

**No Peace Without Justice Written Contribution**

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

No Peace Without Justice (NPWJ) is a non-profit organisation that works on human rights and international justice. Since 2019, we have been developing a project in the Amazon Forest that aims at seeking accountability, raise awareness, and effect behavioural change regarding deforestation, fires, and other environmental and human rights violations in Amazonia.

1. **General Overview**

The General Comment (GC) should comprehensively address indigenous groups. There is an undeniable link between land for indigenous peoples and specific rights that we will address in the following sections, including the connection between land and the right to an adequate standard of living, food, health, culture, and housing. Furthermore, we will provide considerations regarding non-compliant corporations and institutions, land and armed conflict measures, and matters related to an eco-centric approach to land.

We believe there must be an intersectional perspective when addressing all land-related issues and that the indivisibility of human rights constitutes a principle of utmost importance. Finally, the GC should include a call for accountability at various levels and underline justice as a means of redress and future preventions since those aspects do not seem to be addressed fully.

1. **Suggested Considerations: Connection between Land & the right to Adequate Standard of Living (including food, health, culture)**
* **Land as an essential element to the right to adequate food for indigenous peoples (par. 10)**

Putting the right to land into effect is stated as the first step to ensure the food sovereignty of indigenous peoples, given the fact that the autonomy of ownership and access to natural resources are the conditions for traditional food production.

Traditional nutrition - inextricably link to land - is of paramount importance for indigenous peoples and other groups. Given the purpose of the GC, the Committee should clarify these key aspects pointing out this relationship. Access to land means access to its natural resources (e.g., plants, animals, minerals, etc.), often available only in a specific territory and fundamental for the diet of indigenous groups. Therefore, the GC should focus not only on land per se but also on the ecosystem contained within that land and its relationship to critical economic, social, and cultural rights. The GC mainly refers to agrarian reforms, but it is important that traditional nutrition is preserved to fulfil the right to adequate food. Without enough land, the result is the lack of space for growing traditional foods and reduced biodiversity, which leads to increasing reliance on ultra-processed, industrial foods which are ill-fitted to the diet of indigenous groups in certain areas.

For example, in Brazil’s Central-West region, dominated by agribusiness, most indigenous lands are too small to support their human populations through sustainable subsistence activities, with very low potential for indigenous peoples’ production of foods due to lack of space for gardens and reduced biodiversity. Many of these indigenous reserves are circumscribed by large cattle ranches and farms dominated by soy and sugarcane monoculture with minimal native vegetation cover, limited to small patches dispersed among fields and rangelands. When cattle are removed and ranchers leave these lands, they often become covered with invasive grass species that naturally do not belong to those ecosystems, making lands unusable by the indigenous peoples for traditional subsistence production. These characteristics not only limit the potential for collecting, fishing, and hunting, but also favour the occurrence of destructive and extensive wildfires during the dry season.[[1]](#footnote-1) In addition, in the case of the Maya indigenous Community in the Toledo District v. Belize, the Inter-American Commission of Human Rights recognised that the State violated the right of the community to property rights for the lands they have traditionally occupied and used, jeopardising their quality of life and especially their food production.

* **Land, resources, and contamination**

The little food Indigenous families manage to produce on their accessible lands is often compromised.[[2]](#footnote-2) For instance, evidence of contamination in river and stream river water poses serious risks to indigenous peoples’ health and intensive use of pesticides by companies or farmers in the area may also represent a serious risk of contaminating breast milk, which only strengthens the cycle of rights violations.[[3]](#footnote-3) Thus, the interplay between native land and contamination, direct and indirect, should be underlined further.

* **Right to health (par. 24, 36)**

Health is conceived as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.[[4]](#footnote-4) Land helps promote the physical, mental, emotional, spiritual health for many groups of people, such as indigenous peoples (par. 36). Moreover, land is an essential element to access specific plants for traditional medicine, that is key to the achievement of this right and others in the Covenant, and that would otherwise be lost. When addressing this right, the Committee should also highlight these aspects, to reiterate the essential role of land to the overall wellbeing of the humans who inhabit it.

