Committee on Economic, Social and Cultural Rights (CESCR)

Office of the United Nations High Commissioner for Human Rights

CH-1201 Geneva (Switzerland)



 Written contribution to the CESCR on draft General Comment No. 26 (2021) on land and economic, social and cultural rights, E/C.12/69/R.2 (3 May 2021)

By Dr. Thomas Bundschuh

Dear Rapporteurs,

Dear Committee Members,

We welcome the opportunity to contribute to the draft General Comment on land and economic, social and cultural rights by making suggestions for amendments in the following sections of the draft: IV.A. Armed conflict and post-conflict situations; IV.D. Peasants’ rights; IV.F. Climate change.

The General Comment on land and economic, social and cultural rights should indicate the role of corporations when it comes to designing land restitution programmes in **post-conflict situations** to the extent that corporations have been involved in, or benefitted from, land dispossessions during armed conflict. Under the heading of **peasants’ rights**, the significant role of rural women in the survival of their families and in contributing to the economy needs to be acknowledged as women are often denied land tenure and are facing discrimination concerning land rights in many regions. With regard to climate change, the bi-directional dynamics between **climate change** **and land degradation** should be considered while the nexus between land degradation and the Sustainable Development Goals (SDGs) deserves to be brought into focus.

Please note the following:

1. This contribution follows the structure of the draft comment.

2. Amended paragraphs or phrases are highlighted to locate suggestions more easily.

3. Suggested additions are in **red bold letters for text** and **blue bold letters for footnotes.**

4. Original footnotes are in brackets.

Here are our suggestions:

 IV. Specific topics of relevance to the implementation of Covenant rights in land-related contexts

 A. Armed conflicts and post-conflict situations

45. There are links between armed conflicts, land and the enjoyment of Covenant rights. Sometimes, land conflicts, especially those relating to structural unequal distribution of land tenure coming, for example, from colonial or apartheid systems, can be one of the root causes or a trigger of the conflict. In other cases, the conflicts may lead to forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as peasants, indigenous peoples, ethnic minorities or women. It is noteworthy that addressing land disputes and conflicts might be a key to building resilience and sustaining peace.[[1]](#footnote-2) [62] Thus, States **parties** should make all efforts possible to prevent land dispossession during armed conflicts. If dispossessions do nevertheless occur, States **parties** are obliged to establish restitution programmes to guarantee to all refugees and internally displaced persons the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.[[2]](#footnote-3) [63] **These restitution programmes should also make provision for the restitution of business-related dispossessions and for the protection from threats and violence against land restitution claimants by drawing on the United Nations Guiding Principles on Business and Human Rights** [\**Footnote:* **UN** **Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31, Principle 22. See also UN General Assembly (2020), *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action*, A/75/212, para. 85**]. States **parties** should also address all those land conflicts that might trigger the re-emergence of an armed conflict.

 D. Peasants’ rights

52. Access to land has particular importance for peasants worldwide, in order to realize their livelihood rights. For certain groups, such as peasants, the treatment of their access to land and other productive resources is so important for the realization of several Covenant rights that it functionally equates with a right to land. In that respect, in December 2018 the General Assembly adopted the United Nations Declaration on the Rights of Peasants and Other PeopleWorking in Rural Areas [\**Footnote:* **A/HRC/RES/39/12**]. Article 17 covers the right to land for peasants and other people living in rural areas, including the right to have access to, sustainably use and manage land. Those rights should ensure that those groups have an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures. States **parties** should take measures to support peasants to use the land in a sustainable way, to maintain soil fertility and its productive resources and to avoid endangering the environment for other individuals, ensuring their access to clean water and the preservation of biodiversity.

**52a. [new] Rural women play a significant role in the economic survival of their families and in contributing to the rural and national economy, but are often denied tenure and ownership of land, equal access to land, productive resources, and financial services** [\**Footnote*: **United Nations General Assembly,** **United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/HRC/RES/39/12, Preamble**]. **In many regions, women suffer from discrimination in relation to land rights, including with respect to communal lands, which are controlled largely by man.** [\**Footnote:* **Committee on the Elimination of Discrimination against Women, General recommendation No. 34 (2016) on the rights of rural women, CEDAW/C/GC/34, para. 55**]. **The Committee considers rural women’s rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights. Barriers that prevent women from enjoying these rights often include discriminatory laws, the lack of harmonization of laws and their ineffective implementation at the national and local levels, and discriminatory cultural attitudes and practices.** [\**Footnote:* **Committee on the Elimination of Discrimination against Women, General recommendation No. 34 (2016) on the rights of rural women**, **CEDAW/C/GC/34, para. 56**]. **States parties should take into account the particular situation of rural women and the significant roles they play in the economic survival of their families and should take all appropriate measures to ensure the application of the provisions concerning land and natural resources of General recommendation No. 34 on the rights of** **rural women, adopted in 2016 by the Committee on the Elimination of** **Discrimination against Women (CEDAW).** [\**Footnote:* **CEDAW/C/GC/34, section G., paras. 55-78**].

