**Written contributions to the draft general comment on Land and Economic, Social and Cultural Rights of the Committee on Economic, Social and Cultural Rights**

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The draft General Comment is well written and we thank the CESCR for availing the opportunity for us to make contributions. The observations provided are the individual opinion of the staff and/or experts listed above and do not necessarily represent the organizational position of FAO. While the team has collated the detailed comments in the boxes further below, the following general observations could be made:

* It would be useful for the General Comment to have a more quotable statement or summary of the extent to which there is a human right to land, or how land tenure rights relate to human rights. That would be used as an authoritative statement.
* The General Comment would benefit from reference to international instruments such as the UNDRIP, UNDROP, and other General Comments including those of other expert bodies such as CEDAW.
* Specific examples could be drawn from studies conducted by FAO and other specialized organizations on land-related issues – links to some provided below. You may also wish to have a look at the FAO Legislative database, FAOLEX, if you wish to draw on policy and legislative frameworks: <http://www.fao.org/faolex/en/>
* We attach a word version of the draft General Comment with our comments in the text.

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| Paragraph 3 | Comment |
| (…) Conflicts over land also are frequent in armed conflicts as well as in post-conflict countries, where large numbers of people seek to reclaim the land that they had been forcefully removed from due to conflicts and later meet the opposition of "secondary occupants", who occupied their lands for many years with the expectation of being able to stay permanently. (…) | Problems in access to land may also fuel conflict as was the case for example in Sierra Leone in the 90s, as the youth without access to land joined the fighting in large numbers…  Conflicts also arise from overlapping land use interest in the absence of proper tenure governance regime – like in between farming and pastoral communities who want to use land for grazing and cattle track – ex, the Gambia. |
| (…)The lack of protection of tenure rights increases…  (…) Many of these conflicts are fuelled when land governance is weak, where tenure is not, or only insufficiently, documented, and where planning fails to clarify long term use patterns and tenure security. | The problem is not only tenure rights protection and regularization and whether tenure rights are recorded or not. The bottom line is that quite frequently in developing countries customary tenure rights are simply not recognized. In this context, socially legitimated tenure rights lack legal legitimacy because legal policy frameworks in place and incomplete or inadequate. As a consequence, customary tenure rights are not recorded.  With that in mind, we would suggest referring to lack of recognition of customary rights, which is at the core of land conflicts.  For instance: (…) where tenure is not, or only insufficiently, documented, *where customary tenure rights are ignored or overlooked*, and where planning (…). |

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| Paragraph 4 | Comment |
| (…) following the Committee on Economic, Social and Cultural Rights in its General Comment No. 12. In 2012, the Committee of World Food Security (CFS) adopted the Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (VGGT) and similarly, the CFS adopted in 2014 the Principles for Responsible Investments in Agriculture and Food Systems, which address inter alia the human rights implications of agricultural investments. (…) | We would suggest shortening this sentence.  Does the word “following” here imply a causal nexus between the GC 12 and the adoptions of VGGT/RAI? If so, that would be a claim too. |
| (…) Other relevant soft law instruments have been developed to describe obligations and responsibilities of States and other actors related to land use of specific groups. (…) | We would suggest refering to the contributions of UNDRIP and UNDROP. |

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| Paragraph 8 | Comment |
| (…)While the Covenant does not affirm a self-standing "right to land", a number of its provisions are relevant to the governance of land tenure. | Here a reference to such a right, as proclaimed in the UNDROP could be added. |

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| Paragraph 13 | Comment |
| (…) In conjunction with ineffective or absent land-governance laws, policies, and urban and rural spatial planning processes, competition for access to and control over land can lead to direct and indirect limitations on the equal access to, use of and control over land and result in insufficient protection against land dispossession and displacement. | We would suggest adding text elaborating on the nexus between land rights and human rights enjoyment (e.g. land tenure security is fundamental for the realization of several human rights such as the right to food, water, shelter and an adequate standard of living just to name a few). That would be useful as an authoritative statement. |

