



Economic and Social Council

Distr.: General
18 October 2019

Original: English

Committee on Economic, Social and Cultural Rights Sixty-sixth session

Summary record of the 52nd meeting

Held at the Palais des Nations, Geneva, on Monday, 14 October 2019, at 3 p.m.

Chair: Ms. Liebenberg (Vice-Chair)

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In the absence of Mr. Zerbini Ribeiro Leão, Ms. Liebenberg, Vice-Chair, took the Chair.

The meeting was called to order at 3.05 p.m.

Substantive issues arising from the implementation of the International Covenant on Economic, Social and Cultural Rights *(continued)*

General discussion on land and the International Covenant on Economic, Social and Cultural Rights (continued)

Panel 4: Concerns related to land by indigenous peoples, traditional groups and other vulnerable groups

1. **Ms. Cordes** (Panellist, Columbia Center on Sustainable Investment), introducing the discussion, said that, in the governance of land tenure, groups such as indigenous peoples, fisherfolk, pastoralists and smallholder farmers were especially at risk of discrimination, often exacerbated by commercial pressures on land and the impacts of the climate crisis. Throughout the world, indigenous groups were losing access to their land, resources and traditional ways of life, particularly as a result of weak land rights. Access to land could also be critical for realizing many Covenant rights, and State failure to protect access would then become a violation of Covenant obligations.

2. To protect security of tenure over land as a common resource, the process of demarcation should address common lands first. Where customary rights to land existed, governments should ensure that they were accorded full equivalence in the country's legal system even in the absence of formal titles, for instance through the recognition of data and maps produced by indigenous peoples and communities. It should then be possible to formalize customary rights and exercise control over communal rights under customary governance systems. Credible and accountable land administration structures were critical to the security of communal tenure. Spatial planning processes should integrate meaningful participation of rights holders and take account of customary land rights claims, which must be resolved before the processes moved forward, with the presumption of ownership in favour of customary rights claimants while claims were pending.

3. The right of indigenous peoples to lands and territories that they had traditionally occupied was already protected by several international instruments, but should be elaborated on further in the general comment. Factors such as cultural and spiritual attachment to and long-time possession of land meant that the Covenant itself gave rise to the right to land, which was determinative of the realization of other Covenant rights.

4. The Committee should consider how regional courts had protected the rights of non-indigenous groups that had similar relationships to lands and natural resources to those of indigenous groups. It might also consider the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, which paved the way for the Committee to provide guidance on the inextricable links between the right to access, use and manage land and the exercise of Covenant rights. States parties must ensure access to effective national and international legal mechanisms to protect such rights.

5. Under international human rights law, the expropriation of privately owned land was conditional on factors including "public purpose" or "the public interest". The general comment should specify the need for a clear definition in law of those terms; it should not be left to the discretion of government officials to determine on a case-by-case basis. The burden of proof should fall on the State, which could also establish mechanisms, such as publicly funded lawyers, to assist land users at risk of eviction and provide relevant training for the judiciary. It could also be clarified whether, for instance, jobs or tax revenue generated by private investment were considered as being in the public interest. One defining consideration might be whether the persons whose rights were being expropriated would benefit explicitly from the project, beyond compensation for their loss. That would not prevent such projects occurring, but would ensure that the land was acquired in a different way, respectful of Covenant rights.

6. **Mr. Pacheco** (Panellist, La Vía Campesina) said that access to land was essential to the enjoyment of economic, social and cultural rights. The United Nations Declaration on the

Rights of Peasants and Other People Working in Rural Areas, adopted in 2018, contained many references to the right to land, its articles 5 and 7 speaking of the right to have access to and manage natural resources for individuals and groups, and thus de facto recognized the right of peasants and rural workers to land. In developing its general comment, the Committee could take the Declaration as a basis and improve on it. The idea of land as a common good was fundamental, but was currently endangered by State support for transnational corporations that hoarded both land and investment, violating farmers' access to land on an unprecedented scale. Land was not a commodity, but part of the life of individuals and communities, and must be seen in the same light as other natural and social resources. Furthermore, rights such as employment, housing and education were directly related to and contingent on the right to land.

7. The right to defend oneself from arbitrary and unlawful displacement was also asserted in the Declaration, but not protected in reality. Furthermore, when it was the State that decided on such evictions, they were not considered unlawful. There must therefore be a requirement of proof, precautionary measures, access to justice and free, prior and informed consent for all projects in rural areas.

8. Comprehensive agricultural reform should take account of existing agricultural models and farmers' priorities, but also possible changes of land use resulting, for instance, from land degradation. Governments must have a public policy on land; it should not be considered simply as a market commodity. Farmers' and rural workers' access to land must be guaranteed, and any market-oriented system must include regulation to protect that right and allow State intervention in the case of land sale. Regional systems governing land ownership should be established, and the activities of transnational corporations made subject to international regulations: human rights belonged to individuals, not to corporations.

