***Collective Submission on the Committee on Economic, Social and Cultural Rights (CESCR) draft General Comment on Land and ESCR (*2021)**

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| *While ESCR-Net welcomes and appreciates the efforts of the Committee on Economic, Social and Cultural Rights to develop a General Comment on Land and Economic, Social and Cultural Rights, we are of the view that the draft General Comment is not yet ready for adoption given the concerns collectively raised by members below, inconsistencies and gaps identified by other allied organizations, and the potential of the proposed General Comment to more fully respond to land-related human rights challenges. We thus call upon the Committee to define the steps of a process that will allow further work and engagement on the General Comment, in order to ensure that it provides forward-looking guidance to States Parties. The comments provided in this document should be read in this context and should be considered as inputs as the Committee continues to work on the General Comment.* |

1. **Introduction**

The social and cultural value of land for humanity is immeasurable and as the Committee on Economic, Social and Cultural Rights (hereinafter Committee/CESCR) has indicated, rights relating to land are central to the realization of a range of human rights. While every human life depends on land directly or indirectly, for millions of people, this interdependent relationship with land is closer still, as many peoples and communities depend directly on land for livelihood, social inclusion, and cultural and spiritual survival. Yet States and corporations frequently violate substantive and process rights relating to land, with impunity. We are also seeing increasing threats to land rights in crisis contexts, in times of conflict, natural disasters, and pandemics, with disproportionate impacts on the rights of historically disenfranchised groups, including women. Such rights violations seriously impact peoples’ most fundamental needs, quicken the climate and biodiversity crises, and increase the threat of future pandemics. As we consider common conditions and shared challenges that undermine the realization of human rights ---- impoverishment and dispossession, deepening inequality, corporate capture of the State; degradation of ecosystems, biodiversity loss and the climate crisis; and growing repression of human and environmental rights defenders ---- land rights related issues cut across these wider trends. **ESCR-Net members thus welcome this draft General Comment which seeks to clarify human rights obligations in relation to land under the International Covenant on Economic, Social and Cultural Rights (hereinafter Covenant/ICESCR).**

This is a collective submission of ESCR-Net members which builds on past ESCR-Net positions. This submission, which has benefitted from the leadership of several civil society, Indigenous Peoples’ organizations and social movements,[[1]](#footnote-1) respectfully offers a number of recommendations to the Committee to deepen and strengthen the draft General Comment. Our submission is thematically divided as follows (ordering the issues in line with the draft General Comment): ***a) The nexus between Land and Covenant Rights b) Indigenous Peoples and Self-Determination c) Substantive Equality d) Corporate Accountability e) Armed Conflicts and Post-Conflict Situations f) Human Rights Defenders and g) Climate Change and Biodiversity Protection.***

1. **Joint Recommendations**

***a)* *The nexus between Land and Covenant Rights***

We note that in paragraph 8, the Committee states that "*[w]hile the Covenant does not affirm a self-standing "right to land", a number of its provisions are relevant to the governance of land tenure.*" This focus on the governance of land tenure does not do justice to the multiple dimensions of the nexus between land and the whole range of Covenant rights, which encompass much more than merely the governance of land tenure. Moreover, we would urge the Committee to consider in relation to paragraph 8, and indeed the entire text, the evolving human rights jurisprudence in relation to land rights, including the right to land.[[2]](#footnote-2) Accordingly, under paragraph 8, we propose textual changes as follows: "…While the Covenant does not affirm a self-standing "right to land", **access to, use of and control over land plays an essential role for the realization of a whole range of human rights including rights under the Covenant. In this regard, the Committee acknowledges the significant progress that has been made in recognizing the central role of land within the international human rights legal framework including as a right in and of itself, that is crucial for some of the most marginalized groups and individuals**.”

*b)* ***Indigenous Peoples and Self-Determination***

We appreciate the attention to the human rights of Indigenous Peoples within the draft General Comment. While noting the stated aim in Section I: Introduction, paragraph 8 to clarify State obligations contained in the Covenant in relation to land, with regard to Article 1 (which covers self-determination) as well as related references to free, prior and informed consent (FPIC), we are concerned that there is no explicit reference to the right to self-determination in the text of the General Comment. Further, it is crucial in the context of the rights of Indigenous Peoples that this General Comment supports the implementation of, and/or reiteration of, the rights outlined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and should contain no provisions contrary to the Declaration. This is currently not the case.

