

**Response to the CESCR’s call for written contributions to the draft general comment on Land and Economic, Social and Cultural Rights.**

FIAN International[[1]](#footnote-1) commends the Committee on Economic, Social and Cultural Rights (henceforth: the Committee) for its initiative to issue a General Comment (GC) on land and acknowledges the great amount of work undertaken to produce a first draft GC. We submit the following comments in response to the Committee’s call for contributions.

**Preliminary remark**

FIAN International is of the view that the proposed GC on land and ESCR is not ready for adoption because of considerable inconsistencies in terms of its language, logic and structure, and because it is not sufficiently grounded in internationally agreed standards. Moreover, the current draft does not adequately respond to the complex land-related human rights challenges that human societies are currently facing. FIAN International therefore calls upon the Committee to use its upcoming meeting in September to discuss and propose a way forward to the adoption of the GC in 2022, which allows further work and consultations, in particular with groups of rights holders that face structural discrimination, in order to ensure that the GC provides forward-looking guidance to States Parties. The comments contained in this document should be read under this premise and be considered as inputs into the Committee’s further work in this regard.

**I. General considerations**

* FIAN International is of the view that the language of the GC should be improved in the following ways:
  + While the GC needs to use language that is juridically accurate, FIAN recommends that **the language used should be as accessible as possible** for those rights holders (groups and individuals) who seek to defend and affirm their rights, in particular marginalized groups. Concrete examples of measures that exist or could be taken by State Parties may be useful to make the GC’s clarification of States Parties’ human rights obligations related to land more concrete and more easily to apply.
  + Since the GC clarifies States Parties’ human rights obligations related to land, the language used should **clearly indicate that the GC contains the legal interpretation of the Committee**, and not recommendations, which states may decide to apply or not. In this sense, the use of the verb “should” is not appropriate and should be replaced by expressions such as “based on their obligations, States Parties are required to” or “States Parties are obliges/required to”. In this context, we also recommend to refrain from the use of the passive voice, as it can be ambiguous as to which actor must perform a particular action described in the GC.
* The GC should be **more consistent in its references to existing normative guidance** on states’ human rights obligations related to land. This can also contribute to making those sections more concise, which are dedicated to issues for which detailed guidance exists. The Committee should be careful to refer primarily to such standards that have been developed by human rights bodies/institutions and through intergovernmental negotiations. Reference to other instruments (e.g. the World Bank’s safeguard’s policies) should be avoided or, at least, be accompanied by a note that clarifies that such guidelines have not been developed by human rights institutions or through intergovernmental negotiations.
* FIAN International welcomes the references made in the draft GC to **peasants and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)**, as well as the inclusion of a specific section on the rights of peasants. However, we recommend that the UNDROP be referred to in the introductory part (along with the UNDRIP) and that **systematic reference** to peasants and rural people is made throughout the GC whenever reference is made to marginalized groups. This should be made by using the wording of the UNDROP (i.e. “peasants and other people working in rural areas”) and reference should be made to the definition of this group and the different constituencies it englobes as per Art. 1 of the UNDROP.
* Although the relevance of land for communities, groups and individuals living in urban areas is mentioned on some occasions in the GC, the draft is overall marked by a **rural (and agricultural) bias**. While FIAN supports the attention given to rural areas in the GC, we recommend the Committee to seek a dialogue with organizations and groups representing marginalized urban people in order to ensure that the GC also adequately responds to the land-related human rights challenges faced by them. The GC should also address the issue of urban-rural relationships.
* FIAN International considers that the **framing** of the draft GC around “access to land” does not adequately capture the complex and multifaceted relationship that people have with the land (which is, at least partially, captured by the draft GC’s recognition of the social, cultural, spiritual and environmental dimensions of land) and fails to address the power relationships that underpin landed relations and which are more adequately captured by the phrase “control over land”. At least implicitly, the draft GC primarily treats land as a productive resource. In addition, while tenure (security) is undoubtedly a critical issues that needs to be addressed by the GC, focusing almost solely on tenure rights obfuscates the close relationships between tenure (systems) and the way in which communities and people use and manage land, based on their knowledge of local conditions as well as their conceptions of social and environmental justice. FIAN therefore recommends that the GC be built on a **more holistic understanding of land**, taking into account that land is, above all, a social relationship as well as fundamental for the relationship of human societies with their environment. In this sense, and as expressed to the Committee before, FIAN International considers that the GC represents an important opportunity to **clarify that land is in itself a substantial human right**, understood as the right of every human being to effectively access, use and control – individually or in community – land and related natural resources in order to feed and house themselves, and to live and develop their cultures.[[2]](#footnote-2) Such a clarification would allow to move beyond an instrumentalist approach to land – which considers land as a gateway to the realization of other rights – to the recognition that land is a universal human need[[3]](#footnote-3) to sustain life and form identity, culture and wellbeing. In the context of current ecological crises, the recognition of the human right to land also lays the basis for the necessary reconfiguration of humanity’s relationship with the rest of nature.