9. The advantages brought by farming in terms of the climate should be recognized, as should the fact that the unfair distribution of land was frequently a cause of conflict and violence. In that connection, La Vía Campesina had been saddened by the way that the situation in Colombia had developed, which, it believed, underlined the need for fair international oversight of such cases.

10. **Ms. Vars** (Panellist, Expert Mechanism on the Rights of Indigenous Peoples), speaking by video link from Norway, said that the Expert Mechanism on the Rights of Indigenous Peoples was working on a global study on the land rights of indigenous peoples, to be presented to the Human Rights Council in September 2020. Twelve years after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the collective rights to lands and resources were still not enforced, as individual ownership, privatization and land development often prevailed. The Committee's general comment should include direct reference to the Declaration's recognition of the collective rights to lands, territories and resources for indigenous peoples, which had also been recognized by regional human rights mechanisms and cited in national courts. The Declaration further recognized the rights of indigenous peoples over, and their distinctive relationship with, their lands, including coastal seas, and their responsibilities to future generations. States thus had an obligation to protect those lands and consult with the indigenous peoples before allowing any activities on them. It was increasingly accepted that, through their knowledge and practices, indigenous peoples contributed to addressing the challenges of climate change – for instance, the success of health-related adaptation efforts in the Arctic was underpinned by indigenous knowledge.

11. However, implementation of rights remained an issue for many reasons, including non-recognition of indigenous peoples as such, failure to consult them appropriately and failure to obtain their free, prior and informed consent for measures that affected them. Effective protection of their lands should therefore be addressed in the general comment. Free, prior and informed consent meant that indigenous peoples should be able to influence the outcome of – and not merely be involved or heard in – decision-making processes. It must be reached with indigenous peoples' legitimate representatives, in accordance with their own customary norms and traditional decision-making methods, and be demonstrated by their explicit agreement. States, and indigenous peoples themselves, were encouraged to establish robust consultation mechanisms in law, and projects must include necessary safeguards such

as impact assessments, mitigation measures, compensation, benefit-sharing and redress for any human rights violations.

12. The general comment should also address the global scourge of killings of and reprisals against indigenous human rights and environmental defenders.

13. **Mr. Cissé** (Panellist, Mali) said that each country should ensure the consistent and progressive implementation of its international obligations. The Malian authorities had recognized that land was the most basic element for all persons and, in 2006, had adopted the Agricultural Act, a law on which all other legislation concerning land and farming was based. The 2014 Agricultural Land Policy focused, *inter alia*, on combating land speculation and abusive customary retention of land. As a result, each local area now had a land map, with agricultural land indicated. The Policy was designed to address growing human pressure on natural resources and increasing environmental vulnerability and conflicts, as well as the emergence of a market for land, that led to the acquisition of large areas. It was also intended to support decentralization, good land governance through consistent administration, land and agricultural investment security and the sustainable management of land and natural resources, taking account of the diversity of farming practices. Land commissions, consisting of stakeholders from different sectors, had been set up to serve as an alternative conflict resolution tool, and had produced positive results.

14. The Agricultural Land Ownership Act, adopted in 2017, applied to State, municipal, community and individual ownership of land. It emphasized recognition of customary rights in addition to those recognized in positive law, and referred to different methods of land acquisition such as gifts, loans, rental and sharecropping. The Act had brought innovations such as the issuance of individual and collective land ownership certificates, which could be transmitted by succession or between individuals under established conditions.

15. The Act also provided for positive discrimination for vulnerable groups, with at least 15 per cent of State or local authority land subject to allocation being given to groups of women, young persons or persons with disabilities in the area concerned.

16. **Ms. Mejía Molina** (Colombia) said that her Government was committed to the implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace with the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (Revolutionary Armed Forces of Colombia-People's Army), including section 1 on comprehensive rural reform. Through the establishment of objectives in its national development plan to change the production structure, make agriculture and agribusiness more competitive and promote rural development, it was seeking to stimulate production, private investment, innovation and entrepreneurship to generate opportunities for the growth and well-being of the entire rural population. One priority was to establish a multi-purpose rural land register that would provide up-to-date information. Other key objectives related to legal certainty and land titling.

17. **Ms. Enersen** (Norway) said that the United Nations Declaration on the Rights of Indigenous Peoples was not entirely clear on all points relating to the substantive rights of indigenous peoples to land and water. Her delegation therefore recommended that the Committee should take into account articles 14 and 15 of the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the language of which was more precise and accurate. With regard to procedural rights, however, the Committee should draw on the language of the Declaration, which clearly referred to "free, prior and informed consent", rather than using the broader and more ambiguous phrase "principle of free, prior and informed consent".

