



# General Comment on Land and Economic, Social and Cultural rights: Overview and Key Points

The United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) is the expert body that monitors compliance with the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). This human rights treaty has 171 state parties to date. The Committee adopted a General Comment on Land and economic, social and cultural rights (“GC26”) in October 2022,<sup>1</sup> making it public in December 2022. This followed around three years of discussion, including on a draft version.<sup>2</sup>

The Committee considers that GC26 is based on its experience reviewing states’ reports, its other general comments, and its views on communications or complaints (para. 4). It also cited other international jurisprudence, including as developed in the regional systems in the Americas and Africa. According to the Committee, GC26’s purpose is “to clarify States’ obligations related to the impact of access to, use of and control of land on the enjoyment of Covenant rights ... in particular in the context of rights contained in articles 1, 2, 3, 11, 12 and 15” (para. 4). This short note provides an overview of GC26, focusing on how it relates to indigenous peoples. As a general conclusion, GC26 includes some positive statements as well as some troubling or worse statements that detract from its value, and these are even potentially harmful.

## I. General Considerations and Legal Rights

GC26 begins by explaining that “Land plays an essential role for the realization of a range of rights under the [ICESCR]” (para. 1). It highlights interconnections between land and rights to an adequate standard of living, to a healthy and sustainable environment and the right to development, observing that land sometimes also “constitutes the basis for social, cultural and religious practices and the enjoyment of the right to take part in cultural life” (id). It further explains that prevailing land uses and management practices “are not conducive to the realization of the rights in the Covenant” (para. 2). Some of the factors that underlie this conclusion are increased competition for access to and control over land; high demand for land and rapid urbanization; competition for arable land due to demographic growth, large-scale development projects and tourism; significant land degradation; and weak, inadequate or non-existent legal and institutional frameworks “that lead to land



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<sup>1</sup> General comment No. 26 on Land and Economic, Social and Cultural Rights, E/C.12/GC/26, 22 December 2022, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>. It is only available in English at the time of this writing.

<sup>2</sup> <https://www.ohchr.org/en/events/events/2019/general-discussion-land-and-international-covenant-economic-social-and-cultural>.



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disputes and conflicts, social inequality, hunger and poverty” (id.).<sup>3</sup> It also observes that climate change mitigation measures, “such as large-scale renewable energy projects or reforestation measures might contribute to such trends when not adequately managed” (id).

The Committee then lists several policies and legal instruments concerning various aspects of land that “have significantly influenced national legislation and policy and have been widely endorsed by Governments” (para. 3). The UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) is one of these, the Committee says, because it recognizes that **“a right to land” is vested in indigenous peoples**. This is followed by a discussion on various articles of the ICESCR relating to land (paras. 5-11), noting again that “Secure and equitable access to, use of and control over land can have direct and indirect implications for the enjoyment of a range of Covenant rights” (para. 5). Rights to food, water, health, environment, and culture are highlighted. Concerning the right to culture, the Committee explains that this is connected to land “due to the particular spiritual or religious significance of land to many communities; for example, when land serves as a basis for their social, cultural and religious practices or the expression of their cultural identity” (para. 10). This echoes the jurisprudence of the Human Rights Committee in relation to the right of members of minorities to enjoy their culture (ICCPR, Art. 27) as well as other human rights mechanisms and tribunals that have emphasized this connection in the case of indigenous peoples.

The Committee importantly affirms that **“land is also closely linked to the right to self-determination”** (para. 11). Also, **“Indigenous peoples can only freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends if they have land or territory in which they can exercise their self-determination”** (id.). Unnecessarily highlighting states’ territorial integrity, it then explains that, consequently, and **“according to their right to internal self-determination, the collective ownership of lands, territories and resources of indigenous peoples shall be respected**, which implies that these lands and territories shall be demarcated and protected by State parties” (id). Affirming the interconnection between self-determination and land/natural resources is positive and it likely provides an enhanced basis for invoking Article 1 of the ICESCR in relation to land issues, and, in principle, the heightened obligations inherent in this interrelationship (this may also affect interpretations of Article 1 of the ICCPR and regional jurisprudence). Some indigenous organizations recommended that the Committee explicitly explain that this also relates to autonomy and self-government rights, which frame and inform rights to control and manage lands/territory, as well as what this may entail in practice.<sup>4</sup> The Committee either did not understand this, chose not to follow, or did not have sufficient space to include it as there is no further elaboration (however, see below for a minor exception and para. 35 for an endorsement of the general idea).

