and plan of action should also be based on the principles of respect for human rights and international humanitarian law, human dignity, non-discrimination, equality and justice, gender sensitivity and equality, holistic approaches and sustainability. The operational principles of meaningful consultation and participation, rule of law, transparency, accountability and independence of the judiciary, since good governance is

essential to the effective implementation of all human rights, including the realization of the human right to land.

151. States parties may find it advantageous to adopt framework legislation to operationalise their human right to land strategy. Such legislation should include:
- (a) Targets or goals to be attained and the time frame for their achievement;
  - (b) The means by which the purpose could be achieved;
  - (c) The intended collaboration with civil society, private sector and international organizations;
  - (d) Institutional responsibility for the process;
  - (e) National mechanisms for its monitoring; and
  - (f) Remedies and recourse procedures.
152. The State party should undertake steps to ensure sufficient coordination between and among national ministries, regional and local governments and authorities, in order to reconcile land-related policies. Where implementation of the obligations related to the human right to land have been delegated to regional or local governments and authorities, or other organs of the State, the State party still retains the responsibility to comply with its Covenant obligations and, therefore, should ensure that those various organs of the State have at their disposal sufficient resources to maintain and extend the necessary services and facilities necessary to realize the human right to land. The States parties must further ensure that such organs and representatives of the State do not deny access to services on a discriminatory basis.
153. In order to ensure equitable opportunity to realize the human right, the State party may wish to legislate and institute a maximum ceiling on land holdings to be claimed and possessed by individuals, households and other entities, as some States parties, including national and local spheres of government, have done.<sup>163</sup>
154. States parties are obliged to monitor effectively the realization of the human right to land. In monitoring progress toward the realization of the human right to land, States parties should identify the factors and difficulties affecting implementation of their obligations.

#### *Indicators and benchmarks*

155. To assist the monitoring process, the state should identify human right to land indicators in the national land policies, policies, strategies, programmes, plans of action and/or budgets, as appropriate. The indicators should be designed to monitor achievement of the human right to land in all spheres and at all levels of the State's operation. Indicators should address the different components of land adequacy (as outlined in the **Normative Content of the Human Right to Land** above). Statistical data should be disaggregated by the prohibited grounds of discrimination and cover all persons residing in the State party's territorial jurisdiction or under its effective control. States parties may obtain guidance on appropriate indicators from the ongoing work of the Food and Agriculture Organization of the United Nations (FAO), the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Centre for Human Settlements (UN-Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), the United Nations Commission on Human Rights, UN Women, or other bodies of the UN Sustainable Development System, insofar as these correspond to human rights criteria.

156. Having identified appropriate human right to land indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure, the Committee will engage in a process of “scoping” with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks that then will provide the targets to be achieved during the next reporting period. In the ensuing five years between Covenant-implementation reporting cycles, the State party will use those national benchmarks to help monitor its implementation of the human right to land. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered.<sup>164</sup> Further, when setting benchmarks and preparing their reports, States parties lacking sufficient capacity should utilize the extensive information and advisory services of UN specialized organisations to assist in data collection and disaggregation.

*Remedies and accountability*

157. Any persons or groups who have been denied their right to land should have access to effective judicial or other appropriate remedies at both national and international levels.<sup>165</sup> The Committee notes whether the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the human right to land should be entitled to adequate reparation, which calls for: restitution, including return, resettlement and rehabilitation; compensation; satisfaction; and guarantees of non-repetition. National ombudsmen, human rights commissions, National Human Rights Institutions and similar bodies should be permitted to address violations of the right.

158. Before any action that interferes with an individual’s or group’s human right to land is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant and ensure:

- (a) An opportunity for genuine consultation with those affected;
- (b) Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (d) Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- (e) All persons carrying out the eviction to be properly identified;
- (f) Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies;
- (h) Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts;
- (i) Evictions should not result in individuals being rendered homeless, landless or vulnerable to the violation of other human rights.<sup>166</sup>

Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

159. The incorporation in the domestic legal order of international instruments recognizing the human right to land can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the human right to land, or at least the core obligations, by direct reference to the Covenant.
160. States parties should encourage and require judges, adjudicators and members of the legal profession to pay greater attention to violations of the human right to land in the exercise of their functions.
161. States parties should respect, protect, facilitate, promote and assist the work of human rights advocates and other members of civil society with a view to supporting vulnerable or marginalized groups in the realization of their human right to land.

### **State Reporting**

162. With regard to Article 1 of the Covenant, State party reports to the Committee should indicate the ways and means by which the State party recognizes and protects the rights of indigenous communities, if any, to ownership of the lands and territories that they traditionally occupy or use as traditional sources of livelihood. The State party's initial and periodical reports also should indicate the extent to which indigenous and local communities are duly consulted, and whether their free, prior and informed consent is sought in any decision-making, development and other processes affecting their rights and interests under the Covenant. The State party report should provide examples to illustrate the State party's fulfilment of its corresponding obligations under Article 1.<sup>167</sup>
163. State party reports should indicate the measures taken to promote equality of access by the disadvantaged and marginalized individuals and groups, including landless peasants and persons belonging to minorities and other marginalised groups to land, other natural resources, land-related infrastructure, credit and technology for food production.<sup>168</sup>
164. Reporting on performance of obligations under Article 11 should indicate whether a national survey on landlessness, homelessness and inadequate enjoyment of the human right to land has been undertaken, as well as its findings, in particular the number of individuals and households who are landless, homeless or inadequately housed and without access to basic infrastructure and services.<sup>169</sup>
165. States parties should report whether any disadvantaged and marginalized individuals and groups, such as ethnic minorities, are particularly affected by forced evictions from lands and the measures taken to ensure that no form of discrimination is involved whenever evictions take place.<sup>170</sup>
166. State party reports should also indicate the number of persons and households evicted from housing and land within the reporting period and the legal provisions defining the circumstances in which evictions may have taken place and the rights of inhabitants to security of tenure, protection from eviction and the other conditions required for legal evictions, in accordance with General Comment No. 7.<sup>171</sup>