18. **Ms. Soreng** (Indigenous Fellowship Programme) said that she belonged to the Khadia community from Sundargarh district in India, which had been defined as part of a scheduled area under the Indian Constitution and thus benefited from all the facilities and provisions available to tribal peoples thereunder through the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, and the Forest Rights Act. One of the criteria for that definition was that the area must have a majority tribal population, which was currently the case in Sundargarh. However, industrial and land investments had led to migration, displacement and the entry of non-tribal populations and, according to the 2011 census, the district's tribal population now stood at just 50.7 per cent. If it fell below 50 per cent, her

people would lose all the facilities available to them under the Constitution, threatening their access to rights and their very existence.

19. Indigenous peoples still tended to borrow money from moneylenders rather than banks, because the banking system was complicated and banks were located far from their villages. In order to avoid the exploitation associated with moneylending, the Government should provide greater financial aid until a more accessible alternative to the current banking system was available, in order to reduce the distressed sale of land, which was a form of monetary crisis management used to cover health-care, education and marriage expenses.

20. Because land was the identity and core essence of the life of indigenous communities, the non-recognition, deprivation and loss of land rights had a major impact on tribal cultural practices. She invited the Committee to visit Sundargarh district in order to gain a better understanding of land rights issues and the human rights violations that her community was experiencing.

21. **Ms. Sánchez Lozada** (Indigenous Fellowship Programme) said that indigenous peoples in Mexico continued to experience profound marginalization, discrimination and racism. The violation of their right to full and effective participation in the implementation of the agricultural land distribution policy had led to the fragmentation of their territories and their exclusion from use and enjoyment of the land, as well as from decision-making. Against that backdrop, over 500 environmental conflicts related to the extractive industries and megaprojects had been recorded, while 122 human rights defenders had been killed. The rights of indigenous peoples established in the international instruments to which Mexico was a signatory, including the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) were thus being systematically violated.

22. As the State sought to control and exploit what it wrongly described as “resources of strategic importance to the nation”, disappearances, kidnappings and killings associated with militarization and drug trafficking had led to a wave of forced migration and displacement that had affected indigenous peoples particularly severely. While the right to free, prior and informed consent was clearly a minimum standard in relation to investment projects, in Mexico indigenous peoples seemed to have a greater likelihood of being subjected to disappearance or murdered than of gaining access to justice in the face of violations of the right of access to their resources and way of life.

23. All policies, guidelines, strategies and actions related to land tenure should guarantee the participatory development of mechanisms designed to protect indigenous peoples’ rights to land and to self-determination, including recognition and legal guarantees of indigenous systems of land tenure. They should also involve the establishment of an agrarian dispute settlement mechanism that was consistent with indigenous land rights, incorporated a gender perspective and allowed both the restitution of land and the granting of new lands to displaced persons, with due regard to the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples. They should require the legally binding implementation of the right to free, prior and informed consent, including the right to community-based consultation processes on any project concerning investment in indigenous lands and territories in order to protect the right to self-determination and territorial integrity. Finally, in view of the systematic human rights violations taking place in Mexico, consideration should be given to transforming the mechanism for the protection of human rights defenders and journalists into a comprehensive and participatory public policy for the collective protection of human rights defenders.

24. **Mr. Lameman** (Indigenous Fellowship Programme), speaking on behalf of the Confederacy of Treaty Six First Nations and the International Indian Treaty Council, said that the topic before the Committee was connected to the very essence of indigenous peoples, their culture and spirituality and their relationship to Mother Earth. His own ancestors had agreed to share their land with newcomers to the depth of a plough so that they could make a living by farming. However, the treaty that they had entered into with Great Britain and Ireland in 1876 – known as Treaty No. 6 – had not been respected. His people were now on the brink of disaster because of the illegal and unethical practices of the successor State of Canada in relation to the unchecked exploitation of natural resources within Treaty

Territories. He therefore called on the Committee to recommend that the United Nations system should develop a new platform for the revitalization, preservation and protection of indigenous lands with the full and effective participation of indigenous peoples, to ensure their transmission in pure and pristine condition to future generations.

25. It was regrettable that he had been allowed so little time to explain the distressing situation faced by his people. It was also disturbing that the Committee was considering the topic merely in the context of preparing a new general comment. While such work was important, the entire United Nations system should do more in concrete terms to protect the land rights of indigenous peoples.