## II. General Obligations

The Committee then turns to the general obligations of states under the ICESCR (para. 12-46), starting with the obligation to “to eliminate all forms of discrimination and to ensure substantive equality” (para. 12). It observes, first, that women, indigenous peoples, and peasants “deserve special attention, either because they have been traditionally discriminated in access to, use and control of land or because of their particular relation with land” (id.). There is no mention of indigenous women in a positive sense,

<sup>3</sup> It notes also that “Global trends, including climate change and the resulting increase in internal and cross-border migration, are likely to increase tensions over the use, access and tenure of land with negative implications for human rights.”

<sup>4</sup> See e.g., *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, IA. Ct. H.R., Ser. C No. 400 (2020), para. 153 (“the adequate guarantee of communal property does not entail merely its nominal recognition, but includes observance and respect for the autonomy and self-determination of the indigenous communities over their territory”), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

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although there are implied references to discrimination or harm against women in traditional and collective land tenure and inheritance systems. The Committee explains in this regard – without any qualification considering self-government or other rights nor the interaction between individual and collective rights – that ensuring equality for women “requires the removal of traditional land regulations and structures that discriminate against women” (para. 15).

Some indigenous organizations recommended that the Committee temper its enthusiasm for agrarian reform initiatives because these have often been a pretext for taking indigenous lands and allocating them to others. While it did not do so explicitly in the case of indigenous peoples, it noted, however, and where women are affected, that “in cases of agrarian reforms or any redistribution of land, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed” (para. 14). The indigenous organizations’ recommendation is likely covered by the general language in paragraph 35, stating that “agrarian reforms should ... respect and protect the collective and customary tenure of land.”<sup>5</sup>

Next GC26 discusses specific requirements relating to indigenous peoples, who, it says, have rights to lands and territory guaranteed by international law (i.e., ILO 169 and UNDRIP) (para. 16). This includes the right to **“maintain and strengthen their spiritual relationship with their lands, territories and resources, including waters and seas in their possession or no longer in their possession but which they owned or used in the past”** (id.).<sup>6</sup> It states that “Respect for indigenous peoples’ self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources” (para. 19). Thus, the Committee stresses that states are required **“to demarcate their lands, protect them from encroachment and respect their right to manage the lands according to their internal modes of organization”** (para. 16).<sup>7</sup> These ‘internal modes of organization’ should include both indigenous governments, modes of self-governance, and indigenous law, although, it would have been more accurate to say ‘respect their right to control and manage the lands’ in this context.

Additionally, “Laws and policies should protect indigenous peoples from the risk of State encroachment on their land, for instance, for the development of industrial projects or for large-scale investments in agricultural production” (id.). Other components include an affirmation that a right to restitution pertains where indigenous peoples have “unwillingly lost possession of their lands without their free, prior consent after a lawful transfer to third parties,” and that “relocation is allowed only under narrowly defined circumstances and with the prior, free and informed consent” (id.).<sup>8</sup> These ‘narrowly defined circumstances’ are not specified or apparent. Additionally, in international jurisprudence, the right to restitution is not restricted only to third parties but also includes competing and non-consensual state land use designations, such as protected areas.<sup>9</sup>



Photo Kuren Works

<sup>5</sup>See also para. 37, stating that agrarian reform “policies and laws should include ... legal safeguards to protect the collective and customary tenure of land.”

<sup>6</sup>The spiritual relationship “is linked not only to spiritual ceremonies but also to every activity on land, such as hunting, fishing, herding and gathering plants, medicines and foods.”

<sup>7</sup>See also para. 22, stating that the obligation to respect requires “respecting decisions of concerned communities to manage their lands according to internal modes of organization.”

<sup>8</sup>See para. 23 for a possible explanation of what constitutes “narrowly defined circumstances.”

<sup>9</sup> See e.g., *Kaliña and Lokono Peoples v. Suriname*, IA. Ct. H.R., Ser. C No 309 (2015).