### **The Role of Actors Other Than States**

167. United Nations agencies and other international organizations concerned with land, such as FAO, OHCHR, UNICEF, UNEP, UN-Habitat, ILO, UNDP, UN Women, IFAD, or other bodies of the UN Sustainable Development System, as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise within human rights criteria, in relation to the implementation of the human right to land at the national and international level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the human right to land in their lending policies, credit agreements, grants, development policy programmes and other development activities,<sup>172</sup> so that the enjoyment of the human right to land is respected, protected and fulfilled.
168. When examining the reports of States parties and their ability to meet the obligations to realize the human right to land, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the human right to land. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF and UN Women, as well as non-governmental organizations and other associations, is especially important in disaster relief and humanitarian assistance in times of emergencies. Priority should be given to the most vulnerable or marginalized groups of the population in the provision of aid, distribution and administration of land and land-related facilities.
169. In all cases, the State party and all relevant actors should seek the progressive realisation of the human right to land by fostering coordination to achieve policy and operational coherence to ensure that short-term emergency relief, longer-term and institution-building development approaches align with the human rights framework, with its dual preventive and remedial dimensions.<sup>173</sup>

## Endnotes:

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- <sup>1</sup> As provided for in UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDaW), Article 4(1). See also Ineke Boerefijn, Fons Coomans, Jenny E. Goldschmidt, Rikki Holtmaat and Ria Wolleswinkel *Special Temporary Measures*, Maastricht Series in Human Rights (Cambridge, England: Intersentia, November 2003), at: <http://intersentia.com/en/temporary-special-measures.html>; Asian Development Bank, *Gender and Law: Temporary Special Measures to Promote Gender Equality* (June 2010), at: <https://www.adb.org/sites/default/files/institutional-document/33634/files/guidance-note-gender-and-law.pdf>.
- <sup>2</sup> Center for Economic and Social Rights, "Defining Economic Justice and Social Justice", at: <http://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/>; David Harvey, *Social Justice and the City* (Oxford: Blackwell, 1973), at: <https://oneboxofturkishdelights.files.wordpress.com/2013/07/david-harvey-social-justice-and-the-city.pdf>.
- <sup>3</sup> Edward W. Soja, "The city and spatial justice," January 2009, at: <https://www.jssi.org/wp-content/uploads/2012/12/JSSJ1-1en4.pdf>; Sophie Didier, Frédéric Dufaux, « La ville et la justice spatiale », *peuple autochtones et justice spatiale*, n° 01 (September 2009), at: <http://www.jssi.org>; Edward W. Soja, *Seeking Spatial Justice* (Minneapolis: University of Minnesota Press, 2010); Justin Williams, "Toward a Theory of Spatial Justice," paper presented at the Annual Meeting of the Western Political Science Association, Los Angeles CA, "Theorizing Green Urban Communities," 28 March 2013, at: <https://wpsa.research.pdx.edu/papers/docs/Williams,%20Spatial%20Justice,%20WPSA%202013.pdf>;
- <sup>4</sup> Environmental justice has been defined as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies....It will be achieved when everyone enjoys the same degree of protection

