

INTERNATIONAL LAND COALITION

Response to the General Comment on land developed by the Committee of the International Covenant on Economic, Social and Cultural Rights

This collective response to the draft General Comment on land and economic, social and cultural rights was prepared by the International Land Coalition (ILC)¹ in consultation with its membership to further improve the scope and strengthen the content of the current draft². An initial draft response which was prepared in consultation with a panel of experts³ was shared with the ILC membership for their feedback. This final version includes the input from both ILC Global and National members.

The membership of the ILC commends the efforts taken by the committee on Economic, Social and Cultural Rights to develop a General Comment on land. While acknowledging the existing progressive key elements of the present draft and the extensive work involved in developing it, this collective response presents views and ideas on how to broaden the scope of the current draft and further strengthen the intended benefits to individuals, communities and peoples.

The responses from the ILC membership in essence reiterate the need of addressing the increasing land inequality in the world which radically and adversely impact on socio, economic and cultural rights of people around the globe. Based on the research conducted by the ILC, currently land inequality directly threatens the livelihoods of an estimated 2.5 billion people involved in small-scale agriculture, as well as the world's poorest 1.4 billion people, most of whom depend largely on agriculture for their livelihoods. Today, the largest 1 percent of farms operate more than 70 percent of the world's farmland and are integrated into the corporate food system, while over 80 percent are smallholdings of less than two hectares, which are generally excluded from global food chains.⁴ It is estimated that smallholder farmers, under 2 hectares, produce roughly 35% of the world's food, while operating around 12% of all agricultural land.

¹ ILC is a network of members with the collective goal to realise land governance for and with people at country level responding to the needs and protecting the rights of those who live on and from the land. Find out more here: www.landcoalition.org. Currently ILC has 250 members running through 70 countries in all the continents of the world

² Process: The ILC membership was invited to respond to an initial draft prepared in consultation with the panel of experts. A webinar was held on 20th of July to further obtain input. This final response contains views and opinions collected through both these processes.

³ Christophe Golay, Senior Research Fellow and Strategic Adviser on ESC Rights, Geneva Academy of International Humanitarian Law and Human Rights; Jeremie Gilbert, Professor of Human Rights Law at the University of Roehampton; Lorenzo Cotula, Principal researcher (law and sustainable development), International Institute for Environment and Development; Miloon Kothari, Former UN Special Rapporteur on Right to Housing; Priscilla Claeys, Senior Research Fellow, Research Institute for Sustainability, Equity and Resilience, Coventry University and Veronica Torres, Business and Human Rights and Environment Research Group, University of Greenwich

⁴ Anseeuw, Ward et al., 2020. Uneven Ground. Land Inequality at the heart of unequal societies. ILC.

Hence, the ILC membership look forward to an adoption of a comprehensive General Comment by the committee recognising the right to land of women, men, Indigenous Peoples, pastoralists and local communities in the world.

- **Land as a Human Right:** The General Comment should recognise the importance of land beyond its economic and utilitarian values. Given the significance of land in ecological, civil, political, social, economic and cultural lives of people, the General Comment is an opportunity to establish a basis to recognise the right to land embracing diversity of ownership, uses, controls, benefits, threats and vulnerabilities to land and territorial rights of peoples. The current compartmentalised approach in recognising various aspects of land rights in existing international declarations demands a uniform basis to recognize the right to land of women, men and communities in the world.

Therefore, we recommend recognising the right to land as a human right in the language of the General Comment. This is the basis to recognise the right to land and land related rights of all individuals, communities and peoples who depend on land for their survival and livelihood, enabling its enjoyment individually and/or collectively. It is the stepping stone to define a set of core minimum obligations to protect, respect and realise the right to land and create an enabling environment to recognise many other connected rights in the covenant including right to food and right to housing. To do so, the committee can derive inspiration from previous comments of international treaty bodies, human rights declarations and policies and laws in national jurisdictions as relevant⁵.

- **Diverse Tenure Rights:** We understand that the right to land goes beyond the individual property rights regulated by the private law. Instead, the recognition of the right to land reaches individuals and communities whose livelihoods depend on the land. In this regard, we suggest the adoption of the provisions stated by the articles 17.3 and 17.4 of the UN Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP) where States shall provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems. States shall protect legitimate tenure and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed. States shall also recognize and protect the natural commons and their related systems of collective use and management.
- **Control instead of Access:** We recommend changing the present language where it refers to access to land to control and ownership of land throughout the General Comment replacing state centric approaches with people centric approaches to land rights. This would also enable in realising that right to land is not a self-standing one but rather inter-dependent and inextricably linked with ecological, political, social, cultural and economic aspects of peoples' lives.
- **Women's Land Rights:** Given the importance of women's ownership and control over land and achieving the targets of the SDG Goal 5, we suggest inclusion of women's inheritance rights to land in the general comment. This should describe both barriers and discriminatory practices together with their underlying drivers, which prevent women from both legally and customarily inheriting and having control over land. In this context, we would call for a fuller

⁵ For example article 5 & 17 of the UN Declaration on the Rights of Peasants

integration of the provisions of land rights for women as contained in the General Recommendation no. 34 of the CEDAW Committee.⁶