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This is followed by an inaccurate statement that certain regional cases have extended “some of the rights applicable to indigenous peoples concerning land” to some “traditional communities” that have collective land tenure systems. However, the two cases cited simply apply the “tribal” category – as in ‘indigenous and tribal peoples’ in ILO 169 – and do not extend rights to any new group or category, and neither uses the term “traditional community” or any alternative expression thereof. This statement should be viewed as an attempted justification by those who seek precisely to do that, whether it is in the case of peasants or so-called traditional communities or even all local communities.<sup>10</sup> This has a disturbing and potentially harmful manifestation in para. 19, which is at best naïve given what certain governments may do with it (e.g., insert ‘transmigrants’ for peasants in the Indonesian context or ‘colonos’ for peasants in the Latin American context).



While much of it lacks clarity for various reasons, paragraph 19, in part, does plainly concern land disputes between indigenous peoples and peasants, noting – and perhaps limiting the scope insofar as all peasants do not employ collective tenure systems<sup>11</sup>– that “both groups depend to an important extent on access to communal lands or to collective ownership.”<sup>12</sup> Thus, it explains, where “disputes over land arise between indigenous peoples or peasants, **States shall provide mechanisms for the adequate settlement of those disputes, making all efforts to satisfy the right to land of both groups.**” While there may be regional differences, it is difficult to see how the right to land of both groups can be fully ‘satisfied’, albeit the obligation is one of conduct rather than result (to make “all efforts” versus prescribing any specific outcome). What is meant by this is perhaps illuminated in the attendant footnote, which refers to “the need of harmonization of the right to land of peasants and indigenous peoples,” citing the 2020 *Lhaka Honhat v. Argentina* judgment of the Inter-American Court of Human Rights.<sup>13</sup> However, while this judgment stresses that the rights of peasants cannot be simply set aside,<sup>14</sup> it clearly requires that indigenous peoples’ rights should prevail where they conflict (unless otherwise agreed to by indigenous peoples), and there is no mention of ‘harmonization’ in any sense of the word.<sup>15</sup>

<sup>10</sup> See e.g., para. 25, stating that “Local communities that have traditionally used the land should be prioritized in the reallocation of tenure rights;” and para. 35, stating that “Ensuring access to natural resources, cannot be limited to the protections granted to the lands and territories of indigenous peoples.”

<sup>11</sup> United Nations Declaration of Rights of Peasants and other people working in rural areas, G.A. Res. 73/165 (7 Dec. 2018), <http://undocs.org/en/A/RES/73/165>. In Art. 1(1), this Declaration states that “For the purposes of the present Declaration, a peasant is any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land.” Also, Art. 1(3) states that “The present Declaration also applies to indigenous peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities, and the landless engaged in the above-mentioned activities.”

<sup>12</sup> More generally, and perhaps further confusing matters, it explains that “Respect for indigenous peoples’ self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources. There are also other groups including peasants, pastoralists, fisherfolks for whom access to communal lands or the commons for gathering firewood, collecting water or medicinal plants, or hunting and fishing is essential.” This may also reflect that the ‘right to land’ has a different content in this context (access v. ownership), but, nonetheless, this is not apparent in the text and this lack of clarity is not helpful, particularly in an instrument that purports to be explanatory.

<sup>13</sup> *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, IA. Ct. H.R., Ser. C No. 400 (2020), para. 134 (in the facts of this case, “not only indigenous communities are involved, but also a significant number of ‘criollo’ families [translated as creole/mestizo peasants or, in para. 135, “vulnerable rural settlers”] whose connection to the land is determinant for their way of life...”); para. 136 (explaining that “The State’s remarks on the criollo settlers who inhabit Lots 14 and 55 correspond to the considerations included in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas...”); and para. 137 (The Court cannot ignore that the State has obligations towards the criollo population, because, given their vulnerable situation, the State must take positive steps to ensure their rights”).

<sup>14</sup> See also United Nations Declaration of Rights of Peasants and other people working in rural areas, Art. 2(3), “Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas....”