1. The history and legacy of colonialism is demonstrated by the atrocities committed against Indigenous Peoples, including alienation from their lands and natural resources. Across the world, States and corporations continue to violate land-related rights of Indigenous Peoples with impunity. All peoples, particularly Indigenous Peoples, have a fundamental right to self-determination, including the right to autonomy and governance, the right to effective participation in decision-making and the right to define and pursue their own development priorities on their land. The right to self-determination is enshrined under Article 1 of the Covenant and is an overarching principle of international law.[[3]](#footnote-3) It is important to recall that CESCR has previously expressed its opinion on the right to self-determination under ICESCR in favor of Indigenous Peoples.[[4]](#footnote-4) Within the text of this General Comment, we call on the Committee to explicitly expand on the scope of State obligations in relation to the right to self-determination of Indigenous Peoples under the Covenant as it relates to land rights.
2. Secure land rights are an essential element of the right to self-determination of Indigenous Peoples,[[5]](#footnote-5) to determine their political status and freely pursue their economic, social and cultural development. Secure land rights are also integral to the effective realization of the rights of Indigenous Peoples in a far broader sense. This has been recognized in previous General Comments issued by CESCR including the General Comment on the Right to Health[[6]](#footnote-6) and the General Comment on the Right to Water*[[7]](#footnote-7)* in both of which the Committee explicitly recognized the integral nature of land rights for Indigenous Peoples in the realization of other rights. The General Comment should clearly indicate the interlinkages that land rights have with the enjoyment and realization of other rights protected under the Covenant and other instruments, including reference to previous jurisprudence by the Committee on this topic.
3. The right to self-determination may be violated when Indigenous Peoples are not allowed to own, use, access, develop or control traditionally / customarily or otherwise owned or used lands, particularly when natural resources derived from such lands are their means of subsistence.[[8]](#footnote-8) As the primary unit for the organization of governance structures, local economies and the preservation of cultural identities, land is a critical requirement for many people to have meaningful say in their own affairs and determine the course of their future. Under section II: *Provisions in the Covenant related to land*, we recommend starting paragraph 9 with the following text: **Central to the right to self-determination is permanent sovereignty over natural resources, including land. This includes the right to access and control resources.[[9]](#footnote-9)** We also suggest that in Section III *Obligations of States parties under the Covenant*, Subsection D on extraterritorial obligations, the Committee underscores State obligations where the right to self-determination is being obstructed.[[10]](#footnote-10)
4. In relation to FPIC, a standard embedded within the right to self-determination of Indigenous Peoples, we recommend the following textual additions under section III B *Obligations of States parties under the Covenant-Participation, consultation and transparency*, paragraph 18: ….The standards for indigenous peoples recognized in the international legal developments in relation to indigenous peoples and also in those Voluntary Guidelines (para. 9.9) is that of free, prior and informed consent. **The concept of consent should be in accordance with the elements of FPIC as outlined by the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).[[11]](#footnote-11) Consent must be continuous - with information provided at every stage of any project for subsequent consent.** Further, in its current formulation, the General Comment approaches FPIC in a manner inconsistent with the requirements of UNDRIP. In paragraph 23, the draft states: “*Therefore, indigenous peoples have the right to have their lands demarcated, and relocation is allowed only under narrowly defined circumstances and, in principle, with the free, prior and informed consent of the groups concerned*.” The inclusion of ‘in principle’ here undermines the requirement being outlined. There is also no provided definition of what ‘narrowly defined circumstances’ would allow relocation against the wishes of the concerned people. Both of these issues should be addressed and rectified.

*b.i) Other Affected Communities and Individuals*

While the recommendations under section b) pertain to self-determination and FPIC in relation to the human rights of Indigenous Peoples, we recommend that the draft General Comment should go further. In relation to other communities[[12]](#footnote-12) and individuals whose land rights might be affected due to planned development and other varied circumstances, we recommend that the Committee calls on States to develop relevant laws, policies and procedures to allow for meaningful consultations, ensuring active, free, effective and informed participation of individuals and groups,[[13]](#footnote-13) throughout all phases of planning, operations and closure.