- from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. United States Environmental Protection Agency, "Environmental Justice," at: <https://www.epa.gov/environmentaljustice>.
- <sup>5</sup> Gene R. Laczniak and Patrick E. Murphey, "Distributive Justice: Pressing Questions, Emerging Directions, and the Promise of Rawlsian Analysis," *Journal of Macromarketing*, Vol. 28, Issue 1 (March 2008), pp. 5–11, p. 7 and diagram; Edmund S. Phelps, "Distributive justice," *The New Palgrave: A Dictionary of Economics*, vol. 1, pp. 886–88, at: [https://en.wikipedia.org/wiki/The\\_New\\_Palgrave\\_Dictionary\\_of\\_Economics#The\\_New\\_Palgrave:\\_A\\_Dictionary\\_of\\_Economics](https://en.wikipedia.org/wiki/The_New_Palgrave_Dictionary_of_Economics#The_New_Palgrave:_A_Dictionary_of_Economics).
- <sup>6</sup> A regional and cross-sectoral approach to human settlements planning, development and governance, that places emphasis on rural/urban linkages and treats villages and cities as points on a human settlements continuum within a common ecosystem. See Istanbul Declaration on Human Settlements and the Habitat Agenda, A/CONF.165/14, 7 August 1996, para. 104, at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/CONF.165/14](http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.165/14).
- <sup>7</sup> General Comment (GC) No. 4 "the right to housing," (art. 11 (1) of the Covenant), sixth session (1991), contained in document E/1992/23, 13 December 1991, para. 8(a), at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en); Raquel Rolnik, "Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context," A/HRC/25/54, 27 March 2014, para. 2, at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-54\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-54_en.doc).
- <sup>8</sup> UN, "Poverty Eradication," Sustainable Development Knowledge Platform, at: <https://sustainabledevelopment.un.org/topics/povertyeradication>.
- <sup>9</sup> See, for example, CESCR Concluding Observations on Kenya, 2008; Democratic Republic of the Congo, 2009; Indonesia, 2014.
- <sup>10</sup> *Land and Human Rights, Standards and Application* (Geneva: OHCHR, 2015), at: [http://www.ohchr.org/Documents/Publications/Land\\_HR-StandardsApplications.pdf](http://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf); *Land and Human Rights: Annotated Compilation of Case Law* (Geneva: OHCHR, 2015), at: [http://www.ohchr.org/Documents/Publications/Land\\_HR-CaseLaw.pdf](http://www.ohchr.org/Documents/Publications/Land_HR-CaseLaw.pdf); *Realizing Women's Rights to Land and Other Productive Resources* (Geneva: OHCHR, 2013), at: <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>; Report of the United Nations High Commissioner for Human Rights on land and human rights, E/2014/86, at: <http://www.un.org/Docs/journal/asp/ws.asp?m=E/2014/86>.
- <sup>11</sup> *Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights' Treatment of Land Rights as Human Rights* (London: Minority Rights Group, 2015), at: .
- <sup>12</sup> Defined as "a person of international law possessing the qualifications of: (a) a permanent population, (b) a defined territory, (c) government and (d) capacity to enter into relations with the other states." Convention on Rights and Duties of States (in)ter-American), 26 December 1933, Article 1.
- <sup>13</sup> As affirmed in gravitational biology, human physical development is adapted to life on land, as the factor gravity enables functions of the spine, internal organs, digestion, elimination of waste, flexible mobility, reproduction and the circulation of blood and oxygen. See Ralf H. Anken and Hinrich Rahmann, "Gravitational Zoology: How Animals Use and Cope with Gravity," in Gerda Horneck and Christa Baumstark-Khan, eds., *Astrobiology - The Quest for the Conditions of Life* (Berlin Heidelberg New York: Springer Verlag, January 2002), at: [https://link.springer.com/chapter/10.1007%2F978-3-642-59381-9\\_21](https://link.springer.com/chapter/10.1007%2F978-3-642-59381-9_21); also Janet Tou, April Ronca, Richard Grindeland and Charles Wade, "Models to Study Gravitational Biology of Mammalian Reproduction," *Biology of Reproduction*, Vol. 67 (2002), at: <http://www.bioreprod.org/cgi/content/abstract/bioreprod.102.007252v1>.
- <sup>14</sup> Also referred to as the "Schumann resonance," named after the physicist who first studied the theoretical aspects of the global resonances of the earth-ionosphere waveguide system. Winfried Otto Schumann, "Über die strahlungslosen Eigenschwingungen einer leitenden Kugel, die von einer Luftschicht und einer Ionosphärenhülle umgeben ist," *Zeitschrift für Naturforschung*, Vol. 7, No 2 (1952), at: <https://www.degruyter.com/downloadpdf/j/zn.1952.7.issue-2/zn-1952-0202/zn-1952-0202.pdf>.
- <sup>15</sup> The neural oscillations in the frequency range of 7.5–12.5 Hz arising from synchronous and coherent (in phase or constructive) electrical activity of thalamic pacemaker cells in humans when a person is awake and relaxed.
- <sup>16</sup> James L Oschman, Gaétan Chevalier, Richard Brown, "The effects of grounding (earthing) on inflammation, the immune response, wound healing, and prevention and treatment of chronic inflammatory and autoimmune diseases," *Journal of Inflammation Research*, Vol. 8 (24 March 2015), at: <https://www.dovepress.com/the-effects-of-grounding-earthing-on-inflammation-the-immune-response-peer-reviewed-article-JIR>; Joseph Mercola, "The Effects of Grounding" (21 November 2015), at: <https://articles.mercola.com/sites/articles/archive/2015/11/21/grounding-effects.aspx>.
- <sup>17</sup> Gaétan Chevalier, Stephen T. Sinatra, James L. Oschman, and Richard M. Delany, "Earthing (Grounding) the Human Body Reduces Blood Viscosity—a Major Factor in Cardiovascular Disease," *The Journal of Alternative and Complementary Medicine*, Vol. 19, No. 2 (2013), at: <https://www.liebertpub.com/doi/pdfplus/10.1089/acm.2011.0820>. Direct contact with land (earthing) during exercise also can inhibit hepatic protein catabolism or increase renal urea excretion, resulting in a positive nitrogen balance. This phenomenon has fundamental importance in understanding human metabolic processes. Paweł Sokal, Zbigniew Jastrzębski, Ewelina Jaskulska, Karol Sokal, Maria Jastrzębska, Łukasz Radziński, Robert Dargiewicz, and Piotr Zieliński, "Differences in Blood Urea and Creatinine Concentrations in Earthed and

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- Unearthed Subjects during Cycling Exercise and Recovery,” *Evidence-Based Complementary and Alternative Medicine*, Vol. 2013 (2013), at: <http://dx.doi.org/10.1155/2013/382643>.
- <sup>18</sup> Karol Sokal and Pawel Sokal, “Earthing the Human Body Influences Physiologic Processes,” *The Journal of Alternative and Complementary Medicine*, Vol. 17, Issue 4 (April 2011), at: <https://www.liebertpub.com/doi/abs/10.1089/acm.2010.0687>.
- <sup>19</sup> Gaétan Chevalier, Stephen T. Sinatra, James L. Oschman, Karol Sokal, and Pawel Sokal, “Earthing: Health Implications of Reconnecting the Human Body to the Earth’s Surface Electrons,” *Journal of Environment and Public Health*, Vol. 2012 (2012), at: <http://dx.doi.org/10.1155/2012/291541>.
- <sup>20</sup> The Civil Society Mechanism for the Committee on World Food Security has defined landlessness as “the condition of being without equitable access to, and use of rural or urban land with secure tenure as needed to fulfil one or more human needs and/or human rights. Those who are landless are those persons or groups living in such a condition (i.e., landlessness) due to any single, or combination of means and factors, including but not limited to: Discrimination; Dispossession; Displacement, including forced eviction; Denial (of use, access, etc.); Scarcity of land; Insufficient capability; Damage or destruction of land and/or means of access.” Estimates of the numbers and percentages of landless persons and communities, as well as the phenomenon of landlessness, vary. See, for instance, Radha Sinha, *Landlessness: A Growing Problem* (Rome: Food and Agriculture Organization of the United Nations, 1984); Inderjit Singh, *Small farmers and the landless in South Asia* (Washington: World Bank, 1979); Mohamad Riad El Ghonemy, *The Dynamics of Rural Poverty* (Rome: FAO, 1986), pp. 15–17; Talat Anwar, Sarfraz K. Qureshi and Hammad Ali, “Landlessness and Rural Poverty in Pakistan,” *The Pakistan Development Review*, No. 43 (February 2004), 855–74; Barry Naughton, *The Chinese Economy: Transitions and Growth* (Boston MA: MIT Press, 2007), pp. 119–20; Elisabeth Wickeri, “Land Is Life; Land Is Power: Landlessness, Exclusion and Deprivation in Nepal,” *Fordham International Law Journal*, Vol. 34, No. 4 (2011), pp. 932–1040; John F. McCarthy, Kathryn Robinson, eds., *Land and Development in Indonesia: Searching for the People’s Sovereignty* (Singapore: ISEAS-Yusof Ishak Institute, 18 May 2016), pp. 278–9.
- <sup>21</sup> The New Urban Agenda, adopted by the General Assembly on 23 December 2016, recognizes the “social and ecological function of land, with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination, universal access to safe and affordable drinking water and sanitation, as well as equal access for all to public goods and quality services in areas such as food security and nutrition, health, education, infrastructure, mobility and transportation, energy, air quality and livelihood through decent works...” A/RES/71/256, 25 January 2017, para. 13, at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/256](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/256);
- <sup>22</sup> Land has been referenced repeatedly in previous General Comments from CESCR. See: CESCR General Comment No. 4 on the Right to Adequate Housing (1991), contained in UN Doc. E/1992/23, at paras. 8(a) and (e); CESCR General Comment No. 7 (1997) on Forced Evictions, contained in UN Doc. E/1998/22, annex IV., at paras. 2, 3, 7, 9, 15 and 16; CESCR General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5, at paras. 12, 13 and 26; CESCR General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, at para. 27; CESCR General Comment No. 15 (2002) on the Human right to land, UN Doc. E/C.12/2002/11, at paras. 16(c) and (d); CESCR General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4, at para. 28; CESCR General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c).
- <sup>23</sup> Commission on Human Rights, “forced eviction,” resolution 1993/77, 10 March 1993, at: <http://www.hlnr.org/img/documents/ECN4199377%20en.pdf>; and “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, para. 1, at: [http://www.hlnr.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlnr.org/img/documents/E-CN_4-RES-2004-28.pdf).
- <sup>24</sup> As recognised in E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2005/48, E/CN.4/2005/43 and E/CN.4/2006/118.
- <sup>25</sup> General Comment No. 4, op. cit., para. 8(e). See also the reports of country missions and working visits by the Special Rapporteur on adequate housing to Afghanistan, Australia, Brazil, Cambodia, Islamic Republic of Iran, Kenya, occupied Palestinian territories and Peru.
- <sup>26</sup> See Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter, A/HRC/16/49, 20 December 2010, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/49/PDF/G1017849.pdf?OpenElement>.
- <sup>27</sup> General Comment No. 12: The right to adequate food (art. 11), twentieth session (1999), contained in document E/C.12/1999/5, para. 12.
- <sup>28</sup> General Comment No. 15 (2002) The human right to water (arts. 11 and 12 of the Covenant), twenty-ninth session (2002), E/C.12/2002/11, 20 January 2003, at: [http://www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf); The human right to water and sanitation, A/RES/64/292, 3 August 2010, at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/64/292](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292).
- <sup>29</sup> GC 15, op. cit., para. 16(c).
- <sup>30</sup> Ibid., para. 16(d).
- <sup>31</sup> Ad minimum, in accordance with Article 31 of the Convention on the Rights of the Child. Article 30 of International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008.
- <sup>32</sup> In accordance with ICCPR, Article 25.
- <sup>33</sup> In accordance with ICESCR, Article 1.
- <sup>34</sup> ICESCR, Article 1.2.