<sup>15</sup> *Id.* para. 130 et seq. See e.g., para. 138 (“... there is no doubt about the indigenous communities’ ownership of 400,000 ha of Lots 14 and 55. To guarantee this right, the State should have demarcated the indigenous property and taken steps to transfer or relocate the criollo population outside it”); para. 144 (“Although it appreciates the agreement process, the Court considers that the procedures should evidently be appropriate to guarantee the indigenous communities’ ownership of their territory. The State cannot subordinate this guarantee to the willingness of private individuals”); para. 146 (“Decree 1498/14 clearly recognizes the indigenous communities’ ownership of their territory. However, it also establishes a ‘co-ownership’ over the same land in favor of criollo settlers. Therefore, and according to the text, which establishes a property right for criollos and indigenous communities over the same land and provides for future actions ‘to determine’ and ‘to delimit,’ it cannot be understood as a definitive act that fulfills the State’s obligation to ensure the communities’ right to property”); para. 149 (“... recognition of indigenous ownership should be carried out providing the right with legal certainty, so that it is enforceable vis-à-vis third parties”); and para. 167 (“the Court notes that Decrees 2786/07 and 1498/14 were acts that recognized the [indigenous] communal ownership of the land claimed. However, the State has not provided adequate title to this land to provide it with legal certainty. The land has not been demarcated and the presence of third parties continues”).

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It is unclear what the Committee intends here and whether this is simply an inelegant way of seeking to provide for a dispute resolution mechanism or whether the Committee intends that indigenous peoples' rights should be somehow affected or diminished due to the presence of other (collective) land users, or if this is to be understood according to the norms in the *Lhaka Honhat* judgment. Also, the meaning of the term "satisfy" (fulfil, comply with) is not the same as "harmonization" (to bring into harmony, accord, coherence), and 'satisfy' can simply mean that the rights of each group should be complied with, in which case the two sets of rights would be of a different order and indigenous peoples' rights should prevail in the absence of an agreement to the contrary. "Harmonization" suggests that conflicting rights should be somehow accommodated or reconciled. **What is clear, however, is the potential for misunderstanding, misuse or abuse of this language, particularly by those who may not be acting in good faith.** Notably, by invoking the UN Declaration on the Rights of Peasants,<sup>16</sup> this is precisely what Argentina attempted to do – unsuccessfully – in the *Lhaka Honhat* case.<sup>17</sup>



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The Committee next addresses a category of rights/obligations under the heading "Participation, consultation, and transparency." This also contains a troubling statement. Positively, it explains that "Participation rights are only meaningful when their use does not entail any form of retaliation" (para. 21), and that these rights include receiving information and meaningful participation in decision-making processes "in land-related contexts, without retaliation" (para. 20). Also positively, it explains that the "international legal standards [sic] for indigenous peoples is that of free, prior and informed consent..." (id.), stating that indigenous people's consent "is required as stated in art. 10 of UNDRIP".

## III. Specific Obligations

As is usually the case in general comments, the Committee in GC26 breaks down and explains the specific obligations under the headings "respect," "protect," and "fulfil." This is followed by a section on "extraterritorial obligations" (discussed in Section IV below).

### A. Respect

This section begins by explaining that the "obligation to respect requires that States parties do not interfere directly or indirectly with the Covenant rights related to land, including the access to, use of and control over land." One example cited is an obligation to respect "decisions of concerned communities to manage their lands according to internal modes of organization" (para. 22). As stated above, this should also include indigenous modes of self-government and indigenous law (para. 35, quoted below, supports this view). Much of the remainder concerns relocation and it is unclear how much of it applies to indigenous peoples beyond some of the general considerations that apply to everyone.

### B. Protect

This class of obligations concerns required responses by states to the actions of third parties, including

<sup>16</sup> Cf. *United Nations Declaration of Rights of Peasants and other people working in rural areas*, Preambular para. 4 (Reaffirming also the *United Nations Declaration on the Rights of Indigenous Peoples*); Art. 5(1) ("Peasants and other people working in rural areas have the right to have access to and to use in a sustainable manner the natural resources present in their communities..."); Art. 17(1) ("Peasants and other people living in rural areas have the right to land, individually and/or collectively, in accordance with article 28 of the present Declaration, including the right to have access to, sustainably use and manage land and the water bodies ..."); and 28 ("1. Nothing in the present Declaration may be construed as diminishing, impairing or nullifying the rights that peasants and other people working in rural areas and indigenous peoples currently have or may acquire in the future. 2. The exercise of the rights set forth in the present Declaration shall be subject only to such limitations as are determined by law and that are compliant with international human rights obligations. Any such limitations shall be non-discriminatory and necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society...").