At the very least, the GC should point out that the right to land has been recognized for certain groups, namely Indigenous Peoples, peasants and other persons working in rural areas and rural women,[[4]](#footnote-4) referring to the respective human rights instruments. In case the GC does not recognize a universal right to land, it should, however, recognize that there is a tendency towards such a recognition. In this sense, wording such as “the Covenant does not affirm a self-standing "right to land"” (draft GC, para. 8) should be avoided, as it may foreclose the possibility of further development of the understanding of human rights, including normative guidance by human rights bodies.

**II. Comments on specific issues**

Due to the complexity of land-related human rights challenges, the GC needs to deal with a range of important issues. This creates the challenge of addressing all relevant aspects adequately within the word limit of a GC. One way of resolving this problem could be that the GC be as synthetic and concise as possible on all those issues where detailed normative guidance exists, systematically referring to those standards without paraphrasing them. The GC could then focus on those aspects, which are not, or only partially, addressed by existing standards. In this way, the GC would contribute to filling existing gaps in the interpretation of states’ human rights obligations related to land, and provide forward-looking guidance to states and rights holders. This section contains detailed comments on and recommendations for some areas that FIAN International considers as critical issues requiring special attention in the GC. The focus on these specific issues should, however, not be read as diminishing the importance of other issues.

1. **Financialization of land and related natural resources**

Over the last decade, communities around the world have been facing a surge in dispossession and related human rights violations in the context of what is often referred to as the “global land rush” or “global land grab.” Despite social movements’ and civil society organizations’ struggles to defend and assert their rights to land and related resources as well as the adoption of normative guidance at international level (in particular the Guidelines on the Governance of Tenure of Land, Fisheries and Forests), land and resource grabbing continues in all parts of the world, leading to dispossession, land concentration, ecosystem destruction and other human rights impairments. It is important to emphasize that these dynamics are to a great extent the result of the financialization of land and natural resources, which transforms these into assets and “investment opportunities” for financial actors, such as banks, investment funds, asset management companies, pension funds, etc.[[5]](#footnote-5) As pointed out in FIAN International’s previous submission to the CESCR, financialization increases risks for communities, creates new forms of dispossession, increases the concentration in the hand of power and resourceful actors, and creates additional challenges for accountability of state and non-state actors. Financialization makes the dynamics that underlie the increasing pressure on land more complex, including regarding states’ obligation to respect, protect and fulfil human rights in the context of land. It is of concern that this complexity is not captured nor adequately addressed by the draft GC. In order to address the existing gaps, FIAN International recommends the following:

* Financialization should be mentioned as one of the **main structural drivers of land dispossession, land concentration and land-related human rights abuses and violations** (described in the draft GC as “increased competition,” i.e. in a way that fails to capture the underlying structural drivers) in paras. 1 and/or 2, pointing out to the challenges it raises for the realization of human rights, in particular increasing dispossession, land concentration and additional challenges for accountability (through complex investment webs). Whereas financialization is currently mentioned in the context of urban areas, but is equally relevant in rural areas.
* FIAN cautions the Committee against conceiving of land deals in a too narrow and linear way (i.e. as large-scale land acquisitions for (agricultural) commodity production as implied in the current draft GC), but to take into account the reality of **opaque investment webs** and involvement of various actors (companies involved in production, financers/financial investors, traders and retailers throughout the value chain etc.) that are behind most deals and make them possible in the first place. The GC should further take into account that land deals and dispossession do not only take place for production of (agricultural) commodities, but also in the context of infrastructure development, mining, industrial activities, urbanization, tourism, conservation, climate change mitigation etc. (see our previous remark on a rural and agricultural bias of the draft GC). We further **caution the Committee against using the term “investment” in this context**, since this term could evoke positive connotations and distract from the speculative nature of many land-related financial transactions and the wealth extraction that takes place. At the very least, the term should be explained and problematized in order to clarify its meaning in the context of the GC. In this context, it is important to emphasize that in rural areas, smallholders are the main agricultural investors[[6]](#footnote-6) and that policy guidance by the UN Committee on World Food Security (CFS) calls to prioritize investments by and for smallholders in order to ensure sufficient economic space for them; and that this prioritization is not always compatible with large-scale land acquisitions.[[7]](#footnote-7) FIAN welcomes the draft GC’s recommendation to State Parties to consider **investment models that do not entail the transfer of tenure rights** (para. 31), but cautions against the promotion of “partnerships with local tenure rights holders” given that great power imbalances, which exist in many context, entail the risk of inequitable outcomes, if there are no measures in place to address asymmetries as well as adequate regulation and accountability frameworks in place.
* In order to adequately address State Parties’ obligation to protect the right to land and human rights in the context of financialization, the draft GC should be strengthened in the following way:
  + Paras. 31 and 32 of the draft GC should be more explicit and use stronger language for **State Parties’ duty to regulate non-state actors, in particular corporations and financial actors, and to ensure accountability for harm that they have caused**. The wording in para. 32 should therefore be changed from “providing clear standards for” to “effectively regulate and ensure accountability of”. The GC should further clarify that such regulations need to apply to **all business relationships** related to a given land deal or transaction, including all entities that are involved in the financing of such operations (investment webs) as well as those who draw financial benefit from them. Whereas due diligence (para. 32 of the GC) can be a tool, it should be emphasized that it needs to be embedded in broader accountability mechanisms and must not replace judicial remedy mechanisms. Moreover, the GC should clarify that corporations’ due diligence includes the duty to control their subsidiaries to prevent human rights abuses.
  + It is further critical that the GC clarifies State Parties’ obligation to ensure that in the context of financialization, regulation of corporate and financial actors needs to go beyond land sector-specific frameworks and cover all business areas that may affect land and human rights. The increasing relevance of financial actors and financial markets, for instance, require State Parties to **oversee and regulate financial markets** in order to prevent land-related human rights impairments. For instance, one manifestation of financialization is that **land deals are increasingly made in the form of financial transactions** rather than land transactions in a strict sense (sometimes referred to as “share deals”) and that such transactions are often not addressed by land-related frameworks. Another relevant example for the need for broad regulation of financial actors is the **microfinance/microcredit sector, which has been shown to contribute to land loss of communities**, especially when land is used as a collateral for micro credits or loans.[[8]](#footnote-8) Another type of institutional investor whose operations in the land sector have had severe negative human rights impacts over the last decade are **pension funds**. Because of the huge sums of money managed by these actors and the many cases of adverse land-related human rights impacts of their activities, the GC should refer to them explicitly.
  + Whereas the draft GC rightly underlines the importance of strong safeguards that states need to put in place in the context of land deals, the GC should also encourage States Parties to adopt **approaches that outlaw land deals involving corporate entities, or put in place moratoria on them**.