- <sup>35</sup> As in the Paris Agreement on climate change C.N.63.2016, 12 December 2015, at: <https://treaties.un.org/doc/Publication/CN/2016/CN.63.2016-Eng.pdf>; and United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), A/AC.241/27, 12 September 1994, at: <http://www.unccd.int/Lists/SiteDocumentLibrary/conventionText/conv-eng.pdf>.
- <sup>36</sup> GC 4, op. cit., para. 8(b).
- <sup>37</sup> New Urban Agenda op. cit., para. 46.
- <sup>38</sup> GC 4, op. cit., para. 8(d).
- <sup>39</sup> E/C.12/GC/21 (General comment No. 21): Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), par 36. See also United Nations Declaration on the Rights of Indigenous Peoples, art. 26.1.
- <sup>40</sup> Convention No. 169, arts. 13–16. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 20 and 33.
- <sup>41</sup> Mike Barry, *Property Theory, Metaphors and the Continuum of Land Rights* (Nairobi: Global Land Tool Network and UN-Habitat, 2015), at: <http://www.glttn.net/index.php/publications/publications/download/2-glttn-documents/2200-the-continuum-of-land-rights> <http://www.ucalgary.ca/mikebarry/files/mikebarry/barry-2015-property-theory-metaphors-and-the-continuum-of-land-rights-published.pdf>; Joseph Schechla, “Security of Tenure through the Habitat Agenda, 1976–2016,” Urban Thinkers Campus “Housing in the City We Want,” 16–18 November 2018, at: [http://www.hlrn.org/img/documents/JS\\_presentation\\_full.pdf](http://www.hlrn.org/img/documents/JS_presentation_full.pdf).
- <sup>42</sup> Lauren Royston, *Inequality and Economic Marginalisation: How tenure security can increase access to economic opportunities to poor people* (Pretoria: Trade & Industrial Policy Strategies, January 2009), pp. 6–7, at: [http://www.tips.org.za/files/u65/tenure\\_security\\_-\\_lauren\\_royston.pdf](http://www.tips.org.za/files/u65/tenure_security_-_lauren_royston.pdf).
- <sup>43</sup> GC 15, para. 16(c).
- <sup>44</sup> General Comment No. 4 on the right to adequate housing, para. 8(a).
- <sup>45</sup> In its General Comment No. 4, para. 9, the Committee considers that rights cannot be viewed in isolation from other human rights contained in the two international Covenants and other applicable international instruments.
- <sup>46</sup> The Vancouver Action Plan, 64 Recommendations for National Action approved at Habitat: United Nations Conference on Human Settlements, Vancouver, Canada, 31 May to 11 June 1976, at: [http://mirror.unhabitat.org/downloads/docs/The\\_Vancouver\\_Declaration.pdf](http://mirror.unhabitat.org/downloads/docs/The_Vancouver_Declaration.pdf).
- <sup>47</sup> Agenda item 10 (d).
- <sup>48</sup> Vancouver Declaration, op. cit., Preamble, para. 1.
- <sup>49</sup> In the report of Committee II (A/CONF.70/10) submitted to Plenary the following footnote appeared: “Subject to the action to be taken by the Conference on the Declaration of Principles.”
- <sup>50</sup> A. Settlement policies and strategies, Agenda item 10 (a), para. 3.
- <sup>51</sup> Equitable human settlements are defined as “those in which all people, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, have equal access to housing, infrastructure, health services, adequate food and water, education and open spaces.... provide equal opportunity for a productive and freely chosen livelihood through decent work; equal access to economic resources, including the right to inheritance, the ownership of land and other property, credit, natural resources and appropriate technologies; equal opportunity for personal, spiritual, religious, cultural and social development; equal opportunity for participation in public decision-making; equal rights and obligations with regard to the conservation and use of natural and cultural resources; and equal access to mechanisms to ensure that rights are not violated.” Istanbul Declaration on Human Settlements and the Habitat Agenda, A/CONF.165/14, 14 June 1996, at: <http://www.un-documents.net/ac165-14.htm>.
- <sup>52</sup> Ibid., para. 75.
- <sup>53</sup> New Urban Agenda, op. cit.
- <sup>54</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Rome: FAO, 9 March 2012), at: [https://www.uneca.org/sites/default/files/PublicationFiles/vgggt\\_english.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/vgggt_english.pdf).
- <sup>55</sup> FAO, *Responsible governance of tenure and the law: A guide for lawyers and other legal service providers* (Rome, FAO, 2016).
- <sup>56</sup> See CESCR, General Comment No. 15 (2002) on the Human right to land, UN Doc. E/C.12/2002/11, at para. 3.
- <sup>57</sup> Ibid.
- <sup>58</sup> Contained in UN Doc. E/1992/23, at paras. 8(a) and (e).
- <sup>59</sup> Contained in UN Doc. E/1998/22, annex IV., at paras. 2, 3, 7, 9, 15 and 16.
- <sup>60</sup> UN Doc. E/C.12/1999/5, paras. 12 and 13.
- <sup>61</sup> UN Doc. E/C.12/2000/4, para. 27.
- <sup>62</sup> UN Doc. E/C.12/2002/11, paras. 16(c) and (d).
- <sup>63</sup> UN Doc. E/C.12/2005/4, para. 28.
- <sup>64</sup> United Nations Declaration on the Rights of Indigenous Peoples, in particular arts. 5, 8, and 10–13 ff. See also ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, in particular arts. 2, 5, 7, 8, and 13–15 ff.
- <sup>65</sup> UN Doc. E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c). Declaration on the Right to Development (General Assembly resolution 41/128), Art. 1.
- <sup>66</sup> Articles 156.1 and 182.3-4.