We further request the Committee to reinforce that processes relating to both FPIC and meaningful consultations should be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests.

*c)* ***Substantive Equality***

We welcome the focus of the draft General Comment on non-discrimination and equality. We are concerned, however, that in paragraphs 16-17, the draft generally categorizes women as a homogeneous group rather than taking a more nuanced approach that recognizes the diverse identities of women. Women acquire, own, and use land in vastly different ways based on their geographic location, their socio-economic and political background, and often simply because of where they are situated within their communities. The draft further fails to adequately highlight that women individually and collectively face higher risk of prejudice and discrimination because of the intersection of particular identities. Women’s right to land must be viewed through a lens of intersectionality of race, ethnicity, religion, tradition and customs, economic status, disability, sexual orientation, gender identity and expression and sex characteristics (SOGIESC). We note that the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) makes explicit references to gender stereotypes facing rural and peasant women and the Committee’s effort should also reaffirm this. While the draft General Comment recognizes the systemic, often institutional, discrimination faced by women in their particular contexts to an extent, it fails to adequately connect the intersectional discrimination and the obligations on the state to take active measures that seek to both understand the causes of such discrimination and take active, systematic and continued steps to undo systems of oppression, discrimination and exclusion that hinder women’s secure access to land.

1. We recommend that the General Comment adopt a stronger emphasis on intersectional discrimination,[[14]](#footnote-14) in line with the reference to substantive equality in paragraph 14 and its past analysis.[[15]](#footnote-15) Right-holders who belong to ethnic minorities or Indigenous populations, women and girls in their diversity, persons with disabilities, persons living in conflict-affected areas including situations of occupation, and persons living in extreme poverty, often experience intersecting forms of marginalization that deserve targeted attention and tailored policy responses. The multi-layered and compounding forms of discrimination that such groups experience are no different in the context of land.[[16]](#footnote-16)
2. The prohibition of discrimination is a fundamental principle of human rights protection that lays at the heart of the international human rights law framework, including ICESCR. CESCR has clarified the scope of State obligations under the principle of non-discrimination, explaining that: “*[e]liminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations*.”[[17]](#footnote-17) We call on the Committee to recognize, across the text, the disproportionate impacts of land rights violations on specific and more marginalized populations, in light of intersecting and overlapping identities, and reinforce corresponding State duties to ensure substantive equality and prevent and redress intersectional discrimination.
3. Under Section C: Obligations of States parties under the Covenant as relating to land, in relation to the obligation to fulfil, we recommend under paragraph 34, adding in the following text: Where necessary, “States should carry out land reforms and other policy reforms to secure efficient and equitable access to land.” **Such reforms may include land redistribution programmes.[[18]](#footnote-18)**…[contd.]

***d) Corporate Accountability***

The expansion of industrial agriculture and extractive projects and products has led to pervasive violations of rights concerning land access, use and control, and resulted in large-scale dispossession of Indigenous Peoples and land-dependent communities. Also, corporate impunity and corporate capture have many gendered impacts that should be made visible through the General Comment.