  + Because of the **transnational nature of many land deals**, including, in particular, regarding the financiers that make them possible, financialization also particularly concerns states’ extraterritorial obligations. While the draft GC refers to these in para. 42, the GC should explicitly refer to home states’ obligation to **proactively monitor the activities of companies that they are in a position to regulate**, particularly where there are indications that these are involved in human rights abuses. The GC should point to the role that embassies can play in this regard. State Parties’ extraterritorial protect obligations further include to **ensure accountability by corporate and financial actors abroad** through measures that go beyond due diligence approaches.
* The GC should take into account that **financialization also concerns States Parties’ respect obligations** inasmuch as they may be directly involved in different ways in land deals, e.g. through **sovereign wealth funds, public investment banks, public pension funds or public-private partnerships (PPPs)**, among others. The GC should emphasize State Parties’ obligation to ensure that human rights are protected, including through the systematic carrying out of prior, independent human rights impact assessments as well as accessible and effective accountability mechanisms. States’ respect obligations have a **strong extraterritorial dimension**, which should be highlighted more strongly in the GC. In this context, we recommend the GC to draw from wording used in the Committee’s Concluding Observations on the sixth periodic report of Sweden regarding overseas investment activities. Due to many cases of land grabs involving **development finance institutions (DFI)** and taking into account their increasing interwovenness with the financial sector, the GC should refer to State Parties’ obligations to prevent harm and ensure accountability in this context specifically, including in cases where DFI operate through financial intermediaries or support microfinance schemes.
* In this context, the GC should also explicitly refer to states’ obligations as members of **international institutions, including international financial institutions (IFIs)**, in addition to drawing from previous guidance from the Committee clarifying that IFIs are bound by the human rights frameworks and have obligations in this regard.
* In the light of financialization’s role as driving increasing land concentration and the creation of new, corporate/financial *latifundia*,[[9]](#footnote-9) states’ fulfil obligations are also very relevant in this context. FIAN International welcomes the draft GC’s emphasis on the importance of agrarian reform (in particular para. 35), but recommends that the GC explicitly refers to the relevance of **redistributive reforms as a response to increased land concentration through financialization**, mentioning that State Parties may expropriate and redistribute lands that have been acquired for speculative purposes, which are controlled through tax havens and/or offshore financial centers, and/or which do not fulfil their social and/or ecological functions. In this context, the GC should also underline the importance of **land restitution** wherever land has been illegitimately acquired, including lands pertaining to the ancestral territories of Indigenous Peoples.
* FIAN International is of the view that it is critical that the GC emphasizes the importance for states to **regulate land and real estate markets** in order to prevent dispossession, land concentration and discrimination of marginalized and vulnerable groups or individuals, including discrimination resulting from lack of access to economic resources.[[10]](#footnote-10) In this context, the GC should also underline the importance of adequate **taxation**, which should contribute to the achievement of broader social, economic and environmental objectives and to preventing speculation and concentration of land ownership (Guidelines on the Governance of Tenure, para. 19.1).
* Finally, the draft GC’s section on remedies should be strengthened in order to respond to the reality of financialization. FIAN recommends to strengthen the language in para. 56 of the draft GC by pointing out to frequent **power imbalances** in land deals and recommending State Parties to include in their procedural legal frameworks measures that allow ensuring the so-called “equality of arms” in favor of affected individuals or communities. Possible mechanisms include the reversal of the burden of proof in favor of the affected communities or specific application of strict and several liability in cases of human rights abuses severely impacting human rights concerning land and related natural resources. The GC should further clarify that relevant information that affected people need to have access (para. 56) to includes **information regarding all business relationships and actors involved in investment webs and value chains**. Regarding access to justice, we recommend the GC to emphasize the need for State Parties to take all necessary measures to **impede interference of non-state actors, in particular corporate and financial entities**, in the adjudication on cases of land-related human rights impairments and to put in place regulation to exclude conflicts of interests for judicial operators adjudicating on land-related cases. The mentioning of “complaint mechanisms” in para. 30 should be replaced by “effective accountability mechanisms” and underline the primordial **importance of state-based judicial remedy**, taking into account that moral-duty-based and non-judicial grievance mechanisms have in many cases proven to be ineffective in addressing human rights abuses, in particular in cases where such mechanisms are controlled by actors involved in land deals and related human rights impairments.