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<sup>67</sup> Articles 59, 82, 310 and 313.

<sup>68</sup> Article 282.

<sup>69</sup> Articles 184 and 186.

<sup>70</sup> Article 57. Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights:

1. To freely uphold, develop and strengthen their identity, feeling of belonging, ancestral traditions and forms of social organization.
2. To not be the target of racism or any form of discrimination based on their origin or ethnic or cultural identity.
3. To recognition, reparation and compensation for community groups affected by racism, xenophobia and other related forms of intolerance and discrimination.
4. To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.
5. To keep ownership of ancestral lands and territories and to obtain free awarding of these lands.
6. To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands.
7. To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken.
8. To keep and promote their practices of managing biodiversity and their natural environment. The State shall establish and implement programs with the participation of the community to ensure the conservation and sustainable use of biodiversity.
9. To keep and develop their own forms of peaceful coexistence and social organization and creating and exercising authority, in their legally recognized territories and ancestrally owned community lands.
10. To create, develop, apply and practice their own legal system or common law, which cannot infringe constitutional rights, especially those of women, children and adolescents.
11. To not be displaced from their ancestral lands.
12. To uphold, protect and develop collective knowledge; their science, technologies and ancestral wisdom; the genetic resources that contain biological diversity and agricultural biodiversity; their medicine and traditional medical practices, with the inclusion of the right to restore, promote, and protect ritual and holy places, as well as plants, animals, minerals and ecosystems in their territories; and knowledge about the resources and properties of fauna and flora. All forms of appropriation of their knowledge, innovations, and practices are forbidden.
13. To uphold, restore, protect, develop and preserve their cultural and historical heritage as an indivisible part of Ecuador's heritage. The State shall provide resources for this purpose.
14. To develop, strengthen, and upgrade the intercultural bilingual education system, on the basis of criteria of quality, from early stimulation to higher levels of education, in conformity with cultural diversity, for the care and preservation of identities, in keeping with their own teaching and learning methodologies. A teaching career marked by dignity shall also be guaranteed. Administration of this system shall be collective and participatory, with rotation in time and space, based on community monitoring and accountability.
15. To build and uphold organizations that represent them, in a context of pluralism and cultural, political, and organizational diversity. The State shall recognize and promote all forms of expression and organization.
16. To participate by means of their representatives in the official organizations established by law to draw up public policies concerning them, as well as design and decide their priorities in the plans and projects of the State.
17. To be consulted before the adoption of a legislative measure that might affect any of their collective rights.
18. To uphold and develop contacts, ties and cooperation with other peoples, especially those that are divided by international borders.
19. To promote the use of garments, symbols and emblems that identify them.
20. To restrict military activities in their territories, in accordance with the law.
21. That the dignity and diversity of their cultures, traditions, histories, and ambitions be reflected in public education and in the media; the creation of their own media in their languages and access to the others without any discrimination. The territories of the peoples living in voluntary isolation are an irreducible and intangible ancestral possession and all forms of extractive activities shall be forbidden there. The State shall adopt measures to guarantee their lives, enforce respect for self-determination and the will to remain in isolation and to ensure observance of their rights. The violation of these rights shall constitute a crime of ethnocide, which shall be classified as such by law. The State shall guarantee the enforcement of these collective rights without any discrimination, in conditions of equality and equity between men and women.

Article 58. To build up their identity, culture, traditions and rights, the collective rights of the Afro-Ecuadorian people are recognized, as set forth in the Constitution, the law, and human rights agreements, conventions, declarations and other international instruments.

Article 59. The collective rights of the coastal back-country people (*montubios*) are recognized to guarantee their process of integral, sustainable and durable human development, the policies and strategies for their progress and their forms of societal management, on the basis of knowledge about their reality and respect for their culture, identity, and own vision, in accordance with the law.

Article 60. Ancestral, indigenous, Afro-Ecuadorian and coastal back-country (*montubios*) peoples can establish territorial districts for the preservation of their culture. The law shall regulate their establishment.

Communities (*comunas*) that have collective land ownership are recognized as an ancestral form of territorial organization.

