**Land and the Obligations of States from the Perspective of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

**Presented by: Maat for Peace, Development and Human Rights**

**Introduction**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) makes precise and explicit commitments to states regarding the possibilities of access to land, framing and strengthening it as an obligation based on the world’s political, economic, demographic and environmental dynamics and its development ambitions, and an enabling base for its activation and implementation of its articles, specifically articles (1, 2, 3, 6, 11 & 12) on economic, social and cultural development, non-discrimination, gender equality, work, decent living, and health, respectively. In this context, Maat for Peace, Development and Human Rights presents its contribution to the United Nations Economic, Social and Cultural Committee on the General Comment on Land and Economic, Social and Cultural Rights, in which it monitors the obligations of States parties relating to land and the governance of tenure of land in its three forms: respect, protection and fulfilment, and in all contexts: National and supranational.

**First: Obligations of States Concerned with Land in National Contexts**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) acknowledges, by association, explicit and specific obligations regarding land management and tenure at all levels based on respect, protection and fulfilment, namely:

1. Articles (1 & 25) of the Covenant on people’s right to self-determination, political status, development and free disposal of their natural wealth impose obligations to respect, protect and fulfil with regard to peoples’ right to land and strengthening the potential of equitable, sustainable and safe access to all holders of legitimate tenure, including formal, customary and traditional ownership through the development of political, legal and regulatory frameworks consistent with national and international obligations and their derived and interpreted voluntary commitments. Such obligations would recognize all holders of legitimate tenure as well as facilitate, support and recognize the value and social, economic and cultural dimensions of such tenure, particularly with regard to indigenous people, farmers and traditional communities sharing material and spiritual relations with these peoples. Moreover, these obligations would provide immediate, rapid, reasonable, accessible and effective relevant services, in addition to combating corruption, resolving disputes and providing human, material and financial capacities to the executive and judicial authorities for the implementation of policies and laws and personnel training.

2- Article (5) of the Covenant on protection and non-restriction of rights imposes obligations on states to review and align the domestic measures, legislations and laws on land and land tenure with the national and international conventions and obligations, with the International Covenant on Economic, Social and Cultural Rights at their core as a basic premise, to implement and give effect to such Covenant, especially with regard to self-determination, free and complete disposal and utilization of natural wealth and resources, housing, food, water, health, in addition to an adequate standard of living and the participation and respect for cultural life.

3- The ICESCR acknowledges the obligations upon states to respect, protect and fulfil with regard to full, safe and sustainable access of holders of legitimate tenure to land and their protection. The Covenant imposes the duty to refrain from interfering in the legitimate tenure rights of land users through expulsion, forced eviction and other forced and unlawful threats. Article (4) of the Covenant addresses conditions for the limitation of related rights, which require determining the limitations by law in order to promote and customize public welfare in a less restrictive democratic society and to avoid the effects and damages of such limitation. Accordingly, prior to the implementation of forced eviction or any other measures obstructing the access to land, states shall commit to consultation, transparency and participation in the management of land and decision making through regular, effective and broad dissemination of information in all relevant languages as well as negotiating with the affected parties- individuals or groups- in a manner that achieves free, prior and informed consent and resettling such affected parties in alternative places suitable for earning a living, housing, public services and health.

4- Article (2) of the Covenant imposes on states the obligations to ensure equality and non-discrimination, as states must eliminate all forms of formal, substantive and actual discrimination and must take all the necessary measures to ensure full and equitable access of holders of legitimate tenure to land, including farmers, fishermen, herders, indigenous people, vulnerable and marginalized groups and women, in addition to the registration, control, transfer and full utilization of land. States must also provide effective, fair and equal judicial remedies and eliminate discrimination arising from the change in marital status and the lack of legal capacity.

5- Article (5) of the Covenant on gender equality imposes obligations on states with regard to women’s full and equal access to, tenure, management and contracting of land, as states must ensure women’s equality with men in all their programs of agrarian reform and redistribution of land as well as their development plans and they must also eliminate all forms of discrimination against women concerning the right to land and all the associated rights.

6- The ICESCR acknowledges the obligations upon states to respect, protect and fulfil with regard to full, safe and sustainable access of holders of legitimate tenure to land and their protection. The Covenant imposes the duty to refrain from interfering in the legitimate tenure rights of land users through expulsion, forced eviction and other forced and unlawful threats. Article (4) of the Covenant addresses conditions for the limitation of related rights, which require determining the limitations by law in order to promote and customize public welfare in a less restrictive democratic society and to avoid the effects and damages of such limitation. Accordingly, prior to the implementation of forced eviction or any other measures obstructing the access to land, states shall commit to consultation, transparency and participation in the management of land and decision making through regular, effective and broad dissemination of information in all relevant languages as well as negotiating with the affected parties- individuals or groups- in a manner that achieves free, prior and informed consent and resettling such affected parties in alternative places suitable for earning a living, housing, public services and health.

7- The Covenant imposes obligations on states to develop clear and precise laws and policies for non-state local and regional actors, particularly institutional investors, business enterprises, private sector and civil society, in order to govern their behaviour and investments to promote the rights of the affected individuals and groups and their right to legitimate tenure as well as the associated economic, social and cultural rights by obligating such institutions to conduct feasibility and prior impact studies to determine the damages and the options for mitigating and compensating for such damages as well as the means of complaint and judicial remedies. This is in addition to obligating these institutions to transparency, consultation and participation, to determine the scale, scope and nature of their policies and not to place greater focus on land tenure and concessions, together with the states’ obligation to conclude agreements that would immunize such institutions and their activities.

**Second: The Obligations of the Concerned States in Supranational Contexts**

The International Covenant on Economic, Social and Cultural Rights presents the obligations of states regarding access to land at the regional and international levels, namely:

1. States are obligated to refrain from direct or indirect interference and impeding access to territories outside their domestic framework; they must take measures and policies that guarantee full, safe, sustainable and comprehensive access to land and the enjoyment of the economic, social and cultural rights associated with it outside its local framework and above its territory in a way that ensures that the effects and damages resulting from increased investments in the land after the global food crisis during the period (2007: 2008) are not repeated.

2. States, whether in their encouragement or implementation of investments related to land outside their local framework by their national companies or participating in them partially or wholly, are obligated to ensure respect to human rights, especially those concerned with land, including water, food, housing and shelter, review their commitments and reports regularly, and assist it in strengthening its capabilities to treat abuses and violations of those rights by investment institutions and agencies operating in its territories.

3. States parties should commit themselves to formulate, conclude and interpret international agreements, especially those related to trade, investment, finance and international cooperation in a manner consistent with the International Covenant on Economic, Social and Cultural Rights, with articles are concerned with land, its management and use, and strengthening the means of technical cooperation, financial assistance and institutional capacity building for the management and sharing of land, the development of national tenure policies, and technology transfer.

4. Countries, outside their territory and their local framework, are obligated to ensure and promote full, comprehensive, sustainable and safe access to lands and prevent violations and abuses by investment and non-governmental institutions in other countries, and ensure that their behaviour and investments are carried out legally, taking into account that they are not deprived of investments in those lands and resources.