<sup>17</sup>*Lhaka Honhat*, para. 136.



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of corporations. In the Committee's words, the "obligation to protect requires States parties to adopt measures to prevent any person or entity from interfering with the Covenant rights related to land, including the access to, use of and control of land" (para. 26). This includes protecting communal tenure systems, especially where material and spiritual relationships with traditional lands are "indispensable to their existence, well-being and full development" (para. 27). "[C]ollective rights of access to, use of and control over lands, territories, and resources ... traditionally owned, occupied or otherwise used or acquired" are highlighted in this respect (cf. UNDRIP, Arts. 25 and 26).

Regarding corporations and other private investors (e.g., carbon traders?), the Committee explains that the obligation to protect "entails a positive duty to take legislative and other measures to provide clear standards ... especially in the context of large-scale land acquisitions and leases at home and abroad" (para. 30). Using strong language, it explains further that States "**shall adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the negative impacts caused by their decisions and operations on Covenant rights**" (id). More generally, the Committee identifies a requirement that **Human Rights Impact Assessments are conducted in relation to land-based investments "to identify potential harm and options to mitigate it"** (para. 28).

## C. Fulfil

This obligation requires that states "adopt legislative, administrative, budgetary, and other measures and establish effective remedies aimed at the full enjoyment of Covenant rights related to land, including the access to, use of and control of land" (para. 32). Among other things, **states are required to "recognize the social, cultural, spiritual, economic, environmental, and political value of land for communities with customary tenure systems and shall respect existing forms of self-governance of land"** (para. 35). Also, states "should engage in long-term regional planning to maintain the environmental functions of land" (para. 38). This includes **prioritizing and supporting "land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources,** ... [and,] inter alia, facilitate[ing] the sustainable use of natural resources by recognizing, protecting, and promoting traditional uses of land, adopting policies and measures to strengthen livelihoods of people based on natural resources and the long-term conservation of land" (id.).

## IV. Extra-Territorial Obligations

This section is both interesting and useful for advocacy work (e.g., business and human rights, international financial institutions, supply chain regulation) as it gets into areas that some treaty bodies rarely touch in any detail. For example, it notes that "Land transfers are quite often financed or fostered by international actors, including public investors such as development banks financing development projects requiring land, such as dams or renewable energy parks, or by private investors" (para. 40).<sup>18</sup> The obligations are broken down and explained following the division employed above.

## A. Respect

This requires that states "refrain from actions that interfere, directly or indirectly, with the enjoyment of land-related rights outside their territories," and that they also "**take concrete measures to prevent their**

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<sup>18</sup> Noting also that "In reviews of States parties' reports, the Committee has encountered an increasing number of references to the negative impact on individuals', groups, peasants and indigenous peoples' access to productive resources, as a result of international investment negotiations, agreements and practices, including in the form of public-private partnerships between State agencies and foreign private investors."

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**domestic and international policies and actions, such as trade, investment, energy, agricultural, development and climate change mitigation policies, from interfering, directly or indirectly, with the enjoyment of human rights”** (para. 41, emphasis added). That includes projects undertaken by bilateral and multilateral development agencies and banks. Likewise, member states of international financial institutions “should take steps to ensure that their lending policies and other practices do not impair the enjoyment of the Covenant rights relating to land” (id.).

## B. Protect

This requires that states establish “**regulatory mechanisms to ensure that business entities ... and other non-State actors that they are in a position to regulate, do not impair the enjoyment of Covenant rights in land-related contexts in other countries.** Thus, States parties shall take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence...” (para. 42). It also proposes establishing due diligence requirements to ensure that lands acquired or leased and which impact on land rights have “not been acquired in a way that violates international norms and guidelines” (para. 43). Likewise, States “that promote or carry out land-related investments abroad ... should ensure that they do not reduce the ability of other States to comply with their Covenant obligations” (para. 44).<sup>19</sup> To that end, they “**shall conduct human rights impact assessments prior to making such investments**” and such assessments “**shall be conducted with substantive public participation and the results shall be made public and inform measures to prevent, cease and remedy any human rights violations or abuses**” (id.). This, in principle, would also apply to biodiversity conservation, carbon trading and clean energy projects in addition to extractive industries and the like.