<sup>71</sup> Article 376. To enforce the right to housing, habitat and environmental conservation, the municipalities will be able to expropriate, reserve, and control areas for future development in accordance with the law. Obtaining benefits from speculative land use practices, in particular by changing the use from rural to urban or public to private is forbidden.

<sup>72</sup> Bolivian Constitution, Article 393

<sup>73</sup> *Ibid.*, Article 403.

<sup>74</sup> *Ibid.*, Articles 395, 397.II, 398.

<sup>75</sup> *Ibid.*, Article 402.2.

<sup>76</sup> The Constitution of Kenya, Article 60.1–2.

<sup>77</sup> *Ibid.*, Article 62.2–3.

<sup>78</sup> *Ibid.* Article 63.1–4.

<sup>79</sup> *Ibid.*, 65.1.

<sup>80</sup> *Ibid.*, Article 66.1.

<sup>81</sup> *Ibid.*, Article 66.2.

<sup>82</sup> *Sudama Singh and others v. Government of Delhi and ANR*, High Court of Delhi at New Delhi, WP(C) Nos.8904/2009, 7735/2007, 7317/2009 and 9246/2009. Judgment reserved on 17 December 2009, pronounced on 11 February 2010, at: <http://www.hrln.org/hrln/Order%20Mukundi%20lal.pdf>.

<sup>83</sup> See Kate Tissington, *A Resource Guide to Housing in South Africa 1994-2010: Legislation, Policy, Programmes and Practice* (Socio-economic Rights Institute of South Africa, 2011); and European Court of Human Rights (ECHR), *Yordanova and others v. Bulgaria*, application No. 25446/06, judgment adopted on 3 April 2012.

<sup>84</sup> In accordance with Article 28.

<sup>85</sup> Treaty of Confederation, Congress of Lima (1847), article 1; First American Conference (1890): "Law of Conquest," article 1; Kellogg-Briand Pact (Pact of Paris) – 1927; League of Nations' adoption of the Stimson Doctrine (1932); Convention of Montevideo on the Rights and Duties of States, 7th International American Conference (1933), article 11; Allied Declaration on German War Crimes (1942); Polish Cabinet in Exile decree (1942); Fourth Geneva Convention relative to the Protection of Civilians in Time of War, articles 49, 147 (12 August 1949); International Law Commission, draft Articles on Crimes against the Peace and Security of Mankind, Commentary, Art. 22(b) (1954-91); Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Resolution 1514 (XV) (14 December 1960); Resolutions of the OAU - decolonization and boycott, CIAS/Plen.2 / Rev.2, (25 May 1963), and boundary disputes between states, AHG / Res 16 (1) (21 July 1964); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (GA Resolution 2526 (XXV), 24 October 1970); ICJ Advisory Opinion on the international juridical status of Namibia (21 June 1971), paras. 51 and 56; Definition of Aggression (GA Resolution 3314 (XXIX) December 14, 1974); The International Legal Status of Western Sahara, General List. No. 61, 16 October 1975; Security Council resolution 465 (1 March 1980), para. 3; General Assembly, "The situation in the Middle East," A/37/123 (16 December 1982); *Case Concerning East Timor (Portugal v. Australia)*, Judgment (30 June 1995), p. 16, para. 28; p. 102, para. 29; Rome Statute on the International Criminal Court, articles 7, 8 (1998); International Law Commission, "Draft articles on Responsibility of States for internationally wrongful acts," A/56/10 (2001), commentary on article 41; Letter from the Legal Counsel to the President of the Security Council, S/2002/161 (12 February 2002); ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, General List 131 (9 July 2004), p. 138; p. 172, para. 88; p. 199, para. 155–57; "Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including Jerusalem," A/HRC/22/63 (7 February 2013), p. 5, para. 17; Tom Moerenhout, "The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and their Economic Activity in Occupied Territories," *International Humanitarian Legal Studies* 3 (2012), pp. 344–385, at: <http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00302004>.

<sup>86</sup> See GC 4, para.17; GC 20, para. 11.

<sup>87</sup> GC 20, paras. 7-8.

<sup>88</sup> *Ibid.*, paras. 8, 11.

<sup>89</sup> Declaration on the Rights of Indigenous Peoples (A/RES/61/295) (2007), art. 32.2.

<sup>90</sup> Statement on the Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1) (24 Feb. 2017); GC 23, , para. 47(e) .

<sup>91</sup> GC 20, para. 17.

<sup>92</sup> UNHCR & UN Habitat, *Forced Evictions*, Fact Sheet No. 25/Rev.1 (2014), p. 16.