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| Paragraph 14 | Comment |
| (…) Customary forms of property may provide security for those depending on the commons… | Could be better to refer to customary forms of tenure, as there are many more in addition to property, especially when it comes to such groups. |

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| Paragraph 16 | Comment |
| (…) The Committee, in its general comment no. 12, recognised the importance of “full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land. The Committee on the Elimination of Discrimination Against Women, in its general recommendation no. 21, stipulates the obligation of the States parties to ensure that when undergoing programs of agrarian reform or redistribution of land, the right of women, regardless of marital status, to share such redistributed land on equal terms with men is observed. (…) | We would suggest referring to the UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 34.  The critical link between women’s land rights and their broader human rights has been underscored with respect to rural women by CEDAW in its GR No. 34 of 2016, which recognized “rural women’s rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights”.  This provides a good entry point to highlight the close link between land rights and human rights enjoyment. |

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| Paragraph 17 | Comment |
| (…) As a result, women still represent a significant minority in the total number of holders of titles. Therefore, while it is important to recognise customary land tenure arrangements, tackling discrimination in land rights requires the blending of tradition and modernity in land rights regimes by removing traditional structures that discriminate against women, while building on and enhancing indigenous tenure arrangements, including the documentation and codification of informal land rights regimes, where appropriate. | Women’s tenure rights within communal land governance requires particular attention as communal systems are not often fully covered by legal, policy and institutional frameworks. Women hold secondary tenure rights that are appended to their marriage within the community and they lose that right when they are married outside the community – this doesn’t apply to men.  Here it might be useful to refer to SDG indicator 5.a.2 and its proxies for measuring women’s right to land in law. See method in http://www.fao.org/3/I8785EN/i8785en.pdf |
| (…)Therefore, while it is important to recognise customary land tenure arrangements, tackling discrimination in land rights requires the blending of tradition and modernity in land rights regimes by removing (…) | The idea of blending is good, but note that it has not worked in some contexts such as Sierra Leone where they established the so called “Native Courts” that blend customary and formal court system for dispute resolution… “removing traditional structures” sounds like an adoption of modernization theory that may result in alien institutions that won’t work …. In some cases, merely strengthening existing customary mechanims by introducing precepts of gender equality, non-discrimation, due process and documentation etc could work better – ex. See a study in Sierra Leone on land dispute resolution mechanims: <http://www.fao.org/3/I5908E/i5908e.pdf> |

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| Section III, item B | Comment |
| B. Obligations of States parties under the Covenant as related to Land | It may be worth mentioning here that the VGGT general principles 3A also follow the pattern of respect, protect, fulfil (with some slight variants). It signals how an intergovernmental forum took this up, which could be useful. A footnote perhaps. |
| Obligation to respect | Respect, protect, fulfil is tried and tested of course. However perhaps this should be further aligned with later GCs, including promote etc? |

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| Paragraph 20 | Comment |
| Considering that most land tenure systems are based on the rights of individuals with respect to land, States parties should recognise and protect communal dimensions of tenure, particularly in relation to indigenous peoples, peasants and other traditional communities, who have a material and spiritual relationship with their traditional lands indispensable to their existence, well-being and full development, including the collective rights of access to, use of, and control over lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. | It may be inaccurate affirming that that *‘most land tenure systems are based on the rights of individuals with respect to land’*.  This is probably the most common land tenure arrangement among western, developed and high income countries. Among developing countries especially in Africa and Asia, customary land tenure systems combine individual and communal tenure arrangements.  In addition to that, the text that follows the statement in question seems to contradict it.  We would suggest rephrasing this sentence and delete the statement that *‘most land tenure systems are based on the rights of individuals’.* |

