The Government of the Kingdom of Norway presents its compliments to the Office of the United Nations High Commissioner for Human Rights and the Committee on Economic, Social and Cultural Rights and, with reference to the Committee’s note verbal no. CESR/2021/1 of 27 April 2021, has the honour to submit to the Committee the following observations on the draft general comment on land and economic, social and cultural rights.

**1**

The draft states (para. 8) that its aim is to “clarify the specific obligations contained in the Covenant in relation to land”. In the same paragraph it notes that “the Covenant does not affirm a self-standing “right to land”. This second point is important. The Government has several questions and concerns both regarding the scope and methodology of the draft general comment. The Government would like to reserve its position towards the entire draft, while sharing concrete observations and comments regarding two themes contained in the draft.

**2**

There is no basis in the Covenant for "free, prior and informed consent". The Government understands that the Committee, in dealing with this topic inter alia in paras. 18, 33 and 55, wishes to cover it as it arises from other sources. This does not appear to align with the competence of the Committee to issue general comments, as found in Rule 65 of the Rules of Procedure of the Committee.

A general *requirement* to obtain a free, prior and informed consent from indigenous peoples cannot be derived from international instruments. ILO Convention No. 169 Article 6 establishes a *duty to consult* indigenous peoples, and the *aim* of those consultations must be achieving agreement or consent to the proposed measures. Notably, this standard has recently been enshrined in Norwegian legislation, effective 1 July this year. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), while not legally binding, has a similar wording, in Article 19: *States should consult in good faith in order to obtain a free, prior and informed consent.* In other words: free, prior and informed consent is required as an ambition in the consultations, but it is not a standalone requirement. The Government of Norway recommends the committee to redraft the aforementioned passages to reflect these standards. As practical matter, using the agreed language of UNDRIP Article 19 might be preferable.

An exception might exist with regards to measures whose impact amounts to a denial of the right of a community to enjoy its own culture, are incompatible with the International Covenant on Civil and Political Rights (ICCPR) Article 27. This is the view of the Human Rights Committee in Communication No. 1457/2006, Ángela Poma Poma v. Peru. However, the question, even in that case, is not the consultations nor consent as substantial rights on their own, but as a factor to be considered when determining whether the substantial rights of Article 27 in that treaty has been denied. The Covenant on Economic, Social and Cultural Rights does not have any corresponding provision.

For further information on Norway's considerations of this topic, see the Comments of the Government of Norway, dated 16 September 2016, to the report of the Special Rapporteur on the Rights of Indigenous Peoples on the human rights situation of the Sámi people in the Sápmi region in Norway, Sweden and Finland (A/HRC/33/42/Add.4 (<https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/42/Add.4)>) and Norway's statement in the Human Rights Council 20 September 2016 on the report, available here: [Item 3 - Statement on indigenous peoples and EMRIP - Norway in Geneva](https://www.norway.no/en/missions/wto-un/nig/statements/hr/hrc/hrc-33rd-session-13-sept.---30-sept/item-3/item-3---statement-on-indigenous-peoples-and-emrip/?__cf_chl_managed_tk__=pmd_02b3fd0afe6990750dd4c3f14f799686bd1768cc-1629022887-0-gqNtZGzNA6KjcnBszQd6).

**3**

As firmly stated by the Norwegian Government in the hearing 26 and 27 February 2020 during the Committee’s consideration of Norway’s sixth periodical report, the States parties’ obligations under the Covenant are limited to the territory of the State. Only under certain exceptional circumstances, where a State exercises effective control over an area outside its territory or in certain other cases where it exerts authority and control over individuals concerned, and depending on the interpretation of the provisions in accordance with accepted principles of treaty, may the Covenant find extraterritorial application. The Norwegian Government is committed to this position as is also confirmed by the International Court of Justice in Legal Consequences of the Construction of a Wall in the Occupied Territory, Advisory opinion 9 July 2004, in, e.g., paras. 109 and 112. The draft general comment – or policy document – in considering extraterritorial obligations in paras. 39-44, does not in any way represent the jurisdictional reach of States parties’ obligations, including those of Norway, under the Covenant.