In addition to this, the GC could highlight the importance of land and nutrition for health. The lack of access to land and its resources for traditional food, as discussed above, has severe repercussions to the health of indigenous peoples. An emerging pattern for indigenous peoples worldwide is that greater integration in market economies and thus reduced access to traditional nutrition tend to bring increased prevalence of excess weight and chronic disease, such as diabetes and hypertension.[[5]](#footnote-5)

Access to traditional food benefits their overall health, both through its very consumption but also through the physical activity of collecting and preparing traditional meals. The UN Food and Agriculture Organization (FAO) and the UN Centre for Indigenous Peoples’ Nutrition and Environment also support this important value of traditional foods remaining part of indigenous peoples’ diets, as these foods provide numerous benefits to physical health in consumption and in the physical activity of harvesting and preparing these foods.[[6]](#footnote-6)

* **Right to Culture (par. 5, 12)**

Cultural rights include, among others, access to culture and language, cultural and artistic production, participation in cultural life, cultural heritage, intellectual property. Land is not a mere commodity to be exploited for economic purposes (par. 5); rather, it relates to all these aspects of life, especially for indigenous people. In addition, we believe that the term “good” is not appropriate to use when the social and cultural meaning of land.

The relationship between land and indigenous people is at the centre of cultural life. Each person does not ‘own’ a piece of land; rather, he/she is aware and responsible for taking care of such land, providing a deep sense of identity, and belonging. This is also translated into the language each indigenous community uses, whose expressions and words cannot always be translated literally.

As discussed above, land is central to provide traditional food, medicine and housing to indigenous families and communities. Traditional food plays a key role in maintaining the culture of a given group, its heritage, identity, and other aspects related to economic, social, and cultural rights. In addition, land-related activities and spiritual sites are at the core of indigenous spirituality. Indeed, although beliefs and practices may vary across the geographical regions, communities and individuals, land plays a key role to maintain those practices that nourish their social and spiritual lives. Therefore, forced eviction and land deprivation severely affect the religious and spiritual life of indigenous communities.

Considering the abovementioned links between land and indigenous communities, the GC should also highlight the importance of land in shaping the identity of indigenous communities. The location of certain places or elements is a key aspect of indigenous identity, including those sites where they can find medicines and food, celebrate ceremonies, identify burial sites.

* **Right to Housing**

Lands, territories, and resources of indigenous peoples are of cultural, social, economic, spiritual, and political significance and are inextricably linked to their identity and survival. Therefore, the historical and contemporary dispossessions of their lands for development purposes can be particularly harmful to indigenous peoples' socio-economic status, well-being, and integrity. As the GC highlights in paragraph II.9, there is an undeniable connection between indigenous peoples' relationship to land and the realization of their right to adequate housing, which are threatened by land-grabbing, deforestation, and other forms of environmental destruction usually carried out for development purposes. In this context, the GC could more strongly highlight that housing is an integral component of the rights to land and a cornerstone of indigenous peoples' struggles. The meaning and application of the right to housing must integrate the right to self-determination since the right to housing for indigenous peoples cannot be achieved without the realization of self-determination and vice-versa. Furthermore, the household must be regarded as a physical and social space for exercising cultural and social practices. Thus, despite the universal character of human rights, it is vital to apply them in a culturally sensitive way–considering that the meaning of housing and its implications go hand in hand with the conceptions of lands and territories for some indigenous communities.

In addition, in section III.B, the GC mentions that participation, consultation, and transparency are vital principles for implementing Covenant obligations relating to land. However, we urge the Committee to further emphasize the need for free, prior, and informed consent as a necessary step that states should take before conducting any project that might lead to the relocation of indigenous communities. Thus, the GC could use a more determined language in par. C.23. Without the requirement for consent, indigenous peoples cannot veto government projects and developments in their area that directly affect their lives and cultures. This goes hand in hand with the fact that land registration and land administration should be carried out without discrimination, including discrimination resulting from the change of marital status, lack of legal capacity and lack of access to economic resources, as highlighted in par. C.21.

