**Comments on the Committee on Economic, Social and Cultural Rights Draft General Comment No. 26 (2021) on land and economic, social and cultural rights**

**Marcia V. J. Kran comments, June 16th, 2021**

|  |  |
| --- | --- |
| Paragraph | Comments |
| 2 | Consider adding in the fourth sentence “industrial agriculture”: “frequently pursued by domestic and multi-national corporations…”  |
| 5 | Consider adding at the end of the paragraph: “… but that its role as a social and cultural good is recognized **and protected**” |
| 14  | Experts note that “Merely passing legislation is of little use if the necessary resources for implementation are not provided, if all relevant actors are not informed and educated on the provisions, if the reforms are not monitored, and if there are no effective sanctions for failure to implement”[[1]](#footnote-1)Thus consider adding after “including legislation,”: “education for all parties, monitoring of reforms, and effective sanctions for failure to implement”Spellcheck: to ensure that ~~disadvantages~~ disadvantaged groups have access |
| 12 | Consider adding before the last sentence beginning with “Furthermore”: For example, states should create and enforce legislation and policies to protect indigenous burial grounds from the damage caused by development and excavations. |
| 15 | 1. Remove “groups **such as indigenous peoples**”. Instead, create a new paragraph on the rights of Indigenous people as they are not only minority groups, but peoples who have particular rights such as self-determination under international instruments, which minority groups who are considered to be the subjects of the state may not have:Indigenous peoples have the right to own, use, develop, control, and maintain their spiritual relationship with, their traditional land, territories and resources. States must give legal recognition and protection to these lands, territories and resources with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned[[2]](#footnote-2). Many indigenous peoples claim rights to traditional territories, as control of such territories is essential to their right of self-determination as peoples. States must find appropriate ways to resolve such claims by either ceding title to the lands claimed or working out alternate arrangements after consultation and with the free, prior, and informed consent of the Indigenous peoples. States shall provide effective mechanisms for prevention of, and redress for dispossession or forced population transfer.[[3]](#footnote-3) The reference to “two groups” in paras 15-16 does not adequately capture vulnerable groups whose human rights are embodied in international human rights treaties and who may experience discrimination with regard to the land issues mentioned. 2. ~~Two groups~~ 🡪 Certain groups. May wish to include a reference to migrants and other racialized groups who are often agricultural workers or refugees, migrants or stateless persons forced into informal settlements with no access to other lands, or persons with disabilities who may be deprived of equitable access to land tenure systems.Consider adding a separate paragraph below the current paragraph 17 under the Non-discrimination section of the General Comment on **environmental** **racism and discrimination affecting the use of land**: The above-noted vulnerable groups are subjected to a disproportionate level of destruction and pollution of the lands they occupy and use while being denied ecological benefits such as clean water and air[[4]](#footnote-4). Poor and nonwhite communities are disproportionately burdened by hazardous synthetic chemical wastes, contaminated manufacturing sites, polluting industries, neighboring hazardous waste sites, dirty air, and contaminated drinking water.In addition, children are at significant risk of harm due to the immaturity of their body systems.[[5]](#footnote-5) States must ensure vulnerable groups do not experience discrimination in their access to and use of clean land and a healthy environment.[[6]](#footnote-6)  |
| 19  | Spellcheck: Given that secure access to productive resources such as land is crucial to realize their right to food and their ~~the~~ right to housing |
| 26 | On the point of education, consider adding:“consistent with General Comment No. 11, states must ensure the right to education, which epitomizes the indivisibility and interdependence of all human rights,[[7]](#footnote-7) is not disrupted by relocations”  |
| 32 | Consider adding at the end of the paragraph or adding a new paragraph on business activities: Where business activities or failures to act with due diligence to mitigate risks result in infringements of Covenant rights, States parties should impose criminal or administrative sanctions and enable civil suits and other means of claiming reparations.[[8]](#footnote-8) Where indigenous people’s rights to land and resources are impacted by business activity, such impact should be incorporated into human rights assessments.[[9]](#footnote-9) States parties should ensure that businesses consult and cooperate in good faith with indigenous peoples’ own representative institutions in order to obtain their free, prior and informed consent before commencement of activities. Consultations should lead to design mechanisms that ensure indigenous people share in the benefits generated by the activities developed on their traditional territories.[[10]](#footnote-10)  |
| 33 | Experts note that “the introduction of “modern” forms of property titling has often strengthened men’s lands claims while women’s customary claims to land have been weakened.”[[11]](#footnote-11)Thus, on the topic of titling and its effect on women, consider adding:“States should ensure that titling systems do not result in the weakening of women’s tenure rights, for example by weakening women’s customary claims to land.”  |
| 42 | Consider adding to the end of the paragraph: States should also impose a duty on companies within their jurisdiction to act with due diligence to respect, protect and fulfill human rights affected by their operations, including by reporting on their policies and procedures to ensure respect for human rights, and providing effective means of accountability and redress for abuses of Covenant rights.[[12]](#footnote-12) States should also enact legislation[[13]](#footnote-13) and take diplomatic and foreign relations measures to promote an international environment that facilitates the protection of Covenant rights.[[14]](#footnote-14) |
| 42 | Consider adding new paragraph on international cooperation related to multinational corporations after para 42:Consistent with General Comment No. 24, international cooperation among States is required for effective accountability and access to remedy in transnational cases. States should take steps to improve the effectiveness of cross-border cooperation between State agencies and judicial bodies, with respect to both public and private law enforcement of domestic legal regimes[[15]](#footnote-15). The use of direct communication between law enforcement agencies for mutual assistance should be encouraged in order to provide for swifter action, particularly in the prosecution of criminal offences. [[16]](#footnote-16) |
| 38-44 | Consider generally pulling out the discussion on international assistance and cooperation, rather than comingling it with a discussion on extra-territorial obligations as they are separate although related Covenant obligations |
| 53 | “States must take all necessary measures to ~~respect human rights defenders and their work~~” 🡪 States must take all necessary measures to respect, protect and fulfill the rights of human rights defendersConsider adding:States must protect human rights defenders by investigating violations of their rights, sanctioning perpetrators, providing reparations, and facilitating the work of the economic, social and cultural, as well as the civil and political rights of human rights defenders who engage on land issues and development.[[17]](#footnote-17) This includes the rights to freedom of expression and assembly, including the right of the media and journalists to report on human rights issues, and the rights to be free of arbitrary arrest and detention. States should enact relevant legislative and policy frameworks to establish national protection programmes for human rights defenders. As a matter of priority, States must ensure that indigenous defenders are given protection. States must ensure that judicial processes are not used to abuse or disproportionately punish human rights defenders or those seeking to defend land rights.  |
| Part IV | Consider adding new section on the protection of cultural and natural heritage sites:In accordance with the Convention Concerning the Protection Of The World Cultural And Natural Heritage, States should recognize and take the appropriate legal, scientific, technical, administrative and financial measures necessary to ensure the identification, protection, conservation, presentation and transmission to future generations of the State’s natural heritage. Such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. States should adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes. States should develop scientific research with the goal of counteracting the dangers that threaten its cultural or natural heritage.[[18]](#footnote-18) |