1. **Customary tenure systems and tenure rights that are not based on private property**

As the draft GC rightly points out, many people and communities exercise their right to land through customary tenure systems. However, there is a widespread lack of recognition and effective protection of such rights and systems around the world, which results in dispossession and related human rights abuses, including in the context of land deals and the financialization of land (see previous point). Clarifying states’ obligations in this regard in the GC is therefore of critical importance, not least to address and repair historical injustice. In addition, it is crucial that the GC clearly points out that customary and/or collective tenure systems are not to be considered as relics, but the expression of models of governing, managing and using land in ways that are adapted to local conditions and social relationships. In this sense, such systems can also provide very relevant guidance for land governance models that are not based on exclusive private property or markets, nor based on state ownership. FIAN International recommends to improve the content and language of the draft GC in the following ways:

* The text of the draft GC confuses the **concepts of customary tenure rights, collective tenure rights and the commons**. Whereas these concepts are connected, they should be clearly defined in order to avoid misinterpretation. Regarding the commons, the GC could draw from the definition provided by para. 8.5 of the Guidelines on the Governance of Tenure.[[11]](#footnote-11) This definition refers to “publicly-owned land that is collectively used and managed,” whereas customary tenure rights/systems may also refer to lands owned by a community, group or people.
* The GC should consistently **use the wording “customary and/or collective tenure rights” and “customary and/or collective tenure systems”**. Wording such as “customary land title” (para. 15 of the draft GC) or “collective or communal land use schemes” (ibid.) may lead to misinterpretation and are therefore problematic and should be avoided. Regarding collective tenure rights, we recommend to delete the statement that “most land tenure systems are based on the rights of individuals with respect to land” in para. 20 of the draft GC, unless there is evidence supporting such a claim.
* The GC should contain **stronger language on states’ obligation to recognize, respect and protect customary and/or collective tenure rights and systems**. Para. 20 should use this wording instead of the current wording, which refers to the recognition and protection “of communal dimensions of tenure”. Moreover, the last sentence of para. 24 should be revised: instead of stating that the tenure situation of groups, communities or peoples depending on customary and/or collective tenure rights “should not further be worsened”, the text should reaffirm states’ obligation to provide legal recognition and protection to such rights, as well as to promote them.
* In para. 21, the GC should explicitly refer to states’ obligation to **proactively identify customary tenure rights** as a step for ensuring legal protection.
* FIAN welcomes the critique of titling/formalization programs made in the draft GC (particularly in para. 33 of the draft GC), which broadly reflects the experience of communities that we have worked with over the past decades. However, the current languages may still give the impression that (individual) land titles may be a preferential option for the protection of customary and/or collective tenure rights. Whereas safeguards in the context of titling programs are important, FIAN considers that the GC should encourage states to **develop appropriate models to provide effective legal protection of customary and/or collective tenure rights and systems, which do not result in private property rights/titles**. States should develop such models together with concerned communities or peoples, taking inspiration from existing experiences, such as certificates of collective/community ownership and use or cooperative models.[[12]](#footnote-12)
* FIAN welcomes the reference made in para. 24 of the draft GC to customary tenure systems and the need for states to respect existing forms of **self-governance of land**. Recognizing that **there may be discrimination and inequities in customary tenure systems**, FIAN recommends adding wording calling upon states to cooperate, wherever possible, with concerned communities or peoples as well as their customary/traditional authorities to address such situations.
* FIAN further welcomes the inclusion of reference to states’ obligation to recognize, respect and protect collective and/or collective tenure rights and systems on state-owned lands in para. 27 of the draft GC. However, we recommend to explicitly state that, **in many cases, customary tenure rights and systems predate existing states** and tenure systems based on private property that have, in many cases, been introduced through colonization. Based on such recognition, the GC should point to states’ historic debt vis-à-vis communities and peoples who have such rights, acknowledging that people and communities in many parts of the world are affirming their right to land by **challenging legal doctrines, which give unlimited power to the state to dispose of land and other natural resources**. In this context, explicit reference should also be made to the need to **restitute lands to Indigenous Peoples** and other groups and communities who have been illegitimately deprived of their lands.
* Given that – as the draft GC correctly states – formalization, privatization and commercialization of land have, in many cases, resulted in land-related human rights impairments, the GC should encourage State Parties (possibly as part of their fulfil obligations) to **develop and promote tenure models that are not based on private property and a market logic, and which ensure the sustainable use, management and governance of land** as well as ecosystems. In order to do so, states should take into account existing models through which communities or peoples have (historically) governed and managed their lands, based on their relationships with a given territory and the living environment. The promotion of such alternative tenure models may also be relevant in the context of redistributive/agrarian reforms. States should therefore carry out participatory processes with beneficiaries in order to define what kind of tenure rights they wish to have under such programs.