26. **Mr. Salomon Pedro** (Indigenous Fellowship Programme) said that, although significant progress had been made in many countries regarding recognition of the territorial rights of indigenous peoples in national legislation and the granting of land titles, legal insecurity and the absence of effective guarantees remained a matter of concern. Since the mere fact of ancestral occupation gave indigenous peoples real rights to their land, as established by the international legal order, it was incumbent on States to take genuine, effective and urgent measures to uphold international and national law in relation to the enjoyment, use and benefit of communal land ownership by those peoples.

27. Indigenous peoples often had title to their land but their territories were nonetheless illegally occupied by third parties who promoted large-scale agricultural and livestock projects causing irreparable damage to the ancestral lands and way of life of the indigenous population. States parties to international treaties should therefore take genuine action, with the participation of the affected peoples, to develop and implement effective mechanisms for the protection of communal property rights.

28. In the specific case of the Awas Tingni indigenous community of Nicaragua, although the Inter-American Court of Human Rights had ruled in 2001 that the community had property rights in respect of its ancestral lands, the process of restructuring ownership of the land had not been completed. The community had therefore drafted regulations for the governance of communal property and was in dialogue with the State to ensure their effective implementation.

Panel 5: Land rights and conflict

29. **Mr. Uprimny** (Moderator for panel 5) said that the links between land and conflict were profound. Many armed conflicts originated in deeply unequal distribution of land tenure; moreover, armed conflicts often affected land rights by leading to forced displacement, land dispossession and land abandonment. The topic of land was also highly significant in the context of peacebuilding efforts, which should address the legacy of forced displacement, land dispossession and land abandonment, as well as the question of the land inequalities that were often at the root of conflicts.

30. **Mr. Sánchez** (Panellist, University of Virginia), introducing the discussion, said that, bearing in mind the strong links between land and conflict, it was important to take into account the different phases of armed conflict – the pre-conflict phase when tensions were escalating; the conflict itself; and the post-conflict mediation, negotiation or peacebuilding phase – and the different ways in which economic, social and cultural rights needed to be protected in each phase. In addition, the Committee should urge the harmonization of actions taken in relation to land and armed conflict under the peace and security, human rights and development pillars, as described in the guidance note of the Secretary-General on the United Nations and land and conflict, issued in March 2019. It should also go a step further by calling for the actions taken under each pillar to take account of economic, social and cultural rights.

31. Land should be a central factor in the analysis, prevention and monitoring of conflict by States, mediators, international missions, the international community and donors. Analysis should take into account such aspects as the politics of exclusion, scarce natural resources, population pressure, conflicts over land use and plurality of legal systems, all of which were directly related to the rights enshrined in the Covenant. It should also lead to the establishment of early warning mechanisms in relation to rights violations and the alignment of humanitarian responses with the principles established in the Covenant. States had an obligation to establish and protect information on land rights during conflicts, for example,

by protecting existing land registers in order to allow for the restitution of rights in the post-conflict phase. Lastly, in the peacebuilding phase, interventions should be based on a land-related theory of change, which would help to resolve the tension surrounding the question of whether States should prioritize restitution or redistribution. The rights enshrined in the Covenant would not be fully achieved through restitution, although it was sometimes an important and necessary step.

32. **Mr. Seufert** (Panellist, FIAN International) said that conflict increased pressures on land and exacerbated human rights violations. Human rights defenders, especially those working in natural resource and environmental justice or who were part of marginalized groups, were experiencing increased violence at the hands of State actors, the military and police, or even paramilitary groups with links to private companies. Such violence encompassed not only killings, but also threats, harassment, arbitrary detention, generalized criminalization of social struggles and obstruction of access to justice.

33. Corporate actors often tried to gain control of land and natural resources in post-conflict situations, which were characterized by an increased risk of dispossession. In the general comment, the Committee should therefore clarify that States had an obligation to address the specific risks arising in the post-conflict phase. It should also emphasize the obligation of States to take proactive measures to prevent conflicts and address causes of conflict, including discrimination in access to natural resources and unequal land distribution. The current financialization of the global economy, and the growing power of financial markets over land and natural resources, was a structural factor leading to greater injustices. Land investment projects now generally involved a number of different financial actors behind the scenes, which created substantial challenges for accountability, and such projects often took the form of financial transactions, such as the acquisition of shares or trading in land-related derivatives. The Committee should therefore clarify in the general comment that all actors had the same duties, responsibilities and liabilities in relation to land deals, and that States had an obligation to establish regulatory measures that also applied extraterritorially and that covered the financial markets as well as traditional areas of land governance.

34. Given the increased number and intensity of violent conflicts, and the intensifying pressures on land that fostered them, human rights must be protected more robustly and directly. In particular, and especially in conflict situations, land rights should not be protected merely through the lens of other human rights, but should rather be recognized as substantial rights in themselves.