1. While States are the primary duty bearers in international law and have a well-established obligation to respect, protect, and fulfil human rights, companies – particularly those operating transnationally – have largely enjoyed impunity because international and national mechanisms of accountability do not yet consider them systematically as duty bearers with human rights obligations. For the most part, initiatives to ensure that corporations respect human rights have been voluntary. There are, however, precedents establishing that corporate entities have direct obligations in international law, including international human rights law.[[19]](#footnote-19)
2. The Committee has affirmed that States have human rights obligations, including extraterritorially, to effectively regulate business under the duty to protect,[[20]](#footnote-20) as well as to provide effective access to remedies for victims of human rights violations by business entities,[[21]](#footnote-21) and that business enterprises have the obligation, at a minimum, to respect Covenant rights.[[22]](#footnote-22) These obligations would also apply to rights in the context of access to, use of and control over land given the interconnection with rights under ICESCR. We call on the Committee to further expand on these obligations of State and non-State actors within the General Comment. We also request the Committee encourage State parties to participate in efforts to recognize and implement binding international standards on business and human rights.[[23]](#footnote-23)
3. Under Section C. Obligations of State Parties under the Covenant relating to land, we propose including a new paragraph at the end of subsection (obligation to respect): **Corporations also have the obligation, at a minimum, to respect Covenant rights, including in relation to rights concerning the use of, access to and control over land.**
4. Under Section D. Extraterritorial Obligations, we propose textual changes in paragraph 32 as follows: …States parties should adopt a legal framework requiring business entities **as well as State entities involved in business** to **undertake ongoing and frequently updated** human rights **and environmental** due diligence **(including through regular human rights and environmental impact assessments throughout their operations), proportionate to their size, risk of severe human rights impacts and the nature and context of their operations,** in order to identify, prevent and mitigate the negative impacts caused by their decisions and operations on Covenant rights. **The due diligence obligation should further be an ongoing process across the full value chain, rather than just a single assessment. It is important to avoid due diligence requirements becoming a procedural ‘check-list’ exercise. Thus, human rights due diligence should not automatically absolve a legal or natural person conducting projects from liability (civil, criminal and all other types) for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person. A failure to conduct human rights due diligence and/or the contribution to human rights abuses or violations shall result in commensurate sanctions, including corrective action where applicable.** ...[contd.] States should refrain from entering into **or should consider withdrawing** from international agreements with other States or international finance institutions that protect those institutions and corporations from liability…..[contd.].
5. We recommend that wherever human rights impact assessment is used, that the phrase be replaced by **human rights and environmental impact assessments** as the latter is also very relevant for Covenant rights.
6. At the forefront of land-related injustices is the phenomenon of corporate capture, the entrenched ability of corporations and those representing their private interests to capture decision-making processes to maximize profit at the expense of our fundamental human rights. It is vital to protect the integrity of the policymaking space, its participants, and outcomes from corporate interests – including any potential, perceived, or actual conflicts of interest and imperative to develop good governance measures that safeguard against corporate political interference at the national, international, and intergovernmental levels in relation to the implementation of Covenant rights affecting access to, use of and control over land. Under Section C. Obligations of State Parties under the Covenant in relation to land, we propose adding in a new paragraph 34 at the end of the subsection on obligation to protect: **In setting and implementing their public policies with respect to the implementation of Covenant rights relating to land, States shall act to protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.[[24]](#footnote-24)**

***e) Armed Conflicts and Post Conflict Situations***

We welcome the recognition of forced evictions and land displacement as both a cause and a consequence of violence and conflict around the world.

1. Under Section IV. Subsection A on Armed conflicts and post conflict situations, paragraph 45 mentions individuals in *‘vulnerable situations*’. We recommend that this section mention ‘protected persons’ under international humanitarian law (IHL) generally. Paragraph 46 mentions preventive measures; however, it would be helpful to also underscore the general prohibition against the threat or use of force[[25]](#footnote-25) and how this relates to conflict / land and related rights under the Covenant. We further recommend that the General Comment mention prohibitions against pillage during armed conflicts, including as relates to the role of corporations. Moreover, under subsection A, specific mention should be made to prohibitions related to property under international humanitarian law (and international criminal law) which are linked to land and the enjoyment of Covenant rights. In particular, situations of occupation present specific obligations on the Occupying Power in regards to property and the administration of natural resources, including land.[[26]](#footnote-26)
2. Violence and displacement during conflict have disproportionately impacted women, not least in their access to housing and land. The Committee should recognize that the ability of rural women to fully participate in their agricultural activities and to enjoy their economic, social and cultural rights can also be severely hampered by blockades, military bombardments, and restricted areas. We further recommend that a specific reference be made to the failures to guarantee women’s effective participation in the implementation of peace agreements which can be an obstacle to the realization of women’s human rights, highlighting the continued gender inequality amongst victims of conflict.
3. In the context of conflict-affected areas, corporations must conduct ‘enhanced due diligence’[[27]](#footnote-27) in situations of armed conflict, including by assessing where land has been annexed or otherwise unlawfully appropriated. Enhanced due diligence must take place prior to the commencement of any development or other projects affecting land rights, including business activities, and throughout all phases of operations.

