**A Human Right to Land**

*Housing and Land Rights Network – Habitat International Coalition*

CESCR faces both a challenge and a dilemma in addressing land under the Covenant. However, both can be resolved by adopting a suitable methodology and approach.

Although not explicitly mentioned in the Covenant, land is arguably the subject of a human right; i.e., the “human right to land.” Recognition of the human right calls for exploring the classical element of land beyond the usual consideration of a “right to land” as a material thing to be possessed in pursuit of other already-codified human rights, entitlements or privilege.

ICESCR guarantees no “human right to property.” While UDHR treats property only within a narrow scope as a subject of “ownership” individually, or in association with others.[[1]](#endnote-1) Thus, ICESCR is the appropriate instrument to frame the recognition and understanding of the human right to land, since its silence on property enables—indeed requires—a focus rather on the symbiotic relationship between the land and its people primarily as a matter of equity, not merely as a subject of freehold tenure or exchange value.

Since the adoption of ICESCR, land has remained an issue of competition and dispute, and various scales of conflict over land have been more common than examples of cooperation in its use and governance.[[2]](#endnote-2) Many CESCR reviews of state performance reveal a pattern of Covenmant rights affected by inequitable access to, use of, and/or control over land; the concentration of land tenure, including ownership, as a feature of unprecedented global disparity in wealth and income[[3]](#endnote-3); and unsettled claims over indigenous, occupied, traditional and rural peoples’ and communities’ lands and related natural resources. In such cases, land lies at the source of conflict and its resolution.[[4]](#endnote-4) Contention over land has helped to make the human right to land politically untouchable in multilateral forums, but also a reason why its understanding and treatment as a human right is so important and timely.

Human reproduction, population dynamics, sustainable development, politics, participation in culture and economics are broad categories of human endeavour often depend upon land. More-specific contexts requiring an appreciation of the human right to land include human settlements and urbanization; governance; urban renewal/beautification; conflict resolution and peace-making, allocation for public and private purposes; project implementation; extractive industries; infrastructure development, biodiversity protection; climate change; trade and investment; food systems; foreign occupation and the exercise of peoples’ self-determination increasingly concern the economic, social and cultural human rights dimensions of land. As every complex task requires getting the theory right, constructing a “human right to land” requires a multidisciplinary approach found at the convergence of legal, social and physical sciences, and evidence-informed practice.

A strictly legal case could rest on black-letter treaty law, in particular, the provisions of the Covenant and its jurisprudence, CESCR’s state-party reviews, as well as relevant general principles and peremptory norms of international law. However, a strictly legalistic approach is insufficient, since the available law so far has demurred on the question of land as a human right.

Therefore, other disciplines are needed to complement the lawyer’s usual references and tools of the trade. The social sciences offer crucial sources on the theories of human need[[5]](#endnote-5) and justice,[[6]](#endnote-6) but these only infer the importance of land to human well-being.

Beyond philosophical and ideological considerations, the physical sciences bring needed clarity to the essential nature this classical element of land as a requisite of human dignity, well-being, maintenance and, indeed, survival. Thus, the hybrid approach is indispensable to understanding the normative content of the human right to land through the inextricable link between land and human needs within a framework of social justice. Establishing this construct is the first logical step to be taken before applying the human right to land of particular groups and in various circumstances. Such a forensic method has operated in the emergence of water (and sanitation) as a human right, first elaborated in the CESCR’s legal interpretation of state parties’ related obligations under ICESCR,[[7]](#endnote-7) and then as adopted by the UN General Assembly.[[8]](#endnote-8)

**Normative Content**

The recognition and elaboration of land as a human right in international law would both complement and remain distinct from domestic legislation regulating land, which primarily treats the property relationship of legal persons with real property. Rather, land, analogous to water, constitutes an element upon which human life, dignity and well-being depend.

As any internationally recognized human right must pass the test of universality, the value or condition recognized as a human right must relate to a commonly shared human need for a life of well-being with dignity, not only to certain segments of society, or in particular circumstances. Land is one such essential natural resource of finite quantity and a public good fundamentalto a lifeof well-being and dignity for human beings as an earth-bound species.

With this normative grounding, as it were, land as a human right becomes a common element to be administered—i.e., monitored, distributed, administered, protected and preserved for current and future generations—as any finite public resource in the context of human activity.

The functioning of the human body ultimately relies on a relationship to land by virtue of its coexistence with the physical forces of gravity.[[9]](#endnote-9) Human contact with land also represents a potential treatment and remedy to a variety of degenerative diseases,[[10]](#endnote-10) and a primary factor in regulating the endocrine and nervous system.[[11]](#endnote-11) While the dominant electromagnetic frequency of the earth (7.83 Hz)[[12]](#endnote-12) is the same as the dominant frequency of the human brain and extremely close to that of alpha rhythms,[[13]](#endnote-13) the intense negative charge carried by the earth is electron-rich, and the human body’s direct physical contact with the land is a potent antioxidant.