1. **Digitalization and land-related data**

Digital technologies are increasingly used around the world for the identification, demarcation, registration and administration of land and tenure rights, as well as land governance and land-related policy and decision-making. However, according to a research conducted by FIAN International, which includes five case studies, human rights considerations are largely absent from land-related digitalization processes. In addition, our research points out that the use of digital technologies in the context of land entails serious risks of replicating or even exacerbating patterns of structural discrimination and human rights violations.[[13]](#footnote-13) Existing normative instruments regarding ESCR and land do not provide specific guidance on this issue, so that it is critical that the GC contributes to close this gap. In order to do so, FIAN recommends the following:

* Para. 21 of the draft GC should refer to the **identification and demarcation of land and tenure rights**, in addition to registration and administration, recognizing that these are, in many cases, contentious issues, which require states to put in place transparent, accountable and effective mechanisms that ensure that all legitimate tenure rights (instead of “access rights” as in the draft text) and rights holders are taken into account, giving priority to marginalized and vulnerable groups, communities and individuals. The GC should further explicitly clarify that State Parties are required to ensure that such **mechanisms are in place and effective whenever they use digital technologies**, making sure, among others, that no tenure rights are made invisible in such cases, in particular customary and/or collective tenure rights and systems.[[14]](#footnote-14) This is also of importance for paras. 23 and 24 of the draft GC.
* Para. 22 of the draft GC should clarify that, in addition to being accessible, **land registration/recording systems need to be appropriate for their particular circumstances as well as socio-culturally appropriate**, in particular in the context of the rights of Indigenous Peoples and customary and/or collective tenure systems (para. 17.2 of the Guidelines on the Governance of Tenure). The GC should also recommend the use of **locally suitable technology** for the delivery of land administration services (para. 17.4 of the Guidelines on the Governance of Tenure). The GC should further explicitly refer to the need for States Parties to **take into account structural issues such as the digital divide** whenever they use digital technologies, including its strong gender and rural dimensions, as well as lack of participation regarding the use of technology.[[15]](#footnote-15)
* The GC should further clarify State Parties’ obligations to ensure **data protection and privacy of all land-related data** that is collected, processed, stored and used in the context of land administration and governance, recommending States Parties to **ensure public-interest control over land-related data and its use**, including the use of publicly controlled infrastructure for collecting, storing and processing such data.
* Finally, the GC should clarify that States Parties’ protect obligation includes putting in place **regulation regarding the collection, processing, storage and use of land-related data, in particular when carried out by corporate entities for commercial purposes**, taking into account land-related issues in the context of policies and regulation of the digital economy, including addressing concentration of power and monopolies.

1. **Climate change and ecological crises**

As the draft GC rightly underlines, climate change is an issue of utmost importance in the context of land and human rights. Climate change and the closely related ecological crises (in particular biodiversity loss and pollution) affect the right to land and other human rights in several ways, including:

1. Land and resource grabs, and ensuing land use change (deforestation, urbanization and “artificialization”, mining, industrial activities etc.) are main drivers of global warming, biodiversity loss and ecosystem destruction;
2. The effects of climate change and ecosystem destruction increase and exacerbate land conflicts and dispossession of communities;
3. Climate change mitigation as well as ecosystem restoration and conservation entail serious risks of intensifying dispossession of communities;
4. Climate change, land degradation, biodiversity loss and ecosystem destruction are used by some power and resourceful actors to justify dispossession of communities and people;
5. The right to land and territories by communities and people is fundamental to their ability to act as stewards of ecosystems as well as to conserve, restore and sustainably use land and biodiversity.

FIAN International therefore welcomes the importance given to this issue in the draft GC, including the inclusion of a specific sub-section. However, we recommend the Committee to provide more comprehensive and specific guidance. In order to do so, FIAN International recommends the following:

* The GC **should address all the current interlinked ecological crises, specifically referring to climate change, biodiversity loss and pollution**. The introduction should clearly underline the importance of these issues in the context of land, explaining the complex and intertwined interrelations (see points a. to e. above). Moreover, the GC should underline that **land as well as its use, management and governance are fundamental for human societies’ relationship with (the rest of) nature**, which is decisive for the survival of the human species as well as the realization of human rights and wellbeing/*buen vivir*. In this context, FIAN welcomes the reference to stewardship approaches in para. 7 of the draft GC, but recommends the use of the term ecological “functions,” instead of “services,” because the latter may be interpreted as implying a function that can/should be valued economically/financially. We welcome the mentioning of the environmental functions of land in para. 37 of the draft GC.
* Due to the importance of climate change and related ecological crises for land, section F of the GC should be expanded and address the following issues:
  + Due to the considerable impacts of climate change on land and human rights, the GC should underline State Parties’ obligation to **reduce greenhouse gas emissions** in order to prevent such impacts. In this context, the GC should reaffirm the principle of common but differentiated responsibilities (UNFCCC, art. 3.1). The GC should also underline the importance for States Parties’ to ensure policy coherence, especially with regards to policy areas that have considerable impacts on the climate and the environment.
  + The GC should clarify State Parties’ obligation to ensure the **respect and protection of human rights in the context of extreme weather events, emergencies, disasters and shocks**, emphasizing the need to give special attention and priority to marginalized and disadvantaged groups. These obligations apply particularly in cases of **displacements and resettlement** related to climate change and natural disasters, and include the **duty to restitute lands** after such emergency situations.
  + It is of utmost importance that the GC clarifies **State Parties’ obligations to respect, protect and fulfil human rights in the context of climate change mitigation measures**, which have or are likely to have impacts on the right to land and tenure rights, including carbon sequestration, capture and storage, compensation/offsetting mechanisms/schemes and conservation/establishment of protected areas, among others (the Committee may wish to refer to some of the concepts used to refer to such measures such as “natural climate solutions”, “nature-based solutions,” among others). The GC should **caution State Parties against putting in place policies, programs, measures and mechanisms that entail risks of adversely affecting land and tenure rights as well as human rights**, and emphasize that State Parties are required to prioritize the rights of marginalized, vulnerable and disadvantaged groups (including Indigenous Peoples, peasants and other people working in rural areas, women and youth), in the context of climate change mitigation measures. The GC should further emphasize the need for **effective safeguards and accountability mechanisms** in this context. Prior and independent human rights, environmental and social impact assessments, effective monitoring and remedy mechanisms as well as effective participation of all those who may be affected by such measures, taking into account power imbalances, are critical in this context. Free, prior and informed consent (FPIC), which has been recognized as a right of Indigenous Peoples, should be recommended as the commonly used standard and best practice in this regard for all communities, groups and individuals.
  + In addition, the GC should emphasize the important **positive contribution of communities’ sustainable land use and management practices to address and mitigate climate change, as well as to conserve, restore and sustainably use land and ecosystems**. In this context, the GC should emphasize the importance of recognizing and effectively protecting the tenure rights of communities, groups and individuals, including collective and/or customary tenure rights and systems, as important measures to address climate change, biodiversity loss, ecosystem destruction and human rights impairments. The GC should further **encourage State Parties to promote the broad and equitable distribution of land as an important measure in this regard**, including through redistributive reforms for social and environmental reasons (Guidelines on the Governance of Tenure, para. 15.3; a reference to environmental reasons for agrarian reforms should also be included in para. 35 of the draft GC).
  + While FIAN welcomes the reference to extraterritorial obligations and the importance of cooperation in the context of climate change in paras. 54 and 55 of the draft GC, we reiterate our recommendations of explicitly referring to the principle of common but differentiated responsibilities (see above). Taking into account that **countries of the Global North are likely to adopt policies and measures to address and mitigate climate change that are likely to affect the right to land and tenure rights of communities, groups and individuals in countries of the Global South** (e.g. for carbon sequestration, compensation/offsetting, establishment of conservation/protected areas etc.), the GC should emphasize their particular responsibility to ensure the respect, protection and fulfilment of human rights in such cases.