***f. Human Rights Defenders***

ESCR-Net members appreciate the recognition made by the Committee on the risks facing land rights defenders across the world. Today, they are the most targeted group of human rights defenders as they challenge powerful financial and economic interests and bring to light human rights violations perpetrated by both State and non-State actors.

1. We call on the Committee to emphasize within the General Comment the need to recognize the threats and risks facing land rights defenders such as forced evictions or misuse of legislative and judicial systems to target, vilify and criminalize land rights activists (for example, via Strategic Lawsuits Against Public Participation (SLAPP lawsuits), enhanced by repressive legislation, in addition to those already identified by the Committee, as well as highlight the role played by non-state actors in such attacks. These actions are part of efforts to stifle movements of dissent critical for advancing human rights.
2. It is important to explicitly acknowledge in Section IV E, the disproportionate risks facing specific groups of land rights defenders, such as rural, marginalized communities and women human rights defenders. In addition, we encourage the Committee to deepen the analysis and understanding of root causes linked to attacks faced by land rights defenders, since without such an understanding, we believe it will be difficult to prevent and justly resolve land-related conflicts and to meaningfully protect the rights of local communities.
3. We also urge the Committee to call on States to develop protection and grievance mechanisms with the active participation of human rights defenders and affected communities in the design, implementation, and evaluation of such mechanisms.

***g. Climate Change and Biodiversity Protection***

It is encouraging to see the inclusion of a specific section on climate change within the General Comment as well as references elsewhere in the text, in light of land rights related impacts of the climate crisis, the transformative potential of secure land rights as a climate mitigation and adaptation strategy, and the occurrence and risk of land related violations in the name of certain climate solutions.

1. Under Section II, Provisions in the Covenant relating to land, we propose including amended language between the third and fourth sentence in paragraph 11, as follows: **The continued reliance on industrial agriculture and the use of toxicants including, chemical pesticides and fertilizers, is especially concerning in the face of global climate change and its associated impacts on the environment and health. Temperature rises are expected to intensify the toxicity of contaminants, including air pollutants in urban areas, and increase organisms’ sensitivity to chemical stressors.[[28]](#footnote-28) At the same time, in a continuous feedback loop, the production and use of pesticides and chemical-based fertilizers create significant greenhouse gas emissions, while also reducing crops’ resilience to climate change and other stressors and thereby further endangering food security.[[29]](#footnote-29)**
2. We further propose changing the title of Section F to Climate Change **and Biodiversity Protection**
3. Under Section F, we respectfully suggest the following textual additions to paragraph 54: The impact of climate change on access to land **and its use** affecting legitimate user rights, **including for Indigenous Peoples, Tribal Peoples, fisher peoples, coastal communities, pastoralists, peasants, herders and other land-dependent communities,** will be severe in many countries. Sea level rise […….] will affect access to **and use** of land. **These phenomena trigger displacements and rural exoduses, which in turn leads to the violations of a range of economic, social and cultural rights, and also create tensions between communities and potentially conflict, which again impacts human rights.** States should cooperate internationally […..].particularly on disadvantaged groups, **and people who make their living from the land.** We request the Committee to reinforce to States under paragraph 54 that protecting oceans and coastal lands are an important climate mitigation strategy. Furthermore, the Committee should clarify that when the loss of access to natural resources reduces income and affects human rights including the rights to food, water, health, housing and education, States should ensure that effective social protection is available.[[30]](#footnote-30)
