

Supplemental Resource 1

Obligations Under International Treaties and Conventions

How to Use This Resource

There is no established “right to land.”¹ However, many human rights instruments reference land, and there is growing consensus in human rights discourse that land is strongly linked to universally recognized human rights.² In the context of international investments, the host state has the primary duty to protect human rights,³ meaning that the Government of Ghana must design and implement policies and laws to ensure that investments do not harm human rights and contribute to their progressive realization. This guidance is intended to provide companies with an overview of the links between land and human rights enshrined in these agreements and in official statements issued by treaty monitoring bodies. This guidance is not an exhaustive examination of Ghana’s human rights obligations, but is presented as an overview of the most significant agreements pertaining to land-based investments.

Binding International Agreements

The **Universal Declaration of Human Rights (UDHR)**⁴ states that everyone has the right to life (Art. 3) and the right to own property alone, as well as in association with others (Art. 17(1)), and that no one should be deprived of property (Art. 17(2)). The rights to life and property have been extended through treaty bodies and international human rights court decisions to apply to the means of subsistence derived from land.⁵

The **International Covenant on Civil and Political Rights (ICCPR)**⁶ guarantees the rights to life (Art. 6) and self-determination (Art. 1) and to cultural rights for minorities (Art. 27). These rights have been interpreted to mean that all people have the right to freely dispose of their land and natural resources, and that they should not be deprived of those resources.⁷

The **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**⁸ includes the right to an adequate standard of living, including food and housing, and continuous improvement of living conditions (Art. 11). These rights have been

extensively linked to rights to land by the Committee for Economic, Social, and Cultural Rights (CESCR).⁹ The CESCR has also extended states' responsibility to follow free, prior, and informed consent (FPIC) principles to communities whose cultural preservation may be threatened if their land rights are infringed.¹⁰ The CESCR is currently in the process of developing and adopting a General Comment on States Obligations in the Context of Business Activities, the most recent draft of which made reference to land and land acquisition.¹¹

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**¹² obligates states to eliminate discrimination against rural women to ensure that they participate in benefit from development on an equal basis with men, and to provide equal treatment for rural women in the context of land and agrarian reforms and resettlement schemes, including access to agricultural credit and loans (Art. 14). The Committee for the Elimination of Discrimination Against Women (CEDAW), the treaty monitoring body for the CEDAW, recently issued General Recommendation No. 34, which states that the right to land and natural resources is a “fundamental human right” for rural women.¹³ This is the most direct statement equating the right to land as a human right in current human rights discourse.¹⁴ The same General Recommendation also acknowledges the severe discrimination and unequal outcomes experienced by women, especially with regard to land: “Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in access to land and natural resources.”¹⁵

Other Relevant Human Rights Instruments

The following voluntary human rights instruments apply the requirements of human rights treaties to land and related topical and administrative arenas in the context of food security. The summaries of provisions that follow are instructive for companies conducting human rights due diligence, including designing a Human Rights Impact Assessment (HRIA).

Ghana is not a signatory to the **International Labor Organization Convention 169**, which is legally binding. However, Ghana is a signatory to the **United Nations Declaration on the Rights of Indigenous People (UNDRIP)**,¹⁶ which establishes the principle of FPIC (Art. 10) and to the **African Charter for Human and People's Rights (ACHPR)**.¹⁷ The ACHPR itself does not call for FPIC explicitly, but does refer to the right to self-determination (Art. 20), the right to freely alienate property as well as be

compensated (Art. 21), and the right to economic, social, and cultural development (Art. 22). In addition, the ACHPR's 2012 Resolution on "A Human Rights Based Approach to Natural Resource Governance" specifically calls on states to "ensure participation, including the free, prior, and informed consent of communities, in decision-making related to natural resources governance."¹⁸

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the **Maputo Protocol**,¹⁹ specifically references women's access to land in the context of the rights to food security (Art. 15) and control over land and a guaranteed right to property in the context of the right to sustainable development (Art. 19).

The African Union recently endorsed the **Pan African Women's Charter on Land Rights**,²⁰ or the **Kilimanjaro Charter**,²¹ the result of the "Women to Kilimanjaro" civil society initiative to advocate for women's rights to land across Africa. One of the demands included in the Charter is that investments in land are conducted in partnership with communities, guarantee a share of profits, and provide environmental protection.²²

The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security**²³ are widely recognized by international and regional human rights bodies and are used as a reference by international donor institutions. They were developed through an inclusive consultative process. Provisions relevant to human rights and land include: Guiding Principle 3B and Guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, and 25.7.²⁴

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**²⁵ include references relevant to land and human rights at: Guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, and 14.3.²⁶

¹ United Nations Economic and Social Council, *Report of the High Commissioner for Human Rights on Land and Human Rights*, E/2014/86 at ¶ 12 (2014) [hereinafter "OHCHR Report"], available at <https://undocs.org/E/2014/86>.