35. **Ms. Vay García** (Panellist, Comité de Desarrollo Campesino and International Land Coalition), speaking via video link from Guatemala, said that the land struggle was one of the main causes of internal conflict and repression against indigenous peoples and human rights defenders in Guatemala. The most recent attempt to find a comprehensive solution dated back to the 1950s, when land had been granted to farming families under the Agrarian Reform Act. However, the Act had lacked a follow-up mechanism and was deemed a failure. Land concentration, labour exploitation, discrimination and racism had led to an internal armed conflict with over half a million victims.

36. The subsequent peace agreements had provided for the creation of a land market, but that had failed because it considered land as an economic resource rather than a source of life. Large landowners had sold less productive land at excessively high prices; many families had gained access to land but did not have the resources to make good use of it; decades later, no progress had been made and many families were heavily in debt. Land ownership had become more concentrated and monoculture farming more prevalent, which had led to the increased persecution of indigenous communities.

37. Indigenous peoples had resisted for over 500 years but would not be able to continue if large corporations were allowed to sap the life from the planet with their extractive projects. To resolve conflicts, it was important for people to be seen as rights holders rather than sources of cheap labour. It was also essential to monitor fulfilment of the right to land, as a collective rather than an individual right. The territorial link with the specific land where indigenous peoples had built their communities must be upheld. The ultimate goal was to defend the land as a source of life. Otherwise, indigenous peoples would simply not survive.

38. **Ms. Rodríguez Mancía** (Guatemala) said that Guatemala was a post-conflict country. Several of the peace agreements that had been signed following 36 years of internal armed conflict were of relevance to the current discussion. Communities had participated in all the Government's efforts to remedy the situation, and it was important to promote dialogue and adapt existing mechanisms to a changing reality. In post-conflict settings, land conflicts sometimes became more rather than less frequent. In Guatemala, the land dispute resolution mechanism of the Secretariat for Agricultural Affairs had settled over 9,500 different land disputes in the previous two years. Overall, the mechanism had benefited more than 2,800,000 people. The way to solve such disputes was through dialogue with the affected communities, bearing in mind that the State also had an obligation to create jobs and achieve sustainable development for all its citizens.

39. **Ms. Mejía Molina** (Colombia) said that, when addressing land ownership in conflict or post-conflict situations, it was important to have reliable information on which to base land policy. Her Government had requested an international loan to establish a multipurpose digital land registry that would contain up-to-date information based on previous formal and informal surveys. The information would make it possible to determine land rights, responsibilities, occupancy, value, use and level of urban development. Among the first municipalities to be covered by the new registry would be those included in the Regional Development Programme, which were the areas with the highest rates of violence and illicit crops. In one municipality, the information had already been used to grant over 1,000 formal property titles, a majority of them to ordinary people. Those municipalities would also be the focus of government interventions under the Programme, including mediation projects to resolve land disputes.

40. Formalization of land ownership helped to prevent future conflicts. The current Government had overseen the formalization of ownership of 300,000 hectares and was working towards the target of 7 million hectares set out in the final peace agreement. The Land Fund had been provided with hundreds of thousands of hectares to be redistributed to landless persons and small landowners. The final aspect was the reintegration of former combatants into society. The Government had made every effort in that regard, greatly increasing the number of State-supported group and individual productive projects led by former fighters from the Fuerza Alternativa Revolucionaria del Común (FARC).

41. **Ms. Toledo** (Consejo de Pueblos Wuxhtaj) said that the unfair distribution of land was a structural problem in Guatemala. Most Mayan families had memories of living like foreigners on their own land, which had often been handed over to others as a political favour or to change the ethnic make-up of the population. Genocides had occurred, with land as the main factor behind the violence. A court case was under way in Quiché, where the population was in the process of recovering its land.

42. Over 1 million people had lost their land during the armed conflict. Unequal land ownership was also a gender issue, as only 6 per cent of landowners were female. The peace agreements, with their recognition of the importance of land and of multiple rights to land and natural resources, had constituted a major step forward in the reconstruction of inter-ethnic relations in Guatemala. They had provided for the restitution of communal lands and compensation for victims of the conflict. However, the aims of the agreements had not yet become a reality. Land titles were regarded as the only way to prove ownership, which meant that land redistribution had been market-driven, exacerbating the concentration of land and resulting in most land being privately owned.