1. Debbie Budlender and Eileen Alma, *Women and Land*, (Ottawa, Canada: International Development Research Centre, 2011) at 69-70. [↑](#footnote-ref-1)
2. *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, 61st Sess, UN Doc A/61/L.67 (13 Sep 2007) online: <http://www.un.org/esa/socdev/unpfii/documents/DRIPS\_en.pdf>). [↑](#footnote-ref-2)
3. *Ibid.* [↑](#footnote-ref-3)
4. Bruce E. Johansen, *Environmental Racism in the United States and Canada: Seeking Justice and Sustainability*, (Santa Barbara, CA: Praeger, 2020). [↑](#footnote-ref-4)
5. Joint Statement on "Human Rights and Climate Change" (16 September 2019) at para 3, online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>). [↑](#footnote-ref-5)
6. *Ibid.* See also Committee on Economic, Social and Cultural Rights, *General Comment no. 14: The right to the highest attainable standard of health (article 12)*, E/C.12/2005/4, (11 August 2000). [↑](#footnote-ref-6)
7. Committee on Economic, Social and Cultural Rights, *General Comment no. 11: Plans of action for primary education (art. 14)*, E/C.12/1999/4 (11 May 1999) at para 2. [↑](#footnote-ref-7)
8. Committee on Economic, Social and Cultural Rights, *General Comment no. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/GC/24 (23 Jun 2017) at para 15. [↑](#footnote-ref-8)
9. Committee on Economic, Social and Cultural Rights, *General Comment no. 11: Plans of action for primary education (art. 14)*, E/C.12/1999/4 (11 May 1999) at para 17. [↑](#footnote-ref-9)
10. *Ibid.* [↑](#footnote-ref-10)
11. Debbie Budlender and Eileen Alma, *Women and Land*, (Ottawa, Canada: International Development Research Centre, 2011) at 12. [↑](#footnote-ref-11)
12. Committee on Economic, Social and Cultural Rights, *General Comment no. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/GC/24 (23 Jun 2017) at para 33. [↑](#footnote-ref-12)
13. *Empowering the CORE: Requirements for an Effective Canadian Ombudsperson for Responsible Enterprise*, Allard International Justice and Human Rights Clinic (Vancouver, Canada: Allard School of Law, 2020). [↑](#footnote-ref-13)
14. Committee on Economic, Social and Cultural Rights, *General Comment no. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, E/C.12/GC/24 (23 Jun 2017) at para 27. [↑](#footnote-ref-14)
15. *Ibid* at para 34. [↑](#footnote-ref-15)
16. *Ibid.* [↑](#footnote-ref-16)
17. *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*, UN Doc A/HRC/31/32 (24 March 2016). [↑](#footnote-ref-17)
18. *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975), art 5. [↑](#footnote-ref-18)