

Written contribution to the draft General Comment on Land and Economic, Social and Cultural Rights

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The draft General Comment is an important contribution to recognising the role of land for the realisation of human rights. This submission contributes a few suggestions.

1. **Right to land**. The General Comment provides an opportunity for the Committee to explicitly affirm the right to land, building on several other human rights recognised in the Covenant, read in the light of the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). This would follow the approach adopted by the Committee in its General Comment No. 15 (2002), which recognised the right to water on the basis of Articles 11 and 12 of the Covenant, and of other international instruments.

The UNDROP explicitly affirms the right to land (Articles 5 and 17), while the VGGT provide comprehensive guidance on respecting, protecting and enhancing tenure rights. Affirming the right to land in the context of the Covenant would consolidate a universal construct that, while abstracting from the great diversity of land problems and arrangements, recognises the strong economic, social and cultural connection between people and land. Depending on the context, this affirmation can provide the normative basis for tenure reform, land restitution and redistribution, and other measures to respect, protect and fulfil the right to land.

In the context of the General Comment, a more explicit affirmation of the right to land could also provide a more coherent overarching framing for the diverse themes discussed in the Comment – for example, in relation to individual, communal and customary systems of land governance; to recognition of diverse land users and layered land use rights; to social differentiation; to land-based investments; to eviction and displacement; and to urban housing.

1. **Cross-referencing of international instruments**. The draft General Comment could more explicitly reflect, integrate and cross-reference throughout the main text (rather than primarily in footnotes) relevant, hard-fought normative instruments, including:
* The VGGT, which provide guidance on how to recognise, respect and protect socially legitimate tenure rights, including those not currently protected by law.
* The UNDRIP, which highlights the socio-cultural dimensions of land and ties land-related rights to free, prior and informed consent.
* The UNDROP, which explicitly recognises peasants’ right to land.
* Relevant regional instruments, which provide the normative frameworks for many of the judicial decisions referenced in the draft General Comment.
1. **Control, not just access**. The draft General Comment correctly highlights the importance of access to land in diverse situations. In many cases, however, realising the right to land requires not just improved or more secure access but greater *control* over land on the part of human rights holders. Control includes not only access but also wide-ranging tenure rights, and – importantly – the power to shape decisions affecting land. In the case of Indigenous Peoples, control also connects to self-determination and the more encompassing relationship between humans and territory.
2. **Conceptual framing**. For understandable reasons, the draft General Comment follows the well-established respect-protect-fulfil framework. In relation to land, however, this framework would benefit from further reflection, if it is to do justice to the multi-dimensional nature of land. For example, the issue of recognition is particularly important – recognition of all legitimate tenure rights, and also of the sociocultural as well as economic values of land. The draft General Comment refers to aspects of recognition under “respect”; but recognition is considerably broader and is equally relevant to “protect”, for example. Arguably, recognition is a cross-cutting issue that provides the foundations for respect, protect and fulfil.
3. **Relationship with other human rights**. The draft General Comment could more fully elaborate on the connection between land and the realisation of other Covenant rights. The draft discusses rights linked to the physical ability of land to provide public goods, such as the rights to housing, water and adequate food, and as a focal point of cultural life. The draft also recognises the nexus between increased competition for land and growing pressures on the realisation of Covenant rights. But the interface with other rights could be more fully discussed particularly in regard to:
* Gender equality (Article 3);
* Right to work (Article 6);
* Social security (Article 9);
* Environmental hygiene (Article 12(2)(b));
* Education (Article 13);
* Participation in and conservation of cultural life (Article 15);
* Right of all peoples to enjoy and utilize fully and freely their natural wealth and resources (Article 25).
1. **Deepening engagement with key issues**. The draft General Comment mentions many key issues but often in passing, or not in integrated ways, or not across the entire document. In some cases, statements that may be applicable in a particular situation are made without sufficiently acknowledging the relevance to other groups or contexts. Wordcount limitations are duly understood but it should be possible to sharpen treatment of issues such as:
* *Recognition of existing land users and customary systems*, which could be more fully integrated across the General Comment. It would also be helpful to more clearly distinguish between communal and customary tenure arrangements, which can but do not necessarily overlap. In addition, it would make sense to position key statements in overarching, cross-sectoral points whenever relevant, rather than within a specific sector such as agriculture, as this could end up limiting the import of the statements.
* *Clearer definition and more consistent use of terms such as ‘tenure systems’ or ‘land tenure governance’.*Use of these concepts appears to vary, at times encompassing a broad notion, while at others conveying an overly restrictive, formalised or state-centric understanding of tenure systems. Adopting a broad approach that encompasses diverse systems, including customary arrangements, would strengthen key points made in the draft.
* *Greater recognition of gender aspects*. While the draft General Comment specifically mentions women in its discussion on discrimination, it could ensure greater consideration of gender across key sections of the document. For example, the introductory sections read as gender blind, and many issues discussed in the draft General Comment present significant gender aspects that are not referred to in the text.
* *Social differentiation beyond gender* is also important within the context of land and the Covenant rights. The position of youths, migrants, rural workers, peasants, Indigenous Peoples and informal urban residents, for example, should be more fully integrated in the discussion.
* *Clearer statements on evictions and displacement.* Secure tenure is an important safeguard for the realisation of Covenant rights, including in the context of large-scale projects. Evictions and displacement would benefit from improved integration and clearer statements in the draft General Comment. Issues associated with evictions are well elaborated on under the “respect”heading but could benefit from clearer statements about the prima facie inconsistency of forced evictions with Covenant rights, and from fuller integration within the document’s initial framing. A clear statement emphasising that private investments should not be considered as a ‘public purpose’ except in exceptional circumstances would also strengthen the nexus between tenure security and Covenant rights.
* *Free, Prior and Informed Consent (FPIC) and meaningful consultation* are widely seen as fundamental to ensuring that the land rights of Indigenous Peoples, and of individuals and groups, are properly identified, recognised, respected and protected, including in the context of investment processes. While the draft General Comment touches on these two concepts, it could more fully elaborate on their import. For example, the draft elides the complex relation between the consultation process and eviction.
* *The discussion on extraterritorial obligations* could be strengthened through the inclusion of more explicit references to the United Nations Guiding Principles on Business and Human Rights, as well as more concrete links to the Committee on Economic, Social and Cultural Rights General Comment No. 24 (2017) on State obligations under the Covenant in the context of business activities.