43. Recent years had seen increased commercial pressure on land and natural resources. Land had been hoarded by private investors who used it for large-scale crops such as palm oil. In other places, the Government had established protected areas without recognizing the prior ownership of the land by indigenous communities or even conducting the compulsory consultation process. Indigenous peoples had been faced with the privatization of land, conservation projects, protected areas, tourism, the new carbon markets and the acquisition of land by drug traffickers for money-laundering purposes. They called on the Government to respect their land ownership rights and to stop promoting monoculture farming, mines and dams. They also called for an end to the use of security forces to drive families from their homes, as had occurred in the Polochic valley in Alta Verapaz and to the excessive influence of the business lobby on Government.

44. **Mr. Simarmata** (Jakarta University, Indonesia) said that some of the direct causes of displacement from land were discrimination against and the marginalization of particular groups, who could be displaced even when the land was abandoned. Indirectly, the institutional context had a long-term impact on the depletion of natural resources and the reduction of biodiversity. Displacement was related to other issues, such as food: the 2008 global food crisis had occurred not because of a shortage of food or primarily in conflict situations, but as a result of world food systems. The collective context of rural populations also had to be considered in situations of displacement, which was why the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas used the wording “alone, or in association with others”. Currently, there was a trend towards the exclusive ownership and overexploitation of natural resources, which drove displacement and discrimination, leading to the weakening of legal protection for indigenous groups, smallholders and rural women and the eventual destruction of community land tenure institutions.

45. Displacement was also linked to threats to biodiversity, especially with regard to seeds. The customary rights of peasants to use seeds freely had been confirmed by the adoption of the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples; however, intellectual property rights over seeds posed serious challenges to the protection of such customary practices and to agrobiodiversity. Furthermore, as the Special Rapporteur on the right to food had pointed out in his report on agroecology, displacement was closely related to climate change.

46. To uphold the right to land, States should progressively develop the protection of land tenure, responding to the challenges of land competition, the depletion of natural resources and the negative impact of the collateralization of land. The process should involve steps to recognize the extraterritorial obligations of States. The two United Nations declarations contained key provisions on the protection of land rights for smallholders and rural populations, which should be developed taking account of food systems, natural resources, biodiversity and climate change, with careful assessment of inequality, poverty and marginalization. It was essential to ensure the protection of traditional knowledge relevant to plant genetic resources for food and agriculture and the conservation and sustainable use of such resources, including just and fair decision-making. It was also important to prevent and eliminate all forms of violence against rural women and girls, as highlighted by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 34.

Panel 6: Land under changing environmental conditions and climate change

47. **Mr. De Schutter** (Moderator for panel 6) said that environmental degradation and climate breakdown had an impact on the rights to life, to health and to food. The Committee had adopted several statements considering climate change in relation to human rights and the close links between land governance, climate change and the preservation of biodiversity.

48. **Ms. Chandrasekaran** (Panellist, Friends of the Earth International), speaking by video link from Rome and introducing the discussion, said that Friends of the Earth International had been working for several decades with grassroots communities and social movements on the interlinked crises of environmental destruction, social injustice, land grabbing and human rights abuses. While land-based climate mitigation and adaptation policies could present opportunities, they could also pose threats to collective rights to land through enclosures for conservation projects and the commodification and integration of nature into financial markets. The Committee’s general comment on land should address those opportunities and threats.

49. Extractive industries, including industrial agriculture and plantations, contributed to both climate crises and land rights violations. Furthermore, the mining and agribusiness sectors were largely responsible for the documented persecution of environmental human rights defenders. A report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) underscored the need to transform global financial, social and economic structures that were based on extractive growth and overconsumption of industrially produced food, fibre and fuel in some parts of the world, while fuelling poverty, conflict and escalating environmental breakdown in others. Meanwhile, decentralized

solutions based on autonomous ecological management and governance of land by indigenous peoples, forest peoples and small-scale food producers were gaining in importance.

50. The vast majority of emission reduction pathways used by the Intergovernmental Panel on Climate Change (IPCC) to limit the global average temperature rise to less than 2 degrees Celsius currently relied on the use of negative emission technologies or removal of carbon from the atmosphere. Bioenergy with carbon capture and storage (BECCS) featured prominently in such pathways. The IPCC land report cautioned about the impact of BECCS on food security but not about its impact on the right to food or land rights. For example, the Committee on Climate Change in the United Kingdom had increased the country's negative emission technologies to 40 per cent of mitigation targets largely based on BECCS technology.

51. Other options for negative emission technologies included forest restoration, reforestation and afforestation, whose impact on land and peoples' rights depended on how they were deployed. For example, the Bonn Challenge, which had been launched in 2011 by the Government of Germany and the International Union for Conservation of Nature and had been endorsed and extended in 2014 by the New York Declaration on Forests, sought to restore 350 million hectares of the world's deforested and degraded land by 2030. According to a recent study, almost 50 per cent of countries' commitments under the Bonn Challenge were to be met by industrial tree plantations, which had a well-documented negative impact on land rights, including through land grabbing.