The notion of land as a common good, or part of the human commons, is expressed in many cultures. Inherent in the traditions and cultures of traditional and indigenous peoples is the concept of collective guardianship of land and the prohibition against land’s treatment as a commodity. Notably in Islamic cultures is the prophetic Tradition that “people share in three things: water, (pasture) land and fire” and “it is forbidden to put a price on them.”[[14]](#endnote-14)

In many earthly human cultures, this synchronicity and symbiosis are considered sacrosanct.[[15]](#endnote-15) For millennia, Sioux people have expressed the life-giving force of the land and soil as part of their nature.[[16]](#endnote-16) Modern cultures consider physical access to land as a therapy known as grounding, or “earthing,” or what Germans call *Waldbaden* and Japanese refer to as *Shinrin Yoku*.

In the technological age humans are inundated with multiple electronic—including wireless—signals, while the earth remains the constant source of the natural frequency that human mental and physical existence require to function in a healthy way. This physiological reality makes land an indispensable factor of humans’ well-being in their primordial habitat and/or built environment. Land, therefore, is an essential element in the human health equation, along with sunshine, clean air and water,[[17]](#endnote-17) nutritious food,[[18]](#endnote-18) and physical activity.[[19]](#endnote-19)

Land is also attributed with multiple functions: economic, social, cultural and ecological.[[20]](#endnote-20) Respecting, protecting and fulfilling secure and equitable access, management, use and secure tenure of adequate land constitute primary elements in a domino causality toward the realization of other human rights.

Both expressions of land as a universal human need and human right, as well as the special relationship of certain human populations to the basic element and resource of land, underscore these economic, social and environmental functions of land as a common good and resource. Land as a human right makes it both an individual and collective prerequisite to the realization of other internationally guaranteed rights, highlighting the importance of articulating clear and consistent human rights obligations of states in relation to land as a distinct human right, as well as essential element for the realization of other rights guaranteed in the Covenant to which they are party.

**Toward a General Comment on the Human Right to Land**

In order to articulate the obligations of states in relation to land as a distinct human right, CESCR’s authoritative interpretation could overcome the methodological dilemma by treating land not merely as a context in which other Covenant rights are to be respected, protected and fulfilled. By comparison, the foregoing General Comment No. 34 exemplifies the case of an interpretation of established rights in the context of business activities. Land, however, is not merely a human activity or particular circumstance, but constitutes an indispensable value of human existence.

As developed through the CESCR’s interpretation of state party obligations corresponding to other specific human rights, a General Comment on the human right to land should follow a similar forensic method. Therefore, building on the multidisciplinary approach in this submission, we recommend the General Comment on land provide the normative content, sources in law, state obligations and violations pertaining to the human right to land.

The sources of the human right to land in law are inherent on the Covenant in their collective expression as legal persons addressed in Article 1 as members of a people and/or nation, relying directly or indirectly on secure access, use and tenure of land to realize self-determination and other specific human rights, as recognized in foregoing General Comments.[[21]](#endnote-21) Land has been referenced repeatedly in previous General Comments from CESCR as essential to the domino causality required for the realization of other Covenant rights.

As under any treaty, states parties assume simultaneous individual, collective, domestic and extraterritorial obligations. The seven explicit over-riding principles laid out in the Covenant’s first three Articles are foundational to the Covenant’s structure and indispensable to the methods of its implementation, monitoring and review functions over the short and long runs, answering the question *how* states are to perform their function to respect, protect and fulfil the human right to land: (1) Self-determination, (2) Non-discrimination, (3) Gender Equality, (4) Rule of Law, (5) Progressive Realization, (6) Maximum of Available Resources and (7) International Cooperation and Assistance.

Operationalizing the human right to land must be sustainable and inter-generational also, ensuring that the adequacy human right be realized for present and future generations.

Land is increasingly recognized explicitly as an indispensable element and subject of sustainable development by the international community in global instruments. That recognition of the common human relationship to land reinforces the appreciation of land as a universal human need and subject of human rights, as affirmed in the application and interpretation of ICESCR, as treaty law (*lex lata*). The concerns of states and their constituent stakeholders about the impacts of large-scale land acquisitions for diverse purposes, human-caused and natural disasters, and protracted crises, as well as those covered by the global sustainable-development agenda, have sparked deliberation, leading to the development of a series of soft law (*lex feranda*) instruments in the global policy sphere pertaining to land administration,[[22]](#endnote-22) including an elaborate process of developing land indicators to measure states’ performance of their global policy commitments in the 2030 Sustainable Development Agenda.[[23]](#endnote-23)