- **Urban Context:** The General Comment should recognise the right to land of urban dwellers particularly security of tenure and their rights in contexts of evictions. The role of city governments and local authorities can play to protect urban dwellers land rights should be acknowledged here.
- **Food Systems:** Make specific reference to the importance of land in building sustainable food systems and food generation. This particularly should include control over land by people to both produce seeds and make decisions on crops for cultivation and food generation to feed local communities.
- **Climate Change:** In the section relating to climate change, it should mention that climate change mitigation and adaptation measures should not be a basis to expel people from their land. It should further recognise the nexus between secure land tenure, agroecology and preservation of biodiversity.
Further, explicitly recognise that climate emergency measures should not be commodified or financialized. Climate change mitigation and adaptation measures by state parties should be geared towards protecting social, economic and cultural rights of people.
- **Land Degradation:** The general comment should include a paragraph on land degradation acknowledging the reality of increasing levels of land degradation in the world. State parties should report on land degradation as in SDG Goal 15 and adopt counter measures and promote sustainable and agro ecological land management to neutralize and revert trends of land degradation.
- **Geo-Spatial Justice:** The General Comment should include reference to geo-spatial justice and the importance of geo-spatial technology in both analysing and visualising land tenure rights of people. Geo-spatial technology should be recognised as a means to strengthen land tenure rights and under no circumstances be a ground for discrimination or marginalisation of individuals or communities who do not have access to or knowledge on how to use technology.
- **Extractive Industries:** To date most of all transnational litigation for corporate human rights abuses concerns the extractive industries. Major human rights abuses linked to transnational corporations' activities such as extrajudicial killings, torture, personal injuries, illnesses, evictions and displacement have taken place in businesses relating to extractive industries. Given the gravity and impact of all forms of extractive industries in exploiting land, land degradation and climate change, we suggest including a separate paragraph on extractive industries.
- **Business and Human Rights:** Make explicit reference to business and human rights and its impact on land governance including a clear reference to the UN Guiding Principles on Business and Human Rights. Given the impact of financialization of land both in urban and rural areas, investors should respect principles of transparency and accountability, relevant human rights principles in doing businesses and any relevant national laws which protect environmental and land rights of people.
- **Benefit Sharing:** Acknowledge that State parties should take action including legislation to secure benefit sharing arrangements for local communities from activities generating economic benefits from a natural resource asset base (e.g. carbon sequestration, wind and

⁶ CEDAW/C/GC/34

water energy potential) where private ownership dominates a locality and confers economic benefits not otherwise available to a local community.

- **Transparency:** Emphasise that complete transparency around the beneficial owners of land as an essential pre-requisite for balanced governance arrangements in land related investments and transactions.
- **Refer to Relevant International Instruments:** Bring relevant sections of related international instruments such as UNDROP, CEDAW and the VGGTS to each component of the General Comment to both elaborate the intended scope and further strengthen land rights of specific groups and communities.
- **Power asymmetries:** The General Comment should not present people as victims or inherently 'vulnerable' but rather highlight how structural inequalities disadvantage certain groups. Hence, it should make a reference to power asymmetries caused by economic, social, cultural or political inequalities that cause unfair land access and management contributing to hunger, poverty and death. Where relevant in relation to public participation in land management and decision making, the General Comment should recognize the need of fair negotiations among all related stakeholders including the most vulnerable.
- **Equal Land Distribution:** Acknowledge that State parties should take legislative and other legitimate actions to address the effects of currently existing land ownership monopolies in order to help developing an equal distribution of land assets to further economic, social and cultural rights of people including through agrarian reforms.
- **Evictions and Displacements:** Evictions and displacements should be presented as a cross-cutting theme, consistent with the Committee's General Comment no. 7 and the Basic Principles and Guidelines on Development-based Displacement and Evictions⁷
- **Indigenous Peoples:** Strengthen the language in relation to Indigenous Peoples (IPs) with a human rights approach as well as ensure coherence use of the term "Indigenous Peoples" avoiding use of different terms throughout the document. For Indigenous Peoples, land and territorial rights and the right to self-determination are closely linked. Hence, elaborate further on the right to self-determination reflecting their governance rights as recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, Article 3 and 4).

The introduction of the General Comment should include a paragraph specifically addressing the diverse dimensions and importance of lands and territories to the Indigenous Peoples. A reference to the UNDRIP and its provisions on lands and territorial rights of Indigenous Peoples should be mentioned (especially Article 26).

Make a reference to the UNDRIP as the fundamental standard in relation to unpacking state obligations to preserve and protect the territorial rights of Indigenous Peoples. It is crucial that access and rights to land of Indigenous women needs to be made either in para. 16 or para. 17 giving specific reference to the UNDRIP expressing the distinct needs of Indigenous women in relation to equality and improvement of their economic and social conditions.

Further, the general comment should state that in many cases agrarian reforms have served as means to dispossess Indigenous Peoples from their lands and territories and distribution of their lands to third parties.

- **International Instruments:** With reference to international legal development, participation, free, prior and informed consent, rights to lands, territories and resources and relocation, the language of the general comment should be improved: regarding Indigenous Peoples, the UN

⁷ UN Doc. A/HRC/4/18, annex 1.

Declaration on the Rights of Indigenous Peoples and the ILO Convention No. 169 and other relevant jurisprudence must be referred to for clarity as relevant. With regard to the right to land of peasants, landless people, rural workers, herders, pastoralists, fisherfolk, and their families, the CESCR should clearly consider the language adopted in articles 5 and 17 of the UNDROP.

- **National Legislation:** In reference to monitoring the obligations under the covenant, the General Comment should recommend recognising the right to land and land related rights of people and communities through national legislations and policies. This creates a basic measurement on state party conduct and opportunities to monitor implementation of laws and policies once they are enacted/adopted.
- **Land and Environmental Defenders:** The paragraph relating to Human Rights Defenders should acknowledge the pervasive shrinking of civil space in many countries. This is a forefront issue of Human Rights Defenders' concerns, especially of land and environmental defenders. In line with the Covenant, States should adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders covering land and environmental defenders, particularly of those who stand for land rights of Indigenous Peoples, pastoralists, peasants and other local communities.
- **Gender Justice:** We suggest that the General Comment integrate a gender focus language and include gender justice as a recurring theme running through all its components.