4. Section F of the General Comment should emphasize the critical importance[[31]](#footnote-31) of centering the voices of women and girls in climate related decision-making, particularly from communities disproportionately affected by climate change impacts and resisting the structural drivers of the climate crisis, and foreground a feminist, intersectional approach.
5. Under Section F, we further propose the following revised text under paragraph 55 right after the first sentence ending in ‘land-related adaptation measures.’: **In addition, rather than focusing disproportionately on market-based land focused mitigation solutions to the climate crisis such as carbon offsets, States, in line with their human rights obligations, scientific evidence and historical responsibility, must stop investment in and phase out the use of fossil fuels as a way to reduce carbon emissions, and support countries and communities in justly transitioning off of fossil fuels, and implementing real, equitable solutions at scale…**[contd.]
6. There is increasing recognition of the inherent dangers in the use of voluntary, non-binding “net zero” climate pledges by polluting governments and corporations to escape responsibility, accountability and liability in the context of the climate crisis, and to avoid making the necessary emissions reductions to honor their historical responsibility and keep global temperature rise to below 1.5 degrees Celsius.[[32]](#footnote-32) This includes the over-reliance on risky and unproven technologies such as Carbon Capture and Storage (CCS), Direct Air Capture (DAC), and other so-called solutions to compensate for emissions over the course of the next decades. Some of these solutions are already driving massive land grabs[[33]](#footnote-33)or affecting land related rights in other ways.[[34]](#footnote-34) The Committee should reinforce to States that instead of counting on such technologies, they must commit to taking the necessary action now to drastically reduce emissions at source and reach real zero emissions.
7. While we appreciate the draft General Comment’s recommendation of rights-based approaches to conservation and biodiversity in Paragraph 37, it is imperative that the General Comment more closely consider in the text, the issue of biodiversity loss and its impact on land related rights. Biodiversity loss and climate change are closely interconnected in how they intersect with land rights and it is important to consider them in holistic ways in land rights related measures.[[35]](#footnote-35) The text must explicitly recognize that certain laws and policies[[36]](#footnote-36) to mitigate climate change or prevent biodiversity loss, violate/risk violating land rights, and also often not only do not lead to adequate emission reductions or biodiversity protection, but can even worsen levels of emissions or biodiversity loss.[[37]](#footnote-37)
8. Indigenous Peoples, Tribal Peoples, fisher peoples, coastal communities, forest dwellers, pastoralists, peasants, herders and other land-dependent communities, play a central role in conserving biodiversity and combating climate change. The Intergovernmental Panel on Climate Change (IPCC) and Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) have recognized the critical importance of secure land tenure for Indigenous Peoples and local communities as a solution to address climate change and biodiversity loss.[[38]](#footnote-38) Under Section F the Committee must call on States to harmonize relevant climate and biodiversity related legal and policy measures with Indigenous Peoples and land-dependent communities’ human rights to land, territories and resources.[[39]](#footnote-39) In the context of protected areas or other conservation efforts, States must recognize and respect the title, tenure, access, and management rights of Indigenous peoples and land-dependent communities in their collective lands and territories, including the self-determination rights of Indigenous Peoples.
9. **Conclusion**