***Indivisibility and Interdependence***

Like land—also not explicit in the Covenant—the human right to water has been recognized, nonetheless, as a common human need and human right by virtue of its nature inherent in the realization of other codified human rights, including the ICCPR-guaranteed human right to life[[24]](#endnote-24) and to human rights under ICESCR.[[25]](#endnote-25) General Comment No. 15 grounds the affirmation of the human right to water in the human rights to health and an adequate standard of living, “including adequate food, clothing and housing.”[[26]](#endnote-26) The role and function of land relate to adequate housing, which normally includes land as an indispensable element.[[27]](#endnote-27)

While providing a definition for the human right to adequate housing, General Comment No. 4 refers to “the right of all to a secure place to live in peace and dignity, including access to land as an entitlement”[[28]](#endnote-28) (and as “a right,” in the Arabic version).[[29]](#endnote-29)

Access to, use, secure tenure and equitable administration and governance of land are often requisites to accessing vital water. General Comment 15 provides that no household should be denied the human right to water on the grounds of its housing or land status[[30]](#endnote-30) and observes, in particular, indigenous peoples’ right to access water resources on their ancestral lands.[[31]](#endnote-31)

General Comment No. 21 on the right of everyone to take part in cultural life notes the human rights of indigenous peoples to “their cultural institutions, ancestral lands, natural resources and traditional knowledge.”[[32]](#endnote-32)

General Comment No. 14 on the right to the highest attainable standard of health[[33]](#endnote-33) contains recognition of land’s link to health, pointing out how development-related displacement of indigenous peoples from their traditional territories and environment deny them their sources of nutrition and break their symbiotic relationship with their lands, having deleterious effects on their health.[[34]](#endnote-34) In addition to this is land’s relation to the emerging human right to a healthy environment and corresponding state obligations,[[35]](#endnote-35) which are variously enshrined in over 100 state constitutions.[[36]](#endnote-36)

**Defining the Human Right to Land**

The human right to land is realized when every person, individually and/or collectively, enjoys access to, use of and secure tenure over land that is necessary and sufficient to achieve an adequate standard of living; to have a place to live in security, peace and dignity; to engage in recreational activities;[[37]](#endnote-37) to participate in public life;[[38]](#endnote-38) and to develop, conserve, diffuse and take part in culture in free association with others.[[39]](#endnote-39) In the collective dimension, the human right to land is realized when joint and collective forms of tenure are secure and legally protected. In the wider collective dimension, nations and peoples realize their human right to land when they enjoy access to, use of, and sovereignty over their ancestral and continuously inhabited land such that is necessary and sufficient to exercise self-determination external or within independent states, as the case may be.[[40]](#endnote-40)

The human right to land consists of both freedoms and entitlements. The freedoms include the right to maintain access to and tenure on existing land necessary for the enjoyment of all human rights, and the right to be free from interference, arbitrary dispossession or denial of those rights within social justice criteria. The entitlements include meaningful individual and collective participation in, and benefit from equitable administration and governance of land that provide everyone’s equal opportunity to enjoy land as her/his human right.

Forthe land to be *adequate*, it must be sufficient and suitable in quantity and quality aspects to uphold human life,[[41]](#endnote-41) dignity, well-being and livelihood through decent work, social security, housing, food, personal and environmental health, and participation in public life and culture where land constitutes a factor in these human rights outcomes.[[42]](#endnote-42) The adequacy of land should not be interpreted narrowly, but rather beyond mere spatial attributes, or monetary values and other material measures. The human rights metric for adequacy should treat land as a common social, cultural and environmental good with corresponding functions, and not primarily for its exchange value and economic function.

In human rights criteria, adequate land encompasses five criteria that may vary according to particular ambient conditions. However, the following elements of the human right to *adequate* land apply in all circumstances, regardless of the rural or urban context along the human settlement continuum, and should be elaborated in a General Comment on the human right to land:

1. **Availability**: A sufficient supply of land for each person’s personal and domestic uses, and as needed to realize other human rights;

2. **Accessibility** of land for everyone without discrimination on any arbitrary basis. Accessibility of land has four overlapping dimensions: (a) Physical accessibility, (b) Economic accessibility, (c) Accessibility of information and (d) Accessibility of related facilities, goods and services;

3. **Acceptability**: As of a quality required for each personal or domestic use, including cultural appropriateness;

4. **Security of tenure**: Protecting against “the practice of forced eviction constitutes a gross violation of human rights,”[[43]](#endnote-43) in accordance with General Comment No. 7.[[44]](#endnote-44)

5. **Location** suitable for the realization of other human rights.