1. FIAN is an international organization with more than thirty years of experience in the defense and promotion of the human right to food and nutrition. FIAN operates through its international secretariat, which is based in Heidelberg (Germany) and Geneva (Switzerland), as well as its national sections in 20 countries in Africa, Asia, Europe and Latin America. For more information, please see [www.fian.org](http://www.fian.org). [↑](#footnote-ref-1)
2. FIAN International. 2017. The Human Right to Land. Position Paper. Available at: [www.fian.org/fileadmin/media/publications\_2017/Reports\_and\_Guidelines/FIAN\_Position\_paper\_on\_the\_Human\_Right\_to\_Land\_en\_061117web.pdf](http://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf). [↑](#footnote-ref-2)
3. Humans are land-living creatures; they are neither fish, birds nor extra-terrestrials. There is no access to food or housing without – at least some indirect form of – access to land. Although this access may not always be direct (as it is for Indigenous Peoples or peasants, small-scale fishers, pastoralists etc. who need direct access to land for daily survival), but mediated via markets. Nevertheless, these links exist, and if markets break down or if market access is not possible due to price surges and/or low income, the right to land is essential to access food or housing. [↑](#footnote-ref-3)
4. CEDAW General Recommendation No. 34 on the rights of rural women. [↑](#footnote-ref-4)
5. FIAN International/Transnational Institute/Focus on the Global South. 2020. Rogue Capitalism and the Financialization of Territories and Nature. Available at: [www.fian.org/files/files/Rogue\_Capitalism\_and\_the\_Financialization\_of\_Territories\_and\_Nature\_(1).pdf](http://www.fian.org/files/files/Rogue_Capitalism_and_the_Financialization_of_Territories_and_Nature_(1).pdf). [↑](#footnote-ref-5)
6. High Level Panel of Experts on Food Security and Nutrition (HLPE). 2013. Investing in Smallholder Agriculture for Food Security. Available at: [www.fao.org/3/i2953e/i2953e.pdf](http://www.fao.org/3/i2953e/i2953e.pdf). [↑](#footnote-ref-6)
7. CFS Policy Recommendations "Investing in smallholder agriculture for food security" and "Connecting Smallholders to Markets", available at: <http://www.fao.org/3/av034e/av034e.pdf> and <http://www.fao.org/3/bq853e/bq853e.pdf>. [↑](#footnote-ref-7)
8. For examples from Cambodia, please see [www.mficambodia.com/?lang=en](http://www.mficambodia.com/?lang=en). [↑](#footnote-ref-8)
9. For instance, the transnational corporation Olam owns 3 million hectares of land around the world. See FIAN International/Transnational Institute/Focus on the Global South. 2020. Rogue Capitalism and the Financialization of Territories and Nature. Available at: [www.fian.org/files/files/Rogue\_Capitalism\_and\_the\_Financialization\_of\_Territories\_and\_Nature\_(1).pdf](http://www.fian.org/files/files/Rogue_Capitalism_and_the_Financialization_of_Territories_and_Nature_(1).pdf). [↑](#footnote-ref-9)
10. The GC may draw from para. 11.2 of the Guidelines on the Governance of Tenure: “States should take measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.” Para. 4.6 of the same Guidelines refer to discrimination resulting from lack of access to economic resources. [↑](#footnote-ref-10)
11. “Noting that there are ***publicly-owned land, fisheries and forests that are collectively used and managed*** (in some national contexts referred to as commons), States should, where applicable, recognize and protect such publicly-owned land, fisheries and forests and their related systems of collective use and management, including in processes of allocation by the State.” (Emphasis added by the author). [↑](#footnote-ref-11)
12. In case the Committee wishes to include reference to relevant examples, the Malian agricultural land law (loi sur le foncier agricole) of 2017 may be a good reference. [↑](#footnote-ref-12)
13. FIAN International. 2021. Disruption or Déjà Vu? Digitalization, Land and Human Rights. Case Studies from Brazil, Indonesia, Georgia, India and Rwanda. Available at: [www.fian.org/files/files/FIAN\_Research\_Paper\_Digitalization\_and\_Land\_Governance\_final.pdf](http://www.fian.org/files/files/FIAN_Research_Paper_Digitalization_and_Land_Governance_final.pdf). [↑](#footnote-ref-13)
14. According to FIAN’s research on digitalization in the context of land, the lack of appropriate mechanisms to take into account customary and/or collective tenure rights and systems is a major problems with most if not all ongoing land-related digitalization projects. [↑](#footnote-ref-14)
15. Hernandez, K. and Roberts, T. (2018). Leaving No One Behind in a Digital World. K4D Emerging Issues Report. Institute of Development Studies. Available at: <https://opendocs.ids.ac.uk/opendocs/handle/123456789/14147>. [↑](#footnote-ref-15)