 F. Climate change

54. **It is unequivocal that human influence has warmed the atmosphere, ocean, and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere, and biosphere have occurred. In every region across the globe, human-induced climate change is already affecting many weather and climate extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO2 and other greenhouse gas emissions occur in the coming decades.** [\**Footnote:* **IPCC (2021), Summary for Policymakers (SPM). In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change.***] The impact of climate change **on land and land degradation, affecting** **access to land and** legitimate user rights, will be severe in many countries. **Land degradation affects people and ecosystems throughout the planet and is both affected by climate change and contributes to it. Land degradation is a driver of climate change through emission of greenhouse gases (GHGs).** [\**Footnote:* **IPCC (2019), Land Degradation, p. 347. In: *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*.**] **While land is important for all 17 UN Sustainable Development Goals (SDGs), land degradation has a particularly harmful impact on SDG2 (Zero Hunger), SDG3 (Good Health and Well-being), SDG6 (Clean Water and Sanitation), SDG12 (Responsible Consumption and Production), SDG13 (Climate Action), and SDG15 (Life on Land).** [\**Footnote:* **IPBES (2018), *The IPBES assessment report on land degradation and restoration*, p. XXII. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES),** [**https://ipbes.net/**](https://ipbes.net/). **UNCCD (2017), *Land degradation and the Sustainable Development Goals: Threats and potential remedies*. United Nations Convention to Combat Desertification (UNCCD),** [**https://knowledge.unccd.int/publications/land-degradation-and-sustainable-developmentgoals-threats-and-potential-remedies**](https://knowledge.unccd.int/publications/land-degradation-and-sustainable-developmentgoals-threats-and-potential-remedies)]. **States parties should consider joining the Land Degradation Neutrality (LDN) Target Setting Programme.** [\**Footnote:* **UNCCD (n.d.), *The LDN Target Setting Programme*. https://www.unccd.int/actions/ldn-target-setting-programme. Orr, B.J. et al. (2017), *Scientific Conceptual Framework for Land Degradation Neutrality. A Report of the Science-Policy Interface*. United Nations Convention to Combat Desertification (UNCCD),** [**https://www.unccd.int/publications/scientific-conceptual-framework-land-degradation-neutrality-report-science-policy**](https://www.unccd.int/publications/scientific-conceptual-framework-land-degradation-neutrality-report-science-policy). **For rights-based instruments in the context of land restoration policies and tools, see Chapter 6: Responses to halt land degradation and to restore degraded land, section 6.4.2.2. In: IPBES (2018), *The IPBES assessment report on land degradation and restoration***]. **Lack of action to address land degradation will increase emissions and reduce carbon sinks and is inconsistent with the emissions reductions required to limit global warming to 1.5°C or at least significantly below 2°C.** [\**Footnote:* **IPCC (2019), Land Degradation, p. 348**]. Sea level rise has an impact on coastal zones for housing, agriculture and access to fisheries. 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.**[[3]](#footnote-4)** [72]States **parties** should cooperate internationally and comply with their duty to mitigate **greenhouse gas** emissions and their respective commitments made in the context of the implementation of the Paris Agreement [\**Footnote:* [**https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement**](https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement)] Moreover, States **parties** have an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change, to register all affected persons and to use the maximum available resources to address the impacts of climate change, particularly on disadvantaged groups.

[15 August 2021]

1. [62] See the guidance note of the Secretary-General on the United Nations and land and conflict, issued in March 2019. [↑](#footnote-ref-2)
2. [63] See the principles on housing and property restitution for refugees and displaced persons, endorsed by the Sub-Commission on the Protection and Promotion of Human Rights (E/CN.4/Sub.2/2005/17). [↑](#footnote-ref-3)
3. [72] See [www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM\_Approved\_Microsite\_FINAL.pdf](file://conf-share1/conf/Groups/PEPS-Share/Editors/HR%20editors/Fletcher/www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf). [↑](#footnote-ref-4)