² For an overview of key reports on land and human rights, see United Nations Office of the High Commissioner and Human Rights, "Land and Human Rights," <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

³ OHCHR Report, *supra* note 163, at ¶ 17.

⁴ UN General Assembly, *Universal Declaration of Human Rights* 217 A (III) (1948), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

⁵ OHCHR Report, *supra* note 163, at ¶ 28. See also Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgement of 17 June 2005. With regard to forced eviction, see Committee on Economic, Social, and Cultural Rights, *General Comment No. 7: The Right to Adequate Housing* ¶ 4 (1997), available at <http://www.refworld.org/docid/47a70799d.html>.

⁶ Acceded to by Ghana on September 7, 2000. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁷ OHCHR Report, *supra* note 163, at ¶ 22.

⁸ Acceded to by Ghana on September 7, 2000. UN General Assembly, *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.refworld.org/docid/3ae6b36c0.html>.

⁹ Report of the Special Rapporteur on the Right to Food, UN doc. A/65/281, ¶ 4. See also Minority Rights Group International, *Moving Towards a Right to Land: The Committee on Economic, Social, and Cultural Rights' Treatment of Land Rights as Human Rights* 3-4 (2015), available at <http://minorityrights.org/publications/moving-towards-a-right-to-land-the-committee-on-economic-social-and-cultural-rights-treatment-of-land-rights-as-human-rights/>.

¹⁰ Committee on Economic, Social, and Cultural Rights, *General Comment 21: Right of Everyone to Take Part in Cultural Life* (art. 15, ¶ 1(a), of the International Covenant on Economic, Social, and Cultural Rights), UN doc. E/C.12/GC/21/Rev.1 at ¶ 55a. For a fuller examination of the CESCR's statements and standards regarding land rights, see Minority Rights Group International, *supra* note 171.

¹¹ OHCHR, *Committee on Economic, Social and Cultural Rights Holds General Discussion on State Obligations in the Context of Business Activities* (Feb. 21, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21210&LangID=E>. For Landesa's comments on the Draft General Comment, visit <http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/Landesa.docx>.

¹² Signed by Ghana on July 17, 1980 and ratified on January 2, 1986. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.refworld.org/docid/3ae6b3970.html>.

¹³ Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, CEDAW/C/GC/34 (2016), at ¶ 56, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf.

¹⁴ For an examination of human rights norms and women's rights to land and natural resources, see OHCHR, *Realizing Women's Rights to Land and Other Productive Resources*, HR/PUB/13/04 (2013), available at <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.

¹⁵ CEDAW, *supra* note 175, at ¶ 5.

¹⁶ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, A/RES/61/295* (Oct. 2, 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

¹⁷ Ratified by Ghana on January 24, 1989. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981), available at <http://www.achpr.org/instruments/achpr/>.

¹⁸ African Commission on Human and Peoples' Rights, 224: *Resolution on a Human Rights Based Approach to Natural Resource Governance* ¶ 4 (May 2, 2012), available at <http://www.achpr.org/sessions/51st/resolutions/224/>.

¹⁹ See African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, (July 11, 2003), available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

²⁰ ILC, *One Giant Step Forward for Women's Land Rights: The African Union officially endorses Pan African Women's Charter on Land Rights* (April 10, 2017), <http://www.landcoalition.org/en/regions/africa/news/one-giant-step-forward-womens-land-rights-african-union-officially-endorses-pan-african-womens> (last visited Apr. 6, 2018).

²¹ Women to Kilimanjaro, *Charter of Demands: Actualizing Women's Land Rights in Africa* (2016), available at http://www.landcoalition.org/sites/default/files/documents/news/charter_of_demands.pdf.

²² *Id.* at 6.

²³ See VGGT, *supra* note 89.

²⁴ OHCHR, *Land and Human Rights: Standards and Applications*, (2015) HR/PUB/15/5/Add.1 at 15 [hereinafter “OHCHR Land”], available at <http://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

²⁵ See FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (2005), available at <http://www.fao.org/3/a-y7937e.pdf>.

²⁶ OHCHR Land, *supra* note 189, at 15.