## C. Fulfil

States should take steps through international assistance and cooperation aimed at progressively achieving rights relating to land (para. 45). These measures should focus on supporting national policies to secure access to land tenure, avoid land concentration or commodification of land, and improve the access of disadvantaged individuals and groups, increasing their security of tenure (id.). In doing so, “Adequate safeguard policies shall be in place, and persons and groups affected by measures of international cooperation and assistance shall have access to independent complaint mechanisms” (id.).

## IV. Specific Issues

The next section is under the heading “Specific issues of relevance to the implementation of Covenant rights in land-related contexts:” i.e., internal armed conflict, corruption, the situation of human rights defenders, and climate change (paras. 48-58). In the case of internal armed conflicts, GC26 observes that this can include “forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as ... indigenous peoples...” (para. 48). Where this has occurred, “**States are obliged to establish restitution programmes to guarantee ... the right to have restored to them any land of which they were arbitrarily or unlawfully deprived**” (id.).

Regarding human rights defenders, the Committee observes that it “has regularly received reports of threats and attacks aimed at those seeking to protect their Covenant rights or those of others, often in the form of harassment, criminalization, defamation and killings, particularly in the context of extractive and development projects” (para. 54). Citing the UN Declaration on Human Rights Defenders, GC26

<sup>19</sup> GC26 explains that this includes investments “through partially or fully State-owned or State-controlled companies, including sovereign wealth funds and public pension funds, and private-public partnerships...”



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explains that “States shall take all necessary measures to respect human rights defenders and their work, including in relation to land issues, and to refrain from imposing criminal penalties on them or enacting new criminal offences with the aim of hindering their work” (id.). Noting that specific measures to protect human rights defenders “are dependent on national circumstances,” the Committee lists five measures it considers to be of “crucial importance” in this regard (para. 55).<sup>20</sup>

On climate change, GC26 explains that “States shall avoid those policies for mitigating climate change, such as efforts for carbon sequestration through massive reforestation or protection of existing forests, which lead to different forms of land grabbing, affecting especially [indigenous] land and territories...” (para. 56). Also, climate change mitigation and adaptation measures must include a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment... They shall also respect the free, prior, and informed consent (FPIC) of indigenous peoples” (para. 58). Moreover, “Mitigation policies should lead to absolute emissions reductions through phasing out fossil fuel production and use” (para. 56).

### **V. Implementation and Remedies**

GC26 concludes with three paragraphs on implementation measures and remedies. These include regular monitoring of tenure systems, policies and laws. This monitoring should “rely on qualitative and disaggregated quantitative data collected by local communities and others, be inclusive and participatory, and pay particular attention to disadvantaged and marginalized individuals and groups” (para. 59). With respect to collective and customary tenure, “monitoring should include participatory mechanisms to monitor the impact of specific policies on access to land for people living in the respective communities” (id.).

Requirements related to remedies are highlighted, including, as provided for “in Art. 28 of UNDRIP, restitution of land is for indigenous peoples often the primary remedy” (para. 60). Also, “Access to justice shall include access to procedures to address the impact of business activities, both in the countries where they are domiciled but also where the violations have been caused” (id.). Effective procedures for resolving tenure related disputes are also required, including, in the case of “land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed” (para. 61). Finally, states “should recognize and cooperate with customary and other established forms of dispute settlement where they exist, ensuring that they provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, in accordance with human rights” (id.).

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<sup>20</sup> In short, these are: i) Public recognition by the highest level of Government; ii) Repeal of legislation or other measures negatively affecting them; iii) Strengthening of responsible State institutions; iv) Investigation and punishment of violence and threats; v) Adoption and implementation well-resourced measures in consultation with beneficiaries. See also CESCR Statement on Human rights defenders and economic, social and cultural rights, E/C.12/2016/2, 29 March 2017, para 8.