The General Comment should identify also the corresponding p*rocess and accessory rights, including those outside the Covenant, that are essential for respect, protection and fulfilment of* the human right to land. Added to those codified rights is the requisite of human capability, which is an acquired condition and outcome of the enjoyment of a bundle of human rights[[45]](#endnote-45) and necessary for free, prior and informed consent in the context of development.[[46]](#endnote-46)

***Aspects of obligatory state functions***

As noted, General Comment No. 4 provides that: “Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”[[47]](#endnote-47) The Committee further advises that, “within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”[[48]](#endnote-48)

The state party’s obligation to respect, protect and fulfil Covenant rights requires the state to avoid, prevent and remedy violations of the human right to land. These three aspects of obligation apply to all organs of the state, whether the particular central or sub-national sphere of government, institution, representative or agent exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the state, and whatever its character within the territorial unit of the state.[[49]](#endnote-49) As with all human rights, respect, protection and fulfilment of the human right to land are required also as a constant of state obligation in all situations, including peace time, states of emergency, conflict, occupation, war and disaster.

It is particularly incumbent upon states parties, and other competent actors, to provide international assistance and cooperation, especially economic and technical, that enables developing countries to fulfil their core obligations. This is increasingly important in the context of fragile states, protracted crises and states and their populations such as Small Island Development States affected by climate change.

In General Comment No. 3, the Committee confirms that states parties bear a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the human rights guaranteed in the Covenant.[[50]](#endnote-50)

**Violations of the Human Right to Land**

The human right to land and its link to life and well-being with dignity become clearest where and when impeded through cases involving any single or combination of actions or conditions that bring about the violation of codified human rights. In the case of the human right to land, those conditions may include, but not are limited to: discrimination; dispossession; displacement, including forced eviction; denial of equitable use of, and access [to land]; scarcity [of land]; damage or destruction [of land] and/or the means of access [to land]; and/or insufficient capability of persons, social groups and communities to access, use and maintain tenure to adequate land. In addition to these special circumstances, various factors also may intersect to result in increasing land pressures, including population growth, urbanization, infrastructure projects (e.g., energy, transport and tourism installations), climate change and desertification, natural resource (e.g., mineral, oil, gas and water) extraction, the expansion of large-scale and mechanised agriculture, monocultures and biofuel production. The denial of the human right to land in such cases could lead to the condition of “landlessness,”[[51]](#endnote-51) which, in turn, involves the deprivation of a bundle of other Covenant human rights.

As with human rights, generally, the normative content of the human right to land becomes clearer in cases of its violation. In state party reviews[[52]](#endnote-52) and communications under the Optional Protocol,[[53]](#endnote-53) the Committee continuously has confronted cases involving the deliberate and widespread denial of the human right to land in both developing and developed countries. That denial has led to the deprivation of other Covenant human rights and human needs, often involving the failure of the state to respect, protect and fulfil multiple, indivisible and interdependent economic, social and cultural human rights. Often such cases involve the derogation or violation of process and accessory human rights guaranteed also under ICCPR such as access to justice, information, freedom of movement and residence, freedom of opinion, expression, association and peaceful assembly, and participation in public life.[[54]](#endnote-54) Breaches of Covenant human rights may cause and/or result from the violation of the human right to land.

**Endnotes:**

1. Universal Declaration of Human Rights, A/RES/III/217A, 10 December 1948, Article 17, at: <https://www.un.org/en/universal-declaration-human-rights/>. [↑](#endnote-ref-1)
2. *Land and Human Rights, Standards and Application* (Geneva: OHCHR, 2015), at:

   <http://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf>; *Land and Human Rights: Annotated Compilation of Case Law* (Geneva: OHCHR, 2015), at:

   <http://www.ohchr.org/Documents/Publications/Land_HR-CaseLaw.pdf>; *Realizing Women’s Rights to Land and Other Productive Resources* (Geneva: OHCHR, 2013), at:

   <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>; Report of the United Nations High Commissioner for Human Rights on land and human rights, E/2014/86, at:

   <http://www.un.org/Docs/journal/asp/ws.asp?m=E/2014/86>. [↑](#endnote-ref-2)
3. “Capital and land: The return of wealth is about more than housing,” *The Economist* (4 February 2014), at: ; Sam Moyo, “Land Ownership Patterns and Income inequality in Southern Africa,” Identities, Conflict and Cohesion Programme Paper Number 10 December 2004 (Geneva: United Nations Research Institute for Social Development, 2015), at:

   <http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/101C4E46DE4EA2B080256B6D005786F0/$file/moyo.pdf> and

   <https://pdfs.semanticscholar.org/4b6d/5d9142a42693e17ca28d35e38ff5299d8136.pdf>; Michael R. Carter, “Land Ownership Inequality and the Income Distribution Consequences of Economic Growth,” Working Papers No. 201 (Helsinki: United Nations University, World Institute for Development Economics Research, 2000), at: <https://pdfs.semanticscholar.org/4025/00aed5f49cddcb53705693a7f47b56490c7c.pdf>; Klaus Deininger and Pedro Olinto, “Asset distribution, inequality, and growth” (Washington: The World Bank, 2000), at:

   <http://web.worldbank.org/archive/website01066/WEB/IMAGES/127527-2.PDF>; Keith Griffin, Azizur Rahman Khan and Amy Ickowitz, “Poverty and the Distribution of Land,” *Journal of Agrarian Change*, Vol. 2 No. 3 (July 2002), pp. 279–330; *Land inequality and decentralized governance in LDCs* (Helsinki: United Nations University, World Institute for Development Economics Research, 2000), at:

   <https://www.wider.unu.edu/project/land-inequality-and-decentralized-governance-ldcs>; Paolo Verme, Branko Milanovic, Sherine Al-Shawarby, Sahar El Tawila, May Gadallah and Enas Ali A.El-Majeed, *Inside Inequality in the Arab Republic of Egypt* (Washington: World Bank, 2014), at: <http://www.worldbank.org/content/dam/Worldbank/egypt-inequality-book.pdf>; *Unearthed: Land, Power and Inequality in Latin America* (Oxford: Oxfam International November 2016), at: <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-land-power-inequality-latin-america-301116-en.pdf>; Paolo Verme, Branko Milanovic, Sherine Al-Shawarby, Sahar El Tawila, May Gadallah, and Enas Ali A.El-Majeed, Inside Inequality in the Arab Republic of Egypt: Facts and Perceptions across People, Time, and Space (Washington: The World Bank, 2014), at: <http://www.worldbank.org/content/dam/Worldbank/egypt-inequality-book.pdf>. [↑](#endnote-ref-3)
4. The United Nations and Land and Conflict Guidance Note of the Secretary-General, March 2019, at:

   <https://gltn.net/2019/03/15/guidance-note-of-the-secretary-general-the-united-nations-and-land-and-conflict-march-2019/>. [↑](#endnote-ref-4)
5. Len Doyle and Ian Gough, *A Theory of Human Need* (London: MacMillan, 1991). [↑](#endnote-ref-5)
6. John Rawls, *A Theory of Justice* (Cambridge MA: The Belknap Press of Harvard University Press, revised edition, 1999), at: <http://www.consiglio.regione.campania.it/cms/CM_PORTALE_CRC/servlet/Docs?dir=docs_biblio&file=BiblioContenuto_3641.pdf>. [↑](#endnote-ref-6)
7. CESCR, General Comment No. 15: The right to water, E/C.12/2002/11, 20 January 2003, at:

   <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en>. [↑](#endnote-ref-7)
8. The human right to water and sanitation, A/RES/64/292, 3 August 2010, at:

   <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292>; and The human rights to safe drinking water and sanitation, A/RES/70/169, 22 February 2016, at: <https://undocs.org/A/RES/70/169>. [↑](#endnote-ref-8)
9. As affirmed in gravitational biology, human physical development is adapted to life on land, as the factor gravity enables functions of the spine, internal organs, digestion, elimination of waste, flexible mobility, reproduction and the circulation of blood and oxygen. See Ralf H. Anken and Hinrich Rahmann, Astrobiology: The Living Universe - Gravitational Biology; "Gravitational Zoology: How Animals Use and Cope with Gravity". 2001, at: http://library.thinkquest.org/C003763/print.php?page=human03;

   http://www.dlr.de/me/Institut/Abteilungen/Strahlenbiologie/pdf/astrobiologie/P4\_20.pdf; Janet Tou, April Ronca, Richard Grindeland and Charles Wade, “Models to Study Gravitational Biology of Mammalian Reproduction,” Biology of Reproduction, Vol. 67 (2002), at:

   http://www.biolreprod.org/cgi/content/abstract/biolreprod.102.007252v1. [↑](#endnote-ref-9)
10. These range from ranging from chronic stress to autonomic nervous system dysfunction, inflammation, pain, poor sleep, heart rate variability, hyper-coagulable blood and cardiovascular disease. See James L Oschman, Gaétan Chevalier, Richard Brown, “The effects of grounding (earthing) on inflammation, the immune response, wound healing, and prevention and treatment of chronic inflammatory and autoimmune diseases,” Journal of Inflammation Research, Vol. 8 (24 March 2015), at: <https://www.dovepress.com/the-effects-of-grounding-earthing-on-inflammation-the-immune-response--peer-reviewed-article-JIR>; Joseph Mercola, “The Effects of Grounding” (21 November 2015), at: <https://articles.mercola.com/sites/articles/archive/2015/11/21/grounding-effects.aspx>; Gaétan Chevalier, Stephen T. Sinatra, James L. Oschman, and Richard M. Delany, “Earthing (Grounding) the Human Body Reduces Blood Viscosity—a Major Factor in Cardiovascular Disease,” The Journal of Alternative and Complementary Medicine, Vol. 19, No. 2 (2013), at: <https://www.liebertpub.com/doi/pdfplus/10.1089/acm.2011.0820>. Direct contact with land (earthing) during exercise also can inhibit hepatic protein catabolism or increase renal urea excretion, resulting in a positive nitrogen balance. This phenomenon has fundamental importance in understanding human metabolic processes. Paweł Sokal, Zbigniew Jastrzębski, Ewelina Jaskulska, Karol Sokal, Maria Jastrzębska, Łukasz Radzimiński, Robert Dargiewicz, and Piotr Zieliński, “Differences in Blood Urea and Creatinine Concentrations in Earthed and Unearthed Subjects during Cycling Exercise and Recovery,” Evidence-Based Complementary and Alternative Medicine, Vol. 2013 (2013), at: <http://dx.doi.org/10.1155/2013/382643>. [↑](#endnote-ref-10)
11. Karol Sokal and Pawel Sokal, “Earthing the Human Body Influences Physiologic Processes,” *The Journal of Alternative and Complementary Medicine*, Vol. 17, Issue 4 (April 2011), at:

    <https://www.liebertpub.com/doi/abs/10.1089/acm.2010.0687>. [↑](#endnote-ref-11)
12. Also referred to as the “Schumann resonance,” named after the physicist who first studied the theoretical aspects of the global resonances of the earth–ionosphere waveguide system. Winfried Otto Schumann, “Über die strahlungslosen Eigenschwingungen einer leitenden Kugel, die von einer Luftschicht und einer Ionosphärenhülle umgeben ist,” *Zeitschrift für Naturforschung*, Vol. 7, No 2 (1952), at: <https://www.degruyter.com/downloadpdf/j/zna.1952.7.issue-2/zna-1952-0202/zna-1952-0202.pdf>. [↑](#endnote-ref-12)
13. The neural oscillations in the frequency range of 7.5–12.5 Hz arising from synchronous and coherent (in phase or constructive) electrical activity of thalamic pacemaker cells in humans when a person is awake and relaxed. [↑](#endnote-ref-13)
14. ﴿المسلمون شركاء في ثلاث في الماء والكلأ والنار وثمنه حرام﴾ or ﴿ الناس شركاء في ثلاثة: في الكلأ، والماء، والنار﴾, Hadith no. 2472, by the authority of Ibn Abbas, and Hadith no. 2473 by the authority of Abu Hurairah, at: <http://mobile.ahadith.co.uk/chapter.php?page=4&cid=175> and <http://www.taimiah.org/Display.Asp?f=bc9051100010.htm>. See also the Ahadith related by Abu-Dawud, Ibn Majah and al-Khallal, *Islamset*, at: <http://www.islamset.com/env/contenv.html>. [↑](#endnote-ref-14)
15. See Roger S. Gottlieb, ed., *This Sacred Earth: Religion, Nature, Environment* (New York: Routledge, 2nd edition 2004). [↑](#endnote-ref-15)
16. Luther Standing Bear (a.k.a. Ota Kte or Mochunozhin), *Land of the Spotted Eagle* (Lincoln NE and London: University of Nebraska Press, 1933; Bison Book reprinting, 1978). [↑](#endnote-ref-16)
17. CESCR, General Comment No. 15, *op. cit.* [↑](#endnote-ref-17)
18. CESCR, General Comments No. 12, The right to adequate food (Art.11), E/C.12/1999/5, 12 May 1999, at:

    <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en>. [↑](#endnote-ref-18)
19. Gaétan Chevalier, Stephen T. Sinatra, James L. Oschman, Karol Sokal, and Pawel Sokal, “Earthing: Health Implications of Reconnecting the Human Body to the Earth's Surface Electrons,” *Journal of Environment and Public Health*, Vol. 2012 (2012), at; <http://dx.doi.org/10.1155/2012/291541>. [↑](#endnote-ref-19)
20. The New Urban Agenda, adopted by the General Assembly on 23 December 2016, recognizes the “social and ecological function of land, with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination, universal access to safe and affordable drinking water and sanitation, as well as equal access for all to public goods and quality services in areas such as food security and nutrition, health, education, infrastructure, mobility and transportation, energy, air quality and livelihood through decent works…” A/RES/71/256, 25 January 2017, para. 13, at:

    <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/256>; [↑](#endnote-ref-20)
21. See CESCR General Comment No. 4 on the Right to Adequate Housing (1991), contained in UN Doc. E/1992/23, at paras. 8(a) and (e); CESCR General Comment No. 7 (1997) on Forced Evictions, contained in UN Doc. E/1998/22, annex IV., at paras. 2, 3, 7, 9, 15 and 16; CESCR General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5, at paras. 12, 13 and 26; CESCR General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, at para. 27; CESCR General Comment No. 15 (2002) on the Human right to land, UN Doc. E/C.12/2002/11, at paras. 16(c) and (d); CESCR General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4, at para. 28; CESCR General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c). [↑](#endnote-ref-21)
22. These include, inter alia, the adoption of the 2007 United Nations Declaration on the Rights of Indigenous Peoples; the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011–2020, the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Rio+20 (2012), the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024, the Small Island Developing States (SIDS) Accelerated Modalities of Action (SAMOA) Pathway (2014), the 2015 Sustainable Development Agenda toward 2030, the 2015 Paris Agreement on climate change, the 2015 Framework for Action for Food Security and Nutrition in Protracted Crises, the Sendai Framework for Disaster Risk Reduction (2015–30), 2030 Agenda for Sustainable Development (2015), World Humanitarian Summit (2016), the 2016 New Urban Agenda and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/73/165, 17 December 2018, at: <https://undocs.org/en/A/RES/73/165>. [↑](#endnote-ref-22)
23. Oumar Sylla and Everlyne Nairesiae, “Progress in Land Indicators,” *HLRN News* (30 July 2018), at: <https://www.hlrn.org/news.php?id=p21nZg==>. [↑](#endnote-ref-23)
24. Article 6 of the International Covenant on Civil and Political Rights (ICCPR). [↑](#endnote-ref-24)
25. General Comment No. 15 (2002) The human right to water (arts. 11 and 12 of the Covenant), twenty-ninth session (2002), E/C.12/2002/11, 20 January 2003, at: <http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf>; The human right to water and sanitation, A/RES/64/292, 3 August 2010, at: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292>. [↑](#endnote-ref-25)
26. See CESCR, General Comment No. 15 (2002) on the right to water, UN Doc. E/C.12/2002/11, at para. 3, noting that the word “including” indicates that this catalogue of indivisible and interdependent rights is not intended to be exhaustive. [↑](#endnote-ref-26)
27. As recognised in E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2005/48, E/CN.4/2005/43 and E/CN.4/2006/118. [↑](#endnote-ref-27)
28. General Comment No. 4, op. cit., para. 8(e). See also the reports of country missions and working visits by the Special Rapporteur on adequate housing to Afghanistan, Australia, Brazil, Cambodia, Islamic Republic of Iran, Kenya, occupied Palestinian territories and Peru. [↑](#endnote-ref-28)
29. CESCR, لتعليق العام رقم 4، الحق في السكن الملائم (المادة 11(1) من العهد)، الفقرة 8(ه), at: . [↑](#endnote-ref-29)
30. *Ibid*., para. 16(c). [↑](#endnote-ref-30)
31. *Ibid*., para. 16(d). [↑](#endnote-ref-31)
32. General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) , 21 December 2009, para. 3, at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21%2fREV.1&Lang=en>, citing the United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 13 September 2007, in particular Articles 5, 8, and 10–13 ff, at: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>. See also ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989), in particular arts. 2, 5, 7, 8, and 13–15 ff, at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169>. [↑](#endnote-ref-32)
33. CESCR, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, para. 27, at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en>. [↑](#endnote-ref-33)
34. General Comment No. 15, *op. cit.*, paras. 1, 3, 6, 8, 11–13, 29, 41, 44; General Comment No. 14 (2000), para. 27. [↑](#endnote-ref-34)
35. Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Note by the Secretary-General, A/73/188, 19 July 2018, at: <http://srenvironment.org/sites/default/files/Reports/2018/Boyd%20Knox%20UNGA%20report%202018.pdf>; John H. Knox and Ramin Pezan, *The Human Right to a Healthy Environment* (Cambridge: Cambridge University Press, 2018). [↑](#endnote-ref-35)
36. David R. Boyd, “Catalyst for change: evaluating forty years of experience in implementing the right to a healthy environment,” in Knox and Pejan, *op. cit.*; David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver: University of British Columbia Press, 2012); James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge, Cambridge University Press, 2015. [↑](#endnote-ref-36)
37. Ad minimum, in accordance with Article 31 of the Convention on the Rights of the Child. Article 30 of International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, A/Res/61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force 3 May 2008. [↑](#endnote-ref-37)
38. In accordance with ICCPR, Article 25. [↑](#endnote-ref-38)
39. ICESCR, *op. cit.,* Article 15; CESCR, General comment No. 21: Right of everyone to take part in cultural life, E/C.12/GC/21, 21 December 2009, paras. 7, 9, 15, 19, 49, 52, 54–55, and 74, at:

    <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en>. [↑](#endnote-ref-39)
40. In accordance with Article 1, common to ICESCR and ICCPR. [↑](#endnote-ref-40)
41. ICCPR, Article 6. [↑](#endnote-ref-41)
42. In accordance with Articles 1–3, 6–8, 9, 10, 11, 12, and 15 of the Covenant [↑](#endnote-ref-42)
43. Commission on Human Rights, resolutions 1993/77 and 2004/28, op. cit. [↑](#endnote-ref-43)
44. CESCR General Comment No. 7 (1997) on Forced Evictions, contained in UN Doc. E/1998/22, annex IV., at paras. 15 and 16. [↑](#endnote-ref-44)
45. Conceived by Amartya Sen, Nobel Laureate in Economics, the capability approach has been developed in different directions by Amartya Sen, Martha Nussbaum and a growing group of others. The approach has provided the intellectual foundation for human development and provides strong arguments for the right to development, which is the composite of a bundle of rights, including participation, human well-being and freedom as the central features of development. This line of argument has spawned considerable research in moral philosophy, economics, political theory, education, health, food security, ecosystems, empowerment, and other areas. Development actors from NGOs to multilateral institutions engage with this approach, drawing out multidisciplinary insights. For further reference, see: Amartya Kumar Sen, *Development as Freedom* (New York: Alfred A. Knopf, 2000); *Commodities and Capabilities* (Oxford: Oxford University Press, 1999); *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford, Clarendon Press, 1981); *On Economic Inequality* (Oxford: Clarendon Press, 1973); *Collective Choice and Social Welfare* (San Francisco: Holden Day; also London: Oliver and Boyd, 1970). [↑](#endnote-ref-45)
46. See “Violation Impact-assessment Tool,” Housing and Land Rights Network – Habitat International Coalition, at:

    <http://www.hlrn.org/spage.php?id=qnE=#.XY_bp0YzatE>. [↑](#endnote-ref-46)
47. General Comment No. 4, *op. cit,* para.8(e). [↑](#endnote-ref-47)
48. *Ibid*. [↑](#endnote-ref-48)
49. Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at:

    <http://www.un.org/documents/ga/docs/56/a5610.pdf>; and Commentaries, at: <http://www.eydner.org/dokumente/darsiwa_comm_e.pdf>. [↑](#endnote-ref-49)
50. General comment No. 3: The nature of States parties obligations (Art. 2, par. 1), 14 December 1990, at:

    <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en>. [↑](#endnote-ref-50)
51. The Civil Society Mechanism for the Committee on World Food Security has defined landlessness as “the condition of being without equitable access to, and use of rural or urban land with secure tenure as needed to fulfil one or more human needs and/or human rights. Those who are landless are those persons or groups living in such a condition (i.e., landlessness) due to any single, or combination of means and factors, including but not limited to: Discrimination; Dispossession; Displacement, including forced eviction; Denial (of use, access, etc.); Scarcity of land; Insufficient capability; Damage or destruction of land and/or means of access.” Estimates of the numbers and percentages of landless persons and communities, as well as the phenomenon of landlessness, vary. See, for instance, Radha Sinha, *Landlessness: A Growing Problem* (Rome: Food and Agriculture Organization of the United Nations, 1984); Inderjit Singh, *Small farmers and the landless in South Asia* (Washington: World Bank, 1979); Mohamad Riad El Ghonemy, *The Dynamics of Rural Poverty* (Rome: FAO, 1986), pp. 15–17; Talat Anwar, Sarfraz K. Qureshi and Hammad Ali, *“*Landlessness and Rural Poverty in Pakistan,” *The Pakistan Development Review*, No. 43 (February 2004), 855–74; Barry Naughton, *The Chinese Economy: Transitions and Growth* (Boston MA: MIT Press, 2007), pp. 119–20; Elisabeth Wickeri, “Land Is Life; Land Is Power: Landlessness, Exclusion and Deprivation in Nepal,” *Fordham International Law Journal*, Vol. 34, No. 4 (2011), pp. 932–1040; John F. McCarthy, Kathryn Robinson, eds., Land and Development in Indonesia: Searching for the People's Sovereignty (Singapore: ISEAS-Yusof Ishak Institute, 18 May 2016), pp. 278–9. [↑](#endnote-ref-51)
52. Minority Rights Group International (MRG) and University of East London, Centre on Human Rights in Conflict, *Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights’ Treatment of Land Rights as Human Rights* (London: MRG, 2015), at:

    <http://minorityrights.org/wp-content/uploads/2015/10/MRG_Rep_LandRights_Oct15.pdf>. [↑](#endnote-ref-52)
53. OHCHR, *Land and Human Rights: Annotated Compilation of Case Law*, HR/PUB/15/5 (Geneva: United Nations, 2015), at: <http://www.ohchr.org/Documents/Publications/Land_HR-CaseLaw.pdf>. [↑](#endnote-ref-53)
54. OHCHR, *Land and Human Rights: Standards and Applications*, HR/PUB/15/5.Add.1 (Geneva: United Nations, 2015), pp. 16–65, at: <http://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf>. [↑](#endnote-ref-54)