**Committee on Economic, Social and Cultural Rights**

**Draft General Comment on Land** **and Economic, Social and Cultural Rights**

**Comments of the Government of the United Kingdom of Great Britain and Northern Ireland**

1. The Government of the United Kingdom is grateful to the Committee on Economic, Social and Cultural Rights for its work on a new General Comment on land and economic, social and cultural rights. We thank the Committee for the opportunity to provide comments on the present draft.
2. The UK considers that the Committee has, in some parts of the draft General Comment, exceeded the scope of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and notes that some of the views expressed by the Committee in the draft do not coincide with the UK’s understanding of international law. In this response, we outline these concerns in more detail. New proposed text is indicated in italic type.

**Introduction**

1. Paragraph 1 describes the ICESCR as providing a “right to health”. We suggest that this phrase is replaced with “*right to the enjoyment of the highest attainable standard of physical and mental health*”, to mirror more accurately the language of Article 12 of the ICESCR.
2. The UK recognises the importance of access to land as a source of social inclusion. Paragraph 5 can be strengthened by referencing equitable access to public spaces to enable social interaction by adding the following after the first sentence of the paragraph: *“States should adopt an approach which recognises the importance of equality and non-discrimination in relation to access as well as ownership. This includes the need to ensure that access to land (for example to high-quality public green spaces) is available equitably to everyone across the whole of society”.*
3. The UK supports and recognises the role that land can play as a social and cultural good. That being said, not all land governance institutions have the power to guarantee the recognition of land’s role as a social and cultural good. We therefore suggest amending the final sentence of paragraph 5 to read: “States parties should*, where appropriate,* in land governance processes, policies and institutions, *recognise that land is not* a mere commodity *and the importance of land’s role* as a social and cultural good*”.*

**Provisions in the Covenant related to land**

1. At the end of the first sentence in paragraph 10, we suggest adding *“in particular for rural households that depend on agriculture or forests for their livelihoods”* to the end of the sentence, since not all persons require access to land in order to enjoy the right to adequate food.
2. In the seventh line of paragraph 11, we suggest replacing “available” with “*accessible”* to be clear that, in order to promote ICESCR rights, sufficient social security support must be genuinely accessible, rather than simply theoretically available.
3. The General Comment should also address the requirements of nomadic and semi-nomadic communities for whom access to land on a temporary or peripatetic basis is a cultural necessity, over and above considerations such as economic subsistence. A suggestion is to add the following sentence to the end of paragraph 12: *“States should ensure that appropriate recognition is given to the needs of nomadic and semi-nomadic communities for whom access to land on a temporary or peripatetic basis may be a cultural necessity, as well as an essential means of economic subsistence.”*

**Obligations of States parties under the Covenant**

1. The General Comment should recognise the interest that children and future generations have in the responsible management of land and natural resources. Significant inter-generational inequality is generated by the over-use or exploitation of available resources in a way that depletes their future availability. We suggest adding a new paragraph 13bis under heading III.A:

*“States should recognise and make appropriate provision to safeguard the interest that children and future generations have in the responsible management of land and natural resources, and to prevent significant inter-generational inequality. Current owners, tenants or users of land should not be allowed to compromise the ability of future generations to make use of land in a way that supports the realisation of civil, political, economic, social and cultural rights in a sustainable manner.”*