- <sup>93</sup> A/HRC/26/39 (Report of the Working Group on the issue of discrimination against women in law and in practice), paras. 48-50. See also Guidance to States in how to adopt measures to promote workers' rights and social protection in the informal economy while adopting and implementing an integrated policy framework to cover the informal economy can be found in the ILO Recommendation (No. 204) on the Transition from the Informal to the Formal Economy.
- <sup>94</sup> Ibid., paras. 57-62.
- <sup>95</sup> Found in document E/C.12/GC/24, 23 June 2017, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en).
- <sup>96</sup> Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* (1 December 2014).
- <sup>97</sup> GC 15, op. cit., para. 16(c).
- <sup>98</sup> See E/C.12/2005/3 (General Comment N. 16: Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights) ("GC16") (2005).
- <sup>99</sup> Committee on the Elimination of Discrimination against Women (CEDaW), General recommendation No. 34 (2016) on the rights of rural women, paras. 57-62, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en).
- <sup>100</sup> FAO has recognized that, globally, "Gender inequalities in land rights are pervasive. Not only do women have lower access to land than men. They are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. Women thus risk losing entitlements in case of divorce, widowhood or their husband's migration. Evidence also shows that women's land parcels are generally of smaller size and lower quality than men's." Food and Agriculture Organization of the United Nations (FAO), 'Gender and Land Rights: Understanding Complexities, Adjusting Policies,' Economic and Social Perspectives Policy Brief 8, 2010.
- <sup>101</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.
- <sup>102</sup> Ibid.
- <sup>103</sup> CESCR General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4.
- <sup>104</sup> Ibid. See also CESCR Concluding Observations on Morocco, 2000; Senegal, 2001; Madagascar, 2009; Yemen, 2011; Egypt, 2013; Nepal, 2014; Kenya 2016.
- <sup>105</sup> UN Human Rights Committee, General Comment 28 on the Equality of Rights between Men and Women, Article 3, adopted 29 Mar. 2000, UN Doc. CCPR/C/21/Rev.1/Add.10.
- <sup>106</sup> CESCR General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5.
- <sup>107</sup> Ibid., para. 26.
- <sup>108</sup> UN-Women/OHCHR, *Realizing women's rights to land and other productive resources*, HR/PUB/13/04, 2013, at: <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.
- <sup>109</sup> See CESCR Concluding Observations on Equatorial Guinea, 2012; Kenya 2016.
- <sup>110</sup> See CESCR Concluding Observations on Kenya, 2016.
- <sup>111</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.
- <sup>112</sup> See CESCR Concluding Observations on Bolivia, 2008; Cameroon, 2012.
- <sup>113</sup> See CESCR Concluding Observations on Uganda, 2015.
- <sup>114</sup> UN-Women/OHCHR, 'Realizing women's rights to land and other productive resources,' 2013.
- <sup>115</sup> Ibid.
- <sup>116</sup> Ibid. See also CESCR Concluding Observations on Tanzania, 2012.
- <sup>117</sup> Ibid. See also: SDGs land indicator 1.4.2 and those under Goal 5.a which require States to gather sex-disaggregated data vis-à-vis land and property.
- <sup>118</sup> General Comment No. 9, The domestic application of the Covenant (1998), E/C.12/1998/24, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1998%2f24&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1998%2f24&Lang=en).
- <sup>119</sup> "States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms." "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," A/HRC/17/31, endorsed by the Human Rights Council in resolution 17/4 (2011), Principle 5 (Commentary).
- <sup>120</sup> For example, the freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under the International Convention on Civil and Political Rights (articles 2, 7); however, the violation of this human rights notably affects a range of economic, social and cultural rights, including the highest attainable standard of mental and physical health, education and work.
- <sup>121</sup> CESCR, GC No. 9.
- <sup>122</sup> CEDaW, General recommendation No. 34, op. cit., para. 4.

- <sup>123</sup> General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), sixth session (1991), contained in document E/1992/23, para.8(e).
- <sup>124</sup> Ibid.
- <sup>125</sup> Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: <http://www.un.org/documents/ga/docs/56/a5610.pdf>; and Commentaries, at: [http://www.evdner.org/dokumente/darsiwa\\_comm\\_e.pdf](http://www.evdner.org/dokumente/darsiwa_comm_e.pdf).
- <sup>126</sup> See Articles 54 and 56, Additional Protocol I to the Geneva Conventions (1977), Article 54, Additional Protocol II (1977), Articles 20 and 46 of the third Geneva Convention of 12 August 1949, and common Article 3 of the Geneva Conventions of 12 August 1949.
- <sup>127</sup> Commission on Human Rights, “forced eviction,” resolution 1993/77, 10 March 1993, at: <http://www.hln.org/img/documents/ECN4199377%20en.pdf>; and “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, para. 1, at: [http://www.hln.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hln.org/img/documents/E-CN_4-RES-2004-28.pdf).
- <sup>128</sup> GC4, para. 1.
- <sup>129</sup> The Hague Regulations, Article 43.
- <sup>130</sup> Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, Guideline 8.10.
- <sup>131</sup> GC 15, op. cit., para. 16(d).
- <sup>132</sup> GC4, especially paras. 15–16; The Habitat Agenda, op. cit., paras. 40n, 61b, and 98b; The New Urban Agenda, op. cit., paras. 31, 107, 111.
- <sup>133</sup> “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006, at: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.
- <sup>134</sup> Raquel Rolnik, Report of the Special Rapporteur on adequate housing, A/HRC/22/46, p. 11, at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2246\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2246_English.pdf).
- <sup>135</sup> “The human rights dimensions of population transfer, including the implantation of settlers,” E/CN.4/Sub.2/1993/17, 6 July 1993, at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/142/08/PDF/G9314208.pdf?OpenElement>.
- <sup>136</sup> ETO Principle 15: Obligations of States as members of international organisations; ETO Principle 16: Obligations of international organisations; General Comment No. 2: International Technical Assistance Measures, CESCR, E/1990/23 (1990), para. 9; General Comment No. 14: The Right to the Highest Attainable Standard of Health, CESCR, E/C.12/2000/4 (2000), para. 39; General Comment No. 15: The Human right to land, CESCR, E/C.12/2002/11 (2003), para. 36; UN Charter, Article 56; UDHR, Article 22; ICESCR, Article 2(1); Convention on the Rights of Persons with Disabilities, Article 32; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 9(1); International Convention for the Protection of all Persons from Enforced Disappearance, Annex, Article 15; Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex I, Article 10; Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex II, Article 10.
- <sup>137</sup> This paragraph is largely based on CESCR GC 15, para. 36.
- <sup>138</sup> Rolnik, A/HRC/25/54, op. cit., pp. 4–5.
- <sup>139</sup> Article 11.2(a) of the Covenant.
- <sup>140</sup> See A/HRC/25/54, op. cit., p. 5.
- <sup>141</sup> The Habitat Agenda, op. cit., paras. 74(c), 75 and 113(m).
- <sup>142</sup> Ibid., paras. 113–14.
- <sup>143</sup> Istanbul Declaration, op. cit., para. 8; The Habitat Agenda, op. cit., paras. 50(c), 61(c)(v), 113(l).
- <sup>144</sup> A/RES/60/147, op. cit.
- <sup>145</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, para. 5.3.
- <sup>146</sup> Minority Rights Group International (MRG) and University of East London, Centre on Human Rights in Conflict, *Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights’ Treatment of Land Rights as Human Rights* (London: MRG, 2015), at: [http://minorityrights.org/wp-content/uploads/2015/10/MRG\\_Rep\\_LandRights\\_Oct15.pdf](http://minorityrights.org/wp-content/uploads/2015/10/MRG_Rep_LandRights_Oct15.pdf).
- <sup>147</sup> OHCHR, *Land and Human Rights: Annotated Compilation of Case Law*, HR/PUB/15/5 (Geneva: United Nations, 2015), at: [http://www.ohchr.org/Documents/Publications/Land\\_HR-CaseLaw.pdf](http://www.ohchr.org/Documents/Publications/Land_HR-CaseLaw.pdf).
- <sup>148</sup> OHCHR, *Land and Human Rights: Standards and Applications*, HR/PUB/15/5.Add.1 (Geneva: United Nations, 2015), pp. 16–65, at: [http://www.ohchr.org/Documents/Publications/Land\\_HR-StandardsApplications.pdf](http://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf).
- <sup>149</sup> GC No. 7, op. cit.
- <sup>150</sup> Commission on Human Rights, resolutions 1993/77 and 2004/28, op. cit.
- <sup>151</sup> “UK needs new powers to freeze stolen assets and more proactive action to help victim countries,” *Transparency International* (25 February 2011), at: [http://www.transparency.org/news/pressrelease/20110225\\_UK\\_freeze\\_stolen\\_assets](http://www.transparency.org/news/pressrelease/20110225_UK_freeze_stolen_assets).
- <sup>152</sup> Philippe Le Billon, “Corrupting Peace? Peacebuilding and Post-Conflict Corruption,” *International Peacekeeping*, Vol. 15, No. 3 (June 2008), 344–61, at 355.
- <sup>153</sup> UN General Assembly adopted the International Code of Conduct for Public Officials by its resolution A/RES/51/59, “Action against corruption,” 12 December 1996, <http://www.un.org/documents/ga/res/51/a51r059.htm>. See para. 4.

