**The UN Convention to Combat Desertification Written Contribution to the Draft General Comment No. 26 (2021) on Land and Economic, Social and Cultural rights**

The United Nations Convention to Combat Desertification (UNCCD) welcomes the efforts by the Committee on Economic, Social and Cultural Rights and commends the Special Rapporteurs for an excellent draft of the general comment. We welcome this opportunity to send a written contribution on the draft general comment.

**General comments**

Overall, the comment focuses almost exclusively on the negative impacts of insecure land rights. Highlighting the positive would showcase the opportunities for responsible land governance to leverage synergies when acting on land, climate and biodiversity. The general comment could be strengthened in its science-base, recognizing and highlighting the positive effects that more secure land rights can have on nature-based climate mitigation and adaptation solutions.

The land use sector is responsible for about 30% of greenhouse gas emissions, and conversely land represents the planet’s largest sink for carbon after the oceans. For instance, restoring the soils of degraded ecosystems has the potential to store up to 3 billion tons of carbon annually.

Land degradation is mentioned only in Para. 2 of the general comment, yet it is a significant part of the intertwined planetary crises – between 25-40% of the world’s land area is degraded to some extent. Moreover, every year 12 million hectares of land are lost to desertification and drought. The IPCC Special Report on Climate Change and Land estimates that worldwide 1.5 billion people directly depend on lands that is degraded (under-performing) for their livelihoods.

For the UNCCD the issue of land tenure is part of a holistic approach and is recognized by its 197 Parties as an important enabler to achieve land degradation neutrality. This approach is based on the notion that those with tenure security are more motivated to invest in sustainable management practices with a view of long-term health and productivity of the land, without fear that their land can be unjustly taken or encroached upon. [[1]](#footnote-1) As such, the general comment would benefit from having a specific section on land degradation neutrality (SDG target 15.3) in the section “IV. Specific topics of relevance to the implementation of Covenant rights in land-related contexts”.

Gender could be further mainstreamed throughout the General Comment, particularly in the following paragraphs:

* Para. 17 addresses women's engagement in household decision-making. It could further highlight the issue of women headed households and their access to land and natural resources, like water. After the second sentence of the paragraph, we recommend adding the following sentence in italics: “*Rights to land is also crucial to engaging women in entrepreneurship regarding land resources, thus contributing to the economic improvement of the community and country.*” In the same para. 17, we also recommend the following addition in italics “However, laws and social customs, such as those providing that upon the death of the husband the land belongs to the sons *or the husband's male relatives* and not to the widows or daughters, remain in place, in flagrant violation of women’s rights”
* Para. 18 on participation, consultation, and transparency could reinforce the importance of gender and vulnerability assessments during the design of policies and in land governance.
* Para. 47 on land restitution programmes could include measures to guarantee the right of refugees or internally displaced persons to a voluntary return to their former lands or places of habitual residence in safety and dignity. The Special Rapporteur may consider including in the text the right of women refugees (including widows, daughters, women heads of households).

The General Comment mentions two groups, in Para. 15, that are particularly at risk of discrimination in the governance of land tenure, including in the organization of property rights over land, in land registration, and in land policy reform schemes. The first group is composed of indigenous peoples, fisher folk or pastoralists, or landless rural people. The second group is women. However, attention must be paid to women within the first group who may face intersecting forms of discrimination.

In the use of terminologies, we recommend the following:

* To use the term “*gender-responsive*” rather than “gender-sensitive”, to indicate a stronger aspiration to the advancement of gender equality and the fulfillment of women’s rights
* To use the term “*vulnerable groups*” rather than “disadvantaged and marginalized groups” so as to eliminate all forms of stigmatization
* To use the term “*farmers*” or “*small-scale producers*” rather than “peasants”, to avoid terminology with stigmatizing connotation
* To use “*land policy reform*” rather than “agrarian reform” or “land reform”, to ensure that the terminology is better aligned within national contexts, worldwide.