52. Market-based solutions to the climate and biodiversity crisis such as carbon markets, carbon offsets, schemes to reduce emissions from deforestation and forest degradation (REDD and REDD+), and proposals for biodiversity markets presented a new challenge to land tenure rights. Some REDD projects had exacerbated tensions over land and resource rights and had adversely affected indigenous peoples as well as forest-dependent and local communities, since they presented governments with a financial incentive to retain control over or assert ownership of land. Moreover, in some cases, the allocation of carbon rights was in direct conflict with the land rights of indigenous and forest peoples.

53. The IPCC report on land and the IPBES report confirmed that indigenous peoples, peasants, herders, fishers and forest peoples were at the front line of defending ecosystems, protecting biodiversity and producing food to counter the violence caused by industrial chains.

54. The conceptualization of collective rights to land, associated rights to water and self-determination, and women's rights was vital when it came to tackling the structural causes of environmental crises. Such conceptualization determined whether territories were regarded as places from which to extract profit or places in which indigenous peoples and other communities could express their rights. States should view the protection of land tenure and collective land rights not simply as safeguards but as a fundamental means of ensuring sustainability and environmental protection.

55. As community-led agroecology and community forest management could contribute to climate mitigation, adaptation and resilience, as well as ecosystem conservation, the demarcation of land under collective community control and community-based territorial management should be increased. Efforts to ensure customary rights and collective rights to land should not focus narrowly on carbon sequestration or specific ecosystem services, since the financialization of nature could prevent communities from exercising control over their territories. The most successful community management schemes were based on legally recognized tenure and related rights. Local autonomy in decision-making and social heritage had also been identified as an important success factor. In many communities, women were the holders of relevant traditional knowledge but faced the greatest impact from environmental degradation. It was therefore particularly important that their right of access to and control of resources was recognized and protected.

56. **Mr. Castellino** (Minority Rights Group International) said that 150 years of land greed throughout the world had produced an existential and environmental threat by dispossessing many and concentrating wealth in the hands of a few. While there had been significant political decolonization, self-determination had failed to create a rights-based

society and to recognize collective and traditional land systems. Indigenous peoples continued to be presented as objects rather than subjects of law, and the tendency to view land as a factor of production was based on economic theories dating from European colonization of the Americas. The general comment should therefore emphasize that decolonization remained incomplete.

57. The general comment should also consider short, medium and long-term measures to tackle sustained pressure on land. There had been an increase in the use of “fortress conservation” – the creation of protected areas to allow ecosystems to function in isolation from human disturbance – which had been shown to have failed. Short-term protection against eviction was vital. The current enquiry into the work of the World Wide Fund for Nature (WWF) should be borne in mind, especially the irony of evicting indigenous peoples and other groups who had traditionally been custodians of the environment and played a fundamental role in guarding against poaching, illegal mining and vested interests that were decimating land and society.

58. As frontline communities in a wide range of countries were faced with existential threats, the general comment should highlight the structural causes behind the climate crisis. It was essential to recognize the crucial role played by the right to land in environmental protection and achievement of the Sustainable Development Goals.

59. **Mr. Santiago Sánchez** (Centro de Estudios Legales y Sociales) said that the outcome of the increasingly aggressive competition between the market and society for possession of land would determine whether or not the environment and human rights were protected. Agribusiness often led to the expulsion of indigenous communities and had a pernicious impact on the environment.

60. The State played a key role either in guaranteeing human rights and environmentally sustainable land use, or in facilitating exploitation of the market and business gains with negative consequences. In Argentina, the relationship between the State and business enterprises in land management had been demonstrated in the province of Buenos Aires, which encompassed about 200 closed neighbourhoods that had been built without obtaining a legally required urban certificate. The State had launched brief procedures some months previously aimed at granting them the certificates, but no steps had been taken to ensure that buildings were constructed in a manner that protected human rights and the environment. The Centro de Estudios Legales y Sociales had therefore filed a lawsuit against the provincial authorities, especially in view of the disproportionate impact of such action on vulnerable sectors of the population. It was essential to focus on the relationship between the State and business enterprises in order to protect the environment and remove obstacles that impeded access to land.

61. **Ms. Nofal** (State of Palestine) said that the Bedouins and peasants were among the most vulnerable groups in the State of Palestine due to the theft and confiscation of their land by the Israeli occupation authorities. The Climate Change Adaptation Strategy and Programme of Action for the Palestinian Authority had identified water and food security as the most serious issues for all sectors. The Israeli occupation had undermined Palestinian adaptive capacities and ability to address the threat of climate change, most markedly in Area C, which comprised over 60 per cent of the West Bank, and in the Gaza Strip.