We thank CESCR for the opportunity to make this submission and appreciate its efforts in developing the draft General Comment. We trust that the Committee will find our submission helpful for its processes. ESCR-Net members remain available to engage and assist the Committee further on this draft General Comment. For further queries or questions please email Joie Chowdhury at [jchowdhury@escr-net.org](mailto:jchowdhury@escr-net.org) and Valentine Sébile at [vsebile@escr-net.org](mailto:vsebile@escr-net.org).

1. This submission is from ESCR-Net members. ESCR-Net - International Network for Economic, Social and Cultural Rights connects over 280 non-governmental organizations, social movements, and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all. Numerous network members contributed to the strategy, research, drafting, and/or reviewing of this submission on the draft General Comment No. 26 (2021) on land and economic, social and cultural rights, foremost via the Women and ESCR Working Group and the Networkwide Project on Environment and ESCR, with special thanks to: **Altsean-Burma, Asia Indigenous Peoples’ Pact, Confederación Campesina del Perú, Center for International Environmental Law , Consejo de Pueblo Wuxhtaj,Corporate Accountability, Due Process of Law Foundation, Forest Peoples Programme, Franciscans International, Human Dignity, Indigenous Peoples Rights International, International Women’s Rights Action Watch - Asia Pacific, Lilian Chenwi, Manushya Foundation, Pakistan Fisherfolk Forum, Socio-Economic Rights Institute and the Women’s Legal Centre.** [↑](#footnote-ref-1)
2. See for example: United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), 2018, Article 17, available at:<https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/39/12>; CETIM, *The Right to Land*, 2014, available at:<https://www.cetim.ch/wp-content/uploads/Right-to-land-A42.pdf> [↑](#footnote-ref-2)
3. Aureliu Cristescu, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, The Right to Self-Determination: Historical and Current Development based on United Nations Instruments, United Nations, 1981, available at: https://undocs.org/pdf?symbol=en/E/CN.4/Sub.2/404/Rev.1 [↑](#footnote-ref-3)
4. UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding *Observations: Russian Federation*, 12 December 2003, paras. 11, 39, available at: https://undocs.org/en/E/C.12/1/Add.94 [↑](#footnote-ref-4)
5. Indigenous Peoples Release Rio +20 Declaration, 19 June, 2012, para. 3, available at: https://www.forestpeoples.org/en/topics/sustainable-livelihoods/publication/2012/indigenous-peoples-release-rio-20-declaration [↑](#footnote-ref-5)
6. CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),* 11 August 2000, para. 27, available at: <https://www.refworld.org/pdfid/4538838d0.pdf> [↑](#footnote-ref-6)
7. “Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.” CESCR, General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), *2*0 January 2003*,* para. 7, available at: https://www.refworld.org/docid/4538838d11.html [↑](#footnote-ref-7)
8. See for example, CESCR, Concluding Observations: Russian Federation, 12 December 2003, paras. 11, 39, available at: <https://undocs.org/en/E/C.12/1/Add.94>; CESCR, Concluding Observations: Brazil, 12 June 2009, para.9, available at: https://www.refworld.org/publisher,CESCR,CONCOBSERVATIONS,BRA,4b1d04010,0.html [↑](#footnote-ref-8)
9. UN General Assembly resolution 1803 (XVII) of 4 December 1962,Permanent sovereignty over natural resources, available at: <https://www.ohchr.org/Documents/ProfessionalInterest/resources.pdf>; General Assembly Resolution 41/128 of 4 December 1986, Declaration on the Right to Development, Article 1 (2), available at: <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>; Read together with Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 5-16 June 1972, Principle 2, available at: <http://www.un-documents.net/aconf48-14r1.pdf> [↑](#footnote-ref-9)
10. The UN Human Rights Committee has noted that paragraph 3 of common Article 1 on self-determination “imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.” UN Human Rights Committee, General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, 13 March 1984, para.6, available at: <https://www.refworld.org/docid/453883f822.html> [↑](#footnote-ref-10)
11. UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Free, prior and informed consent: a human rights-based approach, 10 August 2018, available at: <https://undocs.org/A/HRC/39/62> [↑](#footnote-ref-11)
12. Notably the ILO Convention 169 mentions "Indigenous and Tribal Peoples". The last term may be especially relevant in the American context, to refer to non-indigenous groups who maintain certain political and cultural singularity, such as the Quilombola in Brazil or the Garifunas in Honduras. We urge the Committee to consider, as relevant, the rights enshrined in ILO Convention 169, not just in relation to Indigenous Peoples but Tribal Peoples as well as defined under Article 1.1 (a). International Labour Organization (ILO), Indigenous and Tribal Peoples Convention (No.169), 27 June 1989, available at: <https://www.refworld.org/docid/3ddb6d514.html> It would be important to recognize that there are ethnic groups who are not encompassed by the term "Indigenous", but who also claim special protection of their land and natural resources. [↑](#footnote-ref-12)
13. In line with international law standards, including relevant standards in UNDROP, 2018. [↑](#footnote-ref-13)
14. See generally, Intersectionality in Promoting Equality, Interview of Kimberlé Crenshaw and Patricia Schulz, The Equality Review, Vol. 16, 2016. [↑](#footnote-ref-14)
15. CESCR, Marcia Cecilia Trujillo Calero V Ecuador, Views adopted by the Committee under the Optional Protocol to the Covenant concerning communication No. 10/2015, 14 November, 2018, para.19.2, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7bgZ6R%2F6BeFMGv10EpQaqTrqHqD6MFRP5QaDu5cwnBuTZ1avdbFtgfe1t%2BjiQdKRHu3YM86WdmwS9ceMQ8g9cYbzEXr85r5lP2xv%2Fmxwv7m98bWSlIoKZcaJWHNul83ig%3D%3D> [↑](#footnote-ref-15)
16. See for example, Mayra Gomez et al., Realizing women’s rights to land and other productive resources, OHCHR & UN Women, 2013, pp. 15, 20-21, available at: https://www.ohchr.org/documents/publications/realizingwomensrightstoland.pdf [↑](#footnote-ref-16)
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