1. The reference in paragraph 15 to “legitimate land users” is imprecise and should be replaced by the established term “*legitimate tenure rights holders”*, which is used in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which the General Comment references in paragraph 19. According to the VGGT, States have an obligation to recognise and respect all “legitimate tenure rights holders and their rights”; in contrast, the VGGT does not recognise or define “legitimate land users”. The reference to “legitimate land users” unhelpfully conflates a specific land use right (e.g. to collect brushwood or graze cattle on land) with all tenure rights; to do so in practice would likely violate the tenure rights of other land users.
2. We suggest amending the second sentence in paragraph 18 to read: “In this regard, States parties shall, *as appropriate*, develop relevant laws, policies and procedures to ensure participation and consultation in all land related policies”.
3. As paragraph 19 makes clear, not all legitimate tenure rights holders have formal land titles. In the UK, only persons with formal legal entitlement to land title, or who can establish formal legal entitlement through adverse possession or through the courts, are entitled to be registered as legal owners of land. Accordingly, not all land governance institutions have the power to register in law those persons with informal land rights. We therefore propose that the first sentence of paragraph 19 should be amended to read “States parties shall*, where appropriate,* recognise and respect existing access to land of all legitimate tenure right holders…”.
4. Also in paragraph 19, we suggest amending the third sentence to read: *“*States shall refrain from any *interference with* legitimate tenure rights*, except in exceptional cases where rights to land or forests are required for a public interest and the State is acting in accordance with the law”*. The recognition of and respect for all legitimate tenure rights does not exclude the possibility that limited circumstances may exist in which compulsory purchase by the State may be lawful – e.g. providing states act within the law, follow due process, in support of a clear public benefit – while technically “infringing” such rights. Similarly, we recommend the deletion of the final sentence, which implies that infringing legitimate tenure rights would be inconsistent with ICESCR, as it is not strictly true.
5. Paragraph 20 requires States to “ensure that all persons possess a reasonable degree of security in relation to their relationship with land”. This could imply that States have an obligation to ensure security regardless of the nature of that relationship, and even if the relationship is unlawful (e.g. squatting). We suggest amending the first sentence of paragraph 20 to read “...a reasonable degree ofsecurity in relation to their relationship with land, *based on legal recognition and measures for practical protection, and* to protect the legitimate tenure rights...*”.*
6. The first sentence of paragraph 22 should be amended to read: *“*Land administration shall be based on accessible and non-discriminatory services implemented by accountable agencies whose actions are *subject to review by* judicial bodies*.”* Subject to constitutional arrangements, not all land administration decisions are reviewed but may be subject to review.
7. The UK fully supports and recognises that indigenous individuals are entitled to the full protection of their human rights and fundamental freedoms in international law on an equal basis with all other individuals. We do not accept that some groups in society should benefit from human rights that are not available to others. With the exception of the right of self-determination, we therefore do not accept the concept of collective human rights in international law, despite what is suggested in paragraph 23.
8. We note that paragraph 23 on indigenous peoples’ tenure rights paraphrases the precise language on land in Articles 25 and 26 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and thereby introduces some ambiguity. We suggest mirroring exactly the language found in relevant UNDRIP articles.
9. The UK recognises the importance of including women and youths in the decision-making processes concerning the issues that affect them, and we would like to see the General Comment recognise the participation of younger people. We therefore suggest amending the second sentence of paragraph 24 to read: *“*It is important that traditional institutions for collective tenure systems ensure meaningful participation of all members, including women, *children and young people* in decisions regarding the distribution of user rights.*”*
10. The language of paragraph 25 and paragraph 26¸ with regard to forced eviction, is not sufficiently precise and could in some cases to be taken to refer to any eviction. We suggest changing all references of “eviction” to “*forced evictions”*, as defined in Annex 1 of the report entitled ‘Basic principles and guidelines on development-based evictions and displacement’ by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18).
11. The UK does not accept that States parties should adopt a legal framework requiring business entities to exercise human rights due diligence. This goes beyond the voluntary approach set out in the UN Guiding Principles on Business and Human Rights, which have been endorsed by the Human Rights Council. We suggest amending the second sentence of paragraph 32 to read *“*States parties should *consider adopting* a legal and policy framework encouraging business entities to exercise human rights due diligence...*”.*
12. In paragraph 34 we suggest maintaining the language on redistributive reforms in the VGGT by beginning the second sentence of the paragraph with *“Where States choose to implement redistributive reforms..."* or *"States may consider…"* .
13. Paragraph 35 states “Redistribution of land and agrarian reforms should give special attention to access to land by youth, and respect and protect collective and customary tenure of land.” As in paragraph 24, we suggest replacing “youth” with *“children and young people”*, which would promote consideration of the rights of the child in line with States obligations under the Convention on the Rights of the Child.
14. Paragraph 36 suggests that the “right to access productive resources for individuals and groups” should be progressively realised by States. As there is no such right in international human rights law, we suggest this sentence is reformulated to focus on the right, found in an ICESCR to an adequate standard of living: “States should use the maximum available resources progressively to realise the right to *an adequate standard of living, including by increasing access to* productive resources for individuals and groups.”
15. The General Comment should recognise that traditional uses of land, climate change goals, wider environmental outcomes and food production goals might not always be aligned. We therefore suggest adding the following to the end of paragraph 37: “*States should recognise that traditional uses of land, climate change goals, wider environmental outcomes and food production goals may not always be aligned, and large scale policies may pose a threat to vulnerable groups and communities. It is therefore important to adopt a human rights approach which ensures that policies are developed and implemented in a manner which prioritises action to respect, protect and fulfil human rights.”*
16. In the paragraphs under heading III.C, the draft General Comment suggests that States parties have extraterritorial obligations related to land with respect to the implementation of ICESCR. The Covenant does not contain an overarching Article setting out the territorial scope of the States Parties’ obligations and the UK takes the view that the obligations under the Covenant are primarily territorial and do not have extraterritorial effect.
17. As non-State actors are not party to international human rights conventions, they cannot violate human rights under them. We therefore suggest replacing “violations” in the final sentence of paragraph 38 with *“abuses”.*
18. We suggest redrafting the end of paragraph 41 to read: “...and *should ensure that such agreements* do not adversely impact on access to productive resources in other countries*”*, since the latter action is a matter of best practice rather than legal obligation.

**Specific topics relevant to the implementation of Covenant rights in land-related contexts**

1. We recommend the Committee amend paragraph 46 to read: “States should also consider the possibility of freezing the land market in regions in which the risks of internal displacement and land dispossession are high, *where this is feasible and will offer greater protection to the rights of existing tenure rights holders*”.
2. The UK has a number of long-standing, serious concerns about the content of the Declaration on the Rights of Peasants and Other People Working in Rural Areas referenced in paragraph 52: along with seven other States, we voted against its adoption when put to the vote in the General Assembly and 54 other States abstained. In particular, we object to the fact that the Declaration seeks to set out new and expanded rights for rural workers that others do not have, including collective rights. We do not agree that collective human rights exist in international law, with the exception of the right to self-determination which was expressly agreed by States in the UN Charter and ICCPR. As the declaration is a non-legally binding instrument which does not represent customary internationals law, we suggest that the paragraph be amended to read “...the General Assembly adopted *by majority vote* the *non-legally binding* Declaration...” and the paragraph should end after the title of the declaration.
3. We consider that paragraph 52 could be strengthened by recognising the importance of sustainable management of natural resources to protect biodiversity, which in turn helps protect the ecosystems people live in. We suggest adding *“and the ecosystem services it provides”* to the end of the final sentence.
4. Some of the specific steps outlined in paragraph 54 and paragraph 55 are not legal obligations under the Paris Agreement and so we suggest amending both paragraphs to reflect the nature of the recommendations therein. The final sentence of paragraph 54 should read: *“*States *should* design adaptation policies to climate change at the national level sensitive to all forms of land use change induced by climate change and to *take account of* all affected persons and to use maximum available resources to address its impacts, particularly on disadvantaged groups*”*. Similarly, the final sentence in paragraph 55 should read: *“*Cooperation mechanisms for climate change mitigation and adaptation measures *should* provide a*…”.*

13 August 2021