When discussing discrimination and equal treatment, we believe it is important to stress that structural forms of violence committed against indigenous peoples are rooted in colonialist practices and discourses that continue to affect them daily. Forced assimilations, past and present dispossession of their lands, territories and resources, and systematic discrimination, disrupts their physical and spiritual connection to their territories.

We welcome the several mentions of forced evictions as a significant component in the mistreatment of indigenous communities and the violation of land and housing rights since it is not mentioned in Article 11 of the International Covenant on Economic, Social, and Social Cultural Rights. Indigenous peoples are often subjected to forced evictions and land-grabbing for the sake of extracting resources, agribusiness, and development projects. There are several cases where indigenous peoples have been forced to migrate to the cities, having no other options than living in informal settlements with poor living conditions or in a situation of homelessness, directly increasing their vulnerability. Such displacements are usually undertaken in a climate of violence and harassment, without effective consultation, free, prior, and informed consent and without just and fair compensation. These situations may lead to human trafficking, forced labour, sexual exploitation, lack of birth registration for children, among other worrying issues. Therefore, we urge the Committee to address further the context of violence that often operates in these situations, transcending the time of the event itself and thereafter, reinforcing structural discrimination and violence.

Finally, indigenous peoples are rarely provided with an opportunity to design and execute their housing policies and programmes. As a result, they are excluded from decision-making processes that impact their right to adequate housing. Therefore, we urge the Committee to stress that states must display participation mechanisms in a culturally sensitive way to facilitate their effectiveness.

1. **Suggested Further Considerations**
* **Binding Mechanisms/Measures for non-compliant corporations & institutions (par. 32, 38, 42)**

The GC includes a reference to human rights due diligence, which is key to the land. However, the Committee could also take the opportunity to stress this aspect further and recommend (or add) strict liability for land grabbing, violations related to business or institutional activities, and all practices that are harmful to the land, its inhabitants (both human and non-human) as well as that may have wider effects on the wellbeing of other communities.

* **Human Rights Defenders (HRDs)**

As the GC highlights in section IV.E, the situation of human rights defenders over land is challenging. HRDs in Latin America are at constant risk, especially those who protect the environment. As mentioned in the GC, states must refrain from criminalising or hindering their work, such as imprisoning campaigners and activists. However, we believe more actors should be contemplated when addressing situations of violence. For instance, private actors and armed groups can also be a threat to their well-being. Therefore, more parties could be involved, and the state should address them to protect HRDs effectively. Additionally, recent demonstrations in Colombia and Brazil have shown that the excessive and disproportionate use of force against protestors - including land defenders - is a problem of significant importance. It does not let them manifest their concerns and create political responses in an environment free from violence, fear, and threats. All in all, we urge the Committee to include the state's role when third parties harm directly or indirectly HRDs, and that the excessive use of force against HRDs in protests - and other contexts of political articulation - constitutes a form of violence that should never be justified.

* **An Eco-centric Lens and Perspective**

Throughout the GC, land is seen solely as property. Thus, environmental devastation and climate change become relevant only when human well-being is at stake. This approach is evident in section IV.F. The GC states that sea-level rise, changes in temperature, the increasing frequency of extreme weather events, among other adverse effects of climate change, will affect legitimate user rights if it continues getting worse at the current rate. Therefore, the GC stresses the need for developing cooperation and mitigation strategies to respond effectively to its imminent consequences.