Finally, the general comment does not address the adverse impacts of COVID-19 on land-based employment and the increased inequalities among specific groups. COVID-19 has revealed how vulnerable our societies and economies are to global, systemic risk as well as the growing exposure of those without secure tenure. Investing in nature-based solutions, specifically land restoration, will allow us to build forward better, greener, healthier, stronger, and more sustainably with improved economic resilience.[[2]](#footnote-2)

**Specific comments**

Para 2 notes that “land degradation is a result of unsustainable agronomic practices and other unsustainable land management practices in general […]”. Here, we recommend to also acknowledge insecure tenure as an indirect driver of land degradation which can be exacerbated by conflicting claims to land and inequitable dispute resolution mechanisms. For example, unresolved or conflicting claims can lead to further land degradation due to future uncertainty. Conversely resolving land disputes offers opportunities for land restoration.

Para. 3 – In the second sentence, we recommend replacing “might be” with “*are often*”, to acknowledge that the links between conflict over land and abandonment are clear, direct and frequent. As such, we recommend adding the words in italics to the following text “Populations *are often* forced to abandon *or overuse* their land when competing users fight for control of those resources.” We also recommend adding the words in italics to the following text “Conflicts over land also are frequent in armed conflicts and in post-conflict countries, where *land rights were either a driver in the conflict, or* large numbers of people seek to reclaim the land […] due to conflicts, *including historical conflicts* […].”

Para. 4 mentions multiple international instruments relating to land governance, crucial to mention here would also be:

* The 2030 Agenda for Sustainable Development which contains many land-related targets and indicators namely under SDGs 1, 2, 5, 11 and 15.
* The UNCCD Decision 26/COP14 on land tenure that was adopted by Conference of the Parties in 2019. It acknowledges the importance of responsible governance of land for addressing desertification/land degradation and drought and for achieving land degradation neutrality. The UNCCD is the only multilateral environmental agreement explicitly addressing the issue of land tenure and recognizing the importance of promoting equal tenure rights and access to land for all.

Para. 4 lists footnote number 5 but this is not to be found in the footnotes. We recommend reviewing the numbering of the footnotes, particularly on pages 3 and 4 where footnote 6 comes after 7, and 7 is repeated twice.

Para. 9 – we recommend adding the words in italics to the following text “where people are evicted from land where they had built, *purchased, rented, borrowed, inherited or squatted* housing, whether informally or not.”

Para. 10. – we recommend the following:

* The statements on the “*most efficient' development and utilization of natural resources*” contradicts earlier statements. This efficiency or economies of scale argument can be distorted to support policies that dispossess small-scale farmers. Large-scale mechanized agrochemical monocultures will almost always be able to produce more food in the short-term yet their impacts on environmental and human health contribute significantly to planetary instability.
* The statement that “The Committee is of the view that effective agrarian reforms aiming at equitable access to land will ensure the realization of the right to adequate food” needs to be further elaborated as access to land is only one component to ensuring healthy and nutritious food for all groups of society.
* The text highlights the “*the importance of “access to productive resources” as a key element for the realization of the right to adequate food, particularly in rural areas, where most of the peasants live and most hunger can be found*.” It is to note that the research and policy suggest that access to land and productive resources is one element in the enabling environment to enhance wellbeing, livelihoods and the environment; however, the link as an important element to tackle hunger is much more complex. The whole picture of other factors such as access to finance and appropriate and inclusive policies and regulations need to be considered.[[3]](#footnote-3)

Para. 13 notes the competition for access to and control over land. Here, it is important to note that there will always be competition for controlling land resources. What matters is how competition is resolved and trade-offs are managed. This will require legitimate and trusted local institutions. Hence, we recommend using the phrase “*unresolved competition*” or “*inadequately regulated competition*”.

Para. 15 uses the terms property and tenure rights interchangeably, we recommend using the term “*tenure*” in this context to recognize the multiple types of tenure, including property rights among others. Tenure or property rights are generally understood as ‘socially recognized rights to action’ where economic actors are more likely to make investments when they have expectations that they will benefit from the returns.[[4]](#footnote-4) Tenure refers to the rights and obligations of the holder while property rights refer to the specific rights associated with the asset held in tenure.[[5]](#footnote-5)

Para. 20 reads “*Considering that most land tenure systems are based on the rights of individuals with respect to land, States parties should recognize and protect communal dimensions of tenure […]*” in which we recommend modifying as “*Considering that most statutory land tenure systems […]”* for accuracy, as communal dimensions of tenure are also tenure systems but not always statutory.