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| Paragraph 21 | Comment |
| (…)The legal recognition and allocation of tenure rights to individuals without gender discrimination, families and communities should be done systematically and in a way that those living in poverty and other disadvantaged groups have the full opportunity to acquire legal recognition of their current access rights. | This and the following (up to para 25) sound more like fulfil/facilitate or promote, rather than respect, in the typology of obligations. |

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| Paragraph 23 | Comment |
| International law recognizes the right of indigenous peoples over the lands and territories that they have traditionally occupied. (…) | We would suggest adding references to UNDRIP. |

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| Paragraph 24 | Comment |
| (…)Fisher folk need access to fishing grounds; (…) | It may be useful to refer also the Voluntary Guidelines on Small Scale Fisheries adopted by the FAO Committee on Fisheries. http://www.fao.org/3/i8347en/I8347EN.pdf |

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| Paragraph 25 | Comment |
| States parties should clearly define the concepts of public purpose in law, in order to allow for judicial review. | What about adequate and prompt compensation?  It would also be good to relate this to the jurisprudence on forced eviction relating to the right to housing– CESCR GC 7 |

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| Paragraph 30 | Comment |
| (…) States parties should develop laws and policies to guarantee that land based investments are done in a responsible manner (…) | Examples may be drawn from a recent report on responsible land based investments in Mekong countries:  http://www.fao.org/publications/card/en/c/CB3937EN/ |

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| Paragraph 33 | Comment |
| (…) Therefore, States should adopt laws and policies to guarantee that titling programmes are not implemented solely to support the sale of land and the commodification of land tenure (…) | Could be interesting to expand on what guaranteeing implies here, e.g. that titling respects the form of tenure be it individual or communal, etc? |

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| Paragraph 37 |  |
| (…) They should also, among others, facilitate…    (…)This includes specific measures to support communities and people to prevent, mitigate and adapt to the consequences of global warming. | … and promote?  Other issues that could be mentioned with regards to tenure and climate change include the protection of tenure rights in the context of climate mitigation projects; the issue of carbon rights *versus* tenure rights; and the protection of tenure rights in the context of displacement led by natural disasters, including those induced by climate change. |

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| Paragraph 42 | Comment |
| (…) This may imply imposing a due diligence obligation on investors to ensure that the land that they acquire or lease has not been acquired in **violation of international norms and guidelines**. | … as well as of national law, including land rights? |

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| Paragraph 43 |  |
| (…) in order to support people and communities outside of their national territories to increase their Covenant rights in relation to the use of land. (…) | This reads a little odd… increase the enjoyment of their rights? |

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| Section IV, item A | Comment |
| Armed conflicts and post-conflict situations | It would be useful here to address the safeguarding of records, digitalization etc. Records often get lost in armed conflict, which hinders restitution.  The same could apply to climate change and disasters. |
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| Paragraph 45 | Comment |
| (…) In other cases, ~~the~~ conflicts may lead to forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as peasants, indigenous peoples, ethnic minorities, or women. (…) | We would suggest deleting the ‘ the’. Otherwise it is implied that all conflict stem from the colonial/apartheid systems. Example, former Yugoslavia. |
| (…) States or are obliged to establish restitution programs to guarantee to all refugees and internally displaced persons (IDPs) the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.(…) | You may wish to include a referene to the Guiding Principles on Internal Displacement, a massive work that remains relevant. |

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| Section IV, item B | Comment |
| Assessment and monitoring measures | This is fine but feels a bit underdeveloped. There are numerous mentions of peasants in the document, but the document doesn’t draw on it for clarifying the right to land. |

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| Section IV, item D | Comment |
| Peasant Rights | Monitoring and assessment would be a better title, and also move this section further down. |

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| Section IV, item E | Comment |
| Human rights defenders | Many of the human and environmental rights defenders are Indigenous Peoples. We would suggest highlighting this, as well as the recent trend of criminalizing HRD actions. |

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| Paragraph 54 | Comment |
| (…) Moreover, States have the obligation to design **adaptation** policies to climate change (…) | … adaptation **and mitigation** policies… |