62. The United Nations Development Programme had identified the impact of the Israeli occupation on Palestinian water and agricultural infrastructure as a *prima facie* breach of international humanitarian law, requiring an independent investigation by the international community. The restrictions imposed by the occupation were the greatest challenges faced by the Palestinians, in both economic and political terms.

63. The State of Palestine requested the Committee, in drafting its general comment, to take into account the situation of nations subject to occupation and colonization in order to enable peasants all over the world to remain on their land, to mitigate climate change, to reduce land degradation and to maintain biodiversity.

64. **Ms. Rodríguez Mancía** (Guatemala) said that small island developing States bore the brunt of the impact of climate change, some even fearing submersion of much of their land owing to the rising sea level. She trusted that the Committee would pay due attention to that

situation. The issues paper had failed to mention natural disasters, which created land ownership problems for many vulnerable countries, as seen in Guatemala, where the recent eruption of a volcano had deprived many local people of their farm land.

65. She underscored that in Guatemala all people, both indigenous and non-indigenous, were treated as subjects of law, not as objects.

66. **Mr. Vaughn** (Regional Office for the Pacific of the Office of the United Nations High Commissioner for Human Rights in Fiji) said that the Regional Office for the Pacific focused on climate justice, including for small island developing States. During missions to Micronesia, Melanesia and Polynesia, it had engaged in discussions with States, civil society, human rights defenders and vulnerable groups concerning issues such as land and loss of cultural rights. He had recently met with taro farmers in Palau, who had suffered crop losses due to climate change and salt water incursions. Such developments had a direct impact on the community's right to food, water, health and work and, given the importance of taro in the female-driven social system, on traditional society. Climate change led to migration, with communities having to take tough decisions on leaving traditional land and moving to informal settlements in capital cities.

67. There was frequently a lack of understanding of the Guiding Principles on Business and Human Rights and how they should be interlinked with green finance. Governments also needed guidance on how to develop a national action plan on business and human rights, particularly in relation to a green and blue economy.

68. **Ms. Raffaeu** (Center for International Environmental Law) said that the need for urgent climate action was shaping policy decisions in the land sector. Land was essential for human well-being and livelihoods, but it was particularly vulnerable to the effects of climate change, which in turn had a major impact on vulnerable groups or persons already marginalized by political or social processes, including women, rural communities and indigenous peoples.

69. The general comment should address the heightened human rights obligations of States in that context. The preservation of natural carbon sinks and the restoration of ecosystems was essential to prevent dangerous levels of climate change. Half the world's land was associated with customary land use claims, but only 10 per cent was legally recognized as indigenous and community property. The general comment should underscore the need for governments to secure community land rights and to promote land tenure reforms.

70. An increasing number of governments and corporate actors were seeking to promote policies aimed at reducing emissions from the land sector, frequently at the expense of the rights of indigenous peoples and local communities. They included ill-designed renewable energy projects, negative emissions and financialization of the protection of carbon stocks in forest ecosystems. Given the scale of the threat to human rights, the general comment should unambiguously highlight the importance for governments of respecting land-related rights when taking climate action and should reject any attempts to justify infringements in the name of climate urgency. It was also critical to address the linkage with the right to self-determination and the right to culture. As the protection of rights was undermined by the lack of accountability of corporate actors, the Committee should in its general comment underscore States' obligation to hold such actors accountable.

71. **Mr. Kothari** (Independent expert on human rights and social policy) said that the basic principles and guidelines on development-based evictions and displacement established a right to resettle with a view to restoring livelihoods in the event of relocation. They also called for impact assessments that would lead to appropriate compensation. The guidelines relied on the right to security of tenure, which would protect communities from relocation and hidden agendas.

72. **Ms. Gómez Tierra** (National Institute of Colonization of Uruguay) said that, given the continuing encroachment of production systems onto undeveloped land, it was essential to continue to define urban and rural zones, for instance, zones where infrastructure should be located with a view to guaranteeing dignified living standards and zones where ecosystems and areas of biodiversity should be maintained. Family and indigenous farming and

agroecology should be promoted. All such processes required support, monitoring and a comprehensive understanding of the issues involved with the assistance of States and civil society.

73. **Mr. Windfuhr** said that the Committee would appreciate written submissions and take careful note of them when preparing its first draft of the general comment at its sixty-seventh session. The draft would then be published and responses could be submitted prior to the finalization of the general comment at the Committee's sixty-eighth session.

74. **The Chair** said that she had greatly appreciated the wide-ranging and complex discussion and looked forward to receiving the written submissions.

The meeting rose at 6 p.m.