Para. 23 reads “*Laws and policies should protect indigenous peoples from the risk of State encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production*”. To restrict industrial development on indigenous lands can deprive indigenous peoples of their right to development and use of the land for their benefit, hence we recommend using wording to acknowledge that “*when indigenous peoples are in control of their lands they are then empowered to decide in what form to engage with industrial or agricultural development for their benefit*”. We recommend noting that ensuring measures are carried out in a non-discriminatory and participatory way so that they promote equal tenure rights and access to land for all, in particular vulnerable groups. In the same para. 23 the meaning of the phrase “*have unwillingly lost possession of their lands after a lawful transfer to innocent third parties*” is unclear and we recommend clarifying because it sounds like a disingenuous way to describe egregious land grabs.

Para. 24 reads “*States parties should also recognize the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems and should respect existing forms of self-governance of land*.” We recommend adding to the end of this sentence “*where they do not contravene human rights principles*”.

Para. 26 reads in the very end “*In all cases, effective legal remedies or procedures should be provided to those who are affected by eviction orders*.” We recommend changing the wording to “*In all cases, effective and agreed legal remedies or procedures as well as just compensation* *for when restitution is not possible should be provided to those who are affected by eviction orders*.”.

Para. 31 reads “*Large-scale land investments risk violating Covenant rights because they normally affect a large number of smallholders, whose informal land use titles are often poorly recognized*.” It is to note that land titles are formal, hence we recommend using “*informal land rights*” in this context. At the very end of the paragraph, we recommend adding the following words in italics “such as through partnerships with local tenure rights holders, *forms of leasing and rent, and co-management and multiple use arrangements*.”

Para. 35 reads “*Land distribution schemes should also support small, family-owned farms, which can often use the land in a more sustainable way, and can also contribute well to rural development because they are more labour-intensive. More equitable distribution of land and the development of owner-operated family farms is thus desirable on both efficiency and equity grounds.*” It is to note that the link between rural development and labor-intensive activities is not causal; intensive labor approaches do not often lead to significant development but are rather supported for employment and livelihood purposes such as for food for work, or cash for work programs.

Para. 36 reads “*to improve methods of production, conservation and distribution of food by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources*” which is contradicting the aforementioned support for labor-intensive approaches in para. 35.

Para. 37 – we recommend the words in italics to the following text “States should create the conditions for regeneration of biological and other natural capacities and cycles and should be obliged to cooperate with local communities, investors and others to ensure that land use for agricultural and other purposes respects the environment and does not accelerate soil depletion*, land degradation* and exhaustion of water reserves.”

Para. 46 – we recommend the words in italics to the following text “those at higher risk of being dispossessed of their land may not be formal*ly recognized* owners”

Para 54. – we recommend the words in italics to the following text “The rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods will affect access to land. *In some cases such events and land use change will accelerate land degradation and desertification*.”

1. For further background please see: <https://www.unccd.int/sites/default/files/sessions/documents/2019-08/ICCD_COP%2814%29_20-1913881E.pdf> and <https://www.unccd.int/sites/default/files/sessions/documents/2019-11/26-cop14.pdf> [↑](#footnote-ref-1)
2. For more land-centered solutions please refer to: [https://www.unccd.int/sites/default/files/inline-files/UNCCD\_Solution%20Brief.pdf](https://www.unccd.int/sites/default/files/inline-files/UNCCD_Solution%2520Brief.pdf) [↑](#footnote-ref-2)
3. For more information on Creating an Enabling Environment for Land Degradation Neutrality: <https://www.unccd.int/publications/creating-enabling-environment-land-degradation-neutrality-and-its-potential#:~:text=The%20UNCCD%2DSPI%20technical%20report,as%20the%20environmental%20conditions%20of> [↑](#footnote-ref-3)
4. Alchian, A.A. and Demsetz, H., 1973. The property right paradigm. The journal of economic history, pp.16-27. [↑](#footnote-ref-4)
5. Bruce, J.W., 1998. Review of tenure terminology. Land Tenure Center, University of Wisconsin-Madison. [↑](#footnote-ref-5)