<sup>154</sup> Ibid, para. 6.

<sup>155</sup> United Nations Economic Commission for Europe (UNECE), “Study on the Challenges of Fraud to Land Administration Institutions,” ECE/HBP/165, 2011.

<sup>156</sup> United Nations Convention against Corruption, annex to General Assembly resolution A/58/4, 31 October 2003, at: <http://www.un-documents.net/a58r4.htm>.

<sup>157</sup> Ibid., Article 5.4.

<sup>158</sup> Ibid., Article 12.1.

<sup>159</sup> Ibid., Article 31. UNCaC addresses 11 categories of corruption, including:

1. Bribery of national public officials (Article 15)
2. Bribery of foreign public officials and officials of public international organizations (Article 16)
3. Embezzlement, misappropriation or other diversion of property by a public official (Article 17)
4. Trading in influence (Article 18)
5. Abuse of functions (Article 19)
6. Illicit enrichment (Article 20)
7. Bribery in the private sector (Article 21)
8. Laundering of the proceeds of crime (Article 22)
9. Embezzlement in the private sector (Article 23)
10. Concealment (Article 24)
11. Obstruction of justice (Article 25).

<sup>160</sup> Ibid., Article 36.

<sup>161</sup> ETO Principle 15: Obligations of States as members of international organisations; ETO Principle 16: Obligations of international organisations; General Comment No. 2: International Technical Assistance Measures, CESCR, E/1990/23 (1990), para. 9; General Comment No. 14: The Right to the Highest Attainable Standard of Health, CESCR, E/C.12/2000/4 (2000), para. 39; General Comment No. 15: The Human right to land, CESCR, E/C.12/2002/11 (2003), para. 36; UN Charter, Article 56; UDHR, Article 22; ICESCR, Article 2(1); Convention on the Rights of Persons with Disabilities, Article 32; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 9(1); International Convention for the Protection of all Persons from Enforced Disappearance, Annex, Article 15; Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex I, Article 10; Optional Protocol to the Convention on the Rights of the Child in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, Annex II, Article 10.

<sup>162</sup> See CESCR GC 15, para. 36.

<sup>163</sup> Examples include Jammu and Kashmir Abolition of Large Holdings Act (1950), West Bengal Land Reforms Act (1955), Maharashtra Agricultural Lands (Ceiling on Holdings) Act (1961), Madhya Pradesh Ceiling on Agricultural Holdings Act (1960), Rajasthan Land Reforms and Acquisition of Landowners' Estates Act (1963), Kerala Land Reforms Act (1964), Karnataka Land Revenue Act (1964), Himachal Pradesh Land Reforms and Tenancy Act (1972), Imposition of Ceiling on Agricultural Holdings Act (1973), Andhra Pradesh Land Reforms (Ceiling on Agricultural Holding) Act (1973), Himachal Pradesh Tenancy and Land Reforms Act (1974), Gujarat Land Ceiling Act (1976) and Indian Urban Land (Ceiling and Regulation) Act (1976).

<sup>164</sup> See General Comment No.14 (2000), para. 58.

<sup>165</sup> See General Comment No. 9 (1998), para. 4, and Principle 10 of the Rio Declaration on Environment and Development, 14 June 1992, at: [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF).

<sup>166</sup> See also General Comments No. 4 (1991) and No. 7 (1997).

<sup>167</sup> In accordance with General Comment 12, para. 13, General Comment 14, para. 27, and Guidelines on Treaty-Specific Documents to Be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (Reporting Guidelines), E/C.12/2008/2, 24 March 2009, para. 8, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2008%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2008%2f2&Lang=en).

<sup>168</sup> In accordance with General Comment 15, para. 7, and Reporting Guidelines, para. 46.

<sup>169</sup> Reporting Guidelines, para. 50.

<sup>170</sup> General Comment 7, para. 10, and Reporting Guidelines, para. 53.

<sup>171</sup> Ibid., paras. 9, 13-15, 16 and 19; and reporting Guidelines, para. 53. See also Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1).

<sup>172</sup> See General Comment No. 2 (1990).

<sup>173</sup> Committee on World Food Security, Framework for Action for Food Security and Nutrition in Protracted Crises (FFA), CFS 2015/42/4, 13 October, 2015, paras. 15–16, at: <http://www.fao.org/3/a-bc852e.pdf>; and Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System, report of the Secretary-General, A/67/93-E/2012/79, 31 May 2012, p. 12, at: [http://www.un.org/esa/coordination/pdf/sg\\_report\\_for\\_2012\\_qcpr.pdf](http://www.un.org/esa/coordination/pdf/sg_report_for_2012_qcpr.pdf).