In this line, we suggest that the GC could also consider a non-anthropocentric view. A piece of land is also a piece of the environment. It is a fraction of a complex ecosystem with an intrinsic value. Therefore, climate change requires our action when humans are at risk and when water streams, wildlife, and other natural processes are disrupted. Even if the ICESCRs deals with anthropocentric rights (rights for humans), an eco-centric approach could serve as an effective vehicle to protect people more effectively. Comprehending humans as an additional piece of an ecosystem - harmed through irresponsible actions and policies - as other natural entities are, is crucial to understand the interconnectedness of land, human rights, and the importance of having a healthy environment.

Another vital element is the transcendental responsibility landowners have in preventing the progression of climate change. For instance, landowners must reduce the use of pesticides and non-environmentally friendly practices due to the long-term effects on the land itself, its resources, the people that inhabit it, and humanity as a whole.

* **Land and armed conflict / post-conflict societies, including impact on indigenous communities**

As the GC rightly recognises, armed conflict and land are inextricably linked in guaranteeing the enjoyment of the rights set by the Covenant rights. However, the GC should address more thoroughly the impact of armed conflict and of post-conflict societies on the rights of peoples in vulnerable situations and potentially subjected to the risk of discrimination and violation of fundamental rights, such as indigenous peoples. The enjoyment of the right to land in situations of armed conflict is indeed fundamental not only to guarantee some basic rights enshrined in the Convention, such as the right to adequate standard of living, including housing, food, and culture, but also to maintain the social fabric and traditions of indigenous communities affected by violence. This is particularly true in cases in which communities are internally displaced or obliged to seek refuge abroad and consequently abandon their traditional lands and livelihoods.

In this framework, reparations and land restitution programs play a key role in mitigating the harmful consequences of land eviction and dispossession and should therefore consider the lands traditionally owned, occupied and used by indigenous peoples to determine any future settlement. The endorsement of the concept of transformative reparations by the GC is to be welcomed as a fundamental instrument aimed not only at ensuring land restitution to victims of internal displacement, but also at addressing deep-rooted socio-economic inequalities. As Rapporteur Rodrigo Uprimny Yepes rightly notices, transformative reparations could be an instrument to come to terms with an injustice that took place in the past, but they are also a means for a better future[[7]](#footnote-7). Thus, as far as indigenous peoples and their right to land is concerned, transformative reparations could be regarded as possible remedies to long-term injustices deriving from the missing recognition of lands traditionally owned by such groups.

Lastly, the situation of land human rights defenders in armed conflict should be approached through a more encompassing perspective, as the indivisibility of all human rights often emerges when human rights organizations document patterns of human rights violations. The imprisonment of people campaigning for recognition of their land rights, the use of disproportionate force in response to protests over the impact of water privatization, and the lack of judicial independence in eviction cases all demand a holistic human rights response.

1. **Conclusion**

To conclude, we would like to stress that despite the obligations set by CESCR, UNDRIP and other international instruments, human rights in relation to land have not been respected in the case of indigenous peoples.

Access and enjoyment of land affects indigenous society in their entirety, and deprivation thereof creates a cycle of human rights violations that affect diverse aspects of their lives, with severe repercussions on their overall well-being. The right to land and its resources is the first step to ensuring, among others, food sovereignty, adequate nutrition, self-sufficiency, housing, culture, and the very survival of indigenous peoples. This because autonomy of ownership and access to land are not only conditions for traditional food production, but also for culture, social aspects, and identity. The GC should therefore stress these aspects further, with attention to the integration between Covenant rights related to land and self-determination, as well as with a culturally aware perspective that considers the peculiar meaning of poverty, the right to food, housing, and others according to each context and social group. Finally, we noticed that terms such as accountability, criminal responsibility, liability, and justice do not seem to be leading concepts when addressing land-related violations in the GC. Thus, we urge the Committee to shed light on these aspects and call for accountability at various levels, not only as a means of redress but also to prevent future violations from occurring.

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7. Rodrigo Uprimny Yepes, “Transformative reparations of massive gross human rights violations: between corrective and distributive jstice”, *Netherlands Quarterly of Human Rights*, vol. 27, No. 4 (2009), p. 638. [↑](#footnote-ref-7)