  

**Written Contribution with concrete amendments and language proposals**

**General Comment on Land and the ESCR**

**Geneva, August 2021**

**Introduction**

**Preliminary remark:** *Our organizations are of the view that the proposed General Comment on land and ESCR is not ready for adoption because of fundamental inconsistencies in terms of its language, its internal logic and its grounding in internationally agreed standards, and because it does not adequately respond to the land-related human rights challenges that human societies are currently facing. We therefore calls upon the CESCR to define the steps of a process that will allow conducting further work on the GC in order to ensure that it provides forward-looking guidance to States Parties. The comments provided in this document should be re**ad under this premise and be considered as inputs into the Committee’s further work in this regard. The General Comment on Land and the ESCR of the Committee on Economic, Social and Cultural Rights constitute a great opportunity to strengthen and enrich human rights normative standards on the critical issue of land.*

The adoption of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) has enshrined, for the second time, after the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the right to land in an international human rights instrument. This has been a huge step forward in legal terms. Since its adoption, the UNDROP has become a reference for the UN human rights protection mechanisms. There have been different efforts of interpretation and jurisprudence in this sense. For example, several UN Special Rapporteurs are using the UNDROP as a reference in their work and have contributed to developing the relationship between access to land, agrarian reform and the economic, social, cultural and environmental rights of the most marginalized groups. Moreover, at the regional and national level, the standards set out by the UNDROP are being used in judicial processes to argument in favor of peasants’ right. They are also becoming useful reference standards in the elaboration of new norms and laws directed towards the protection and promotion of peasants’ rights.

In light of the above and of the persisting situations regarding violations of the right to land, this General Comment should take a more progressive approach in protecting this right and further clarify land as a common good which communities and people should be able to access, control, manage, and use in order to live a dignified life. This General Comment cannot ignore the evolutions at the international law level regarding standards on land and it should not in any way bring about a regression vis-a-vis the existing norms – and in particular about those enshrined in the UNDROP. On the contrary, it should contribute to nourish legal debates and confirm the recognition of this human right, with the perspective of pushing towards its implementation. In this sense, it is highly necessary to ensure compliance between this General Comment on land and the content of the UNDROP. Articles 5 and 17 of the latter have recognized elements of the right to land that are of the upmost importance for rights holders. Issues like the agrarian reform, the social function of land, the security of tenure, the prohibition of evictions, should all be reinforced and take into account in the General Comment. The right to natural resources is also important to peasants and other people working in rural areas and indigenous peoples, as mentioned in article 5 of the UNDROP. Without the right to have access to and to use (in a sustainable manner) the natural resources present in their communities, these people will be denied the resources they required to enjoy adequate living conditions.

In order to constructively contribute to the General Comment and to better reflect the content of the UNDROP, the Geneva Academy, CETIM and La Via Campesina have submitted a first written contribution with general observations and arguments on why the inclusion of the UNDROP in this General Comment is absolutely crucial.

In this second written contribution, the aforementioned organizations present some concrete amendments and language proposals to better reflect the importance of the rights of peasants in the General Comment, including as contained in the UNDROP.

**Proposals of amendments and new language**

**Paragraph 4**

- Add the UNDROP to the list of reference instruments.

- Footnote no.4: Add art.5 of the UNDROP as it also enshrines the right to land (not only in article 17). Still in the same footnote, the ILO Convention should be deleted from here and put in the text.

**Paragraph 5**

At the end of the paragraph, add the following sentence: ***Moreover, land is essential to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures (UNDROP, article 17.1.***

**Paragraph 7**

We propose to add one sentence (in bold): 7. *Land is also a fundamental component of ecosystems. Land use should be sustainable in order to maintain the long-term social, economic and environmental functions that land provides to human beings.* ***According to this, land is not a mere commodity but exists for the benefit of society as a whole. Affirming the social function of land also means that it shall be distributed as a way to meet social needs****[[1]](#footnote-1). A stewardship approach (…)*

**Paragraph 9**

Footnote no.7: Add “**See also UNDROP articles 17.3 and 17.5**”

**Paragraph 10**

We propose to add new language (in bold): *10. (…) The Committee is of the view that effective agrarian reforms aiming at equitable access to land will ensure the realization of the right to adequate food and that such reforms should include special measures to address the situation of landless persons,* ***peasants and other people working in rural areas****, indigenous peoples and other disadvantaged and marginalized groups, as echoed* ***in article 17.6 of the UNDROP and*** *in paragraph 8.1 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. That should be understood as encouraging agrarian reform that leads to a more equitable distribution of land for the benefit of smallholders in small-scale agriculture.* ***The UNDROP recognizes that peasants can require their respective authorities to take steps to have land redistributed so that their right to land is realized. According to this, States should not only ensure that peasants and other people working in rural areas are not prevented from accessing land, but should actively help them to exercise their right to it. (…)***

Footnote n°10: We propose to add the **“Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas” (A/HRC/19/75)**, which mentioned that the absence of agrarian reform is one of the main causes of discrimination and vulnerability of peasants and other people working in rural areas.

**Paragraph 11**

We propose to add one sentence (in bold): 11. *The right to water is infringed where communal grounds are enclosed, depriving people from access to water sources necessary to meet their daily needs.* ***With regard to this right, it is necessary to recall that art.21 of the UNDROP, as well as the CESCR General Comment No.15, recognize the right to water for production of food crops, fishing and livestock keeping.*** *(...)*

**Paragraph 14**

At the end of the paragraph, add the following sentence: ***Furthermore, under art.3 of the UNDROP, States shall take appropriate measures to eliminate conditions that cause or help to perpetuate discrimination, including multiple and intersecting forms of discrimination, against peasants and other people working in rural areas. More particularly on the issue of land, art.17.2 of the UNDROP affirms that States shall take appropriate measures to remove and prohibit all forms of discrimination relating to the right to land.***

**Paragraph 15**

We propose to add new language (in bold): 15. (...) *First, specific attention should be given to those groups such as* ***peasants****, indigenous peoples, fisher folk and pastoralists, or landless rural people who depend on access to communal lands or the commons for gathering firewood, collecting water or medicinal plants, or occasional hunting or fishing.* ***Moreover, it is worth nothing that art. 17.6 of the UNDROP also states that youth shall be given priority in the allocation of land. (...)***

 **Paragraph 16**

At the end of the paragraph, add the following sentence: ***To this regard, it is also important to underline the intake of the UNDROP in its articles 4 and 17. According to art. 4.2, States shall ensure that peasant women and other women working in rural areas enjoy without discrimination all the human rights and fundamental freedoms set out in the UNDROP and in other international human rights instruments[[2]](#footnote-2), including the right to equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes.***

**Proposal for new paragraphs 18bis and 18bis2:**

***18bis. The right to participation has special importance for peasants and other people working in rural areas with regard to their right to land. Indeed, peasants and other people working in rural areas are between the most politically marginalized groups. Therefore, UNDROP enshrines the right to participation for these specific groups (art.10). This participation can be either direct (in person) or indirect (through representative organizations). Peasants and other people working in rural areas should participate both in the development of a public/political decision which affect their lives but also in its implementation. In this sense, States have a duty to be proactive with regard to the right to participation. It is important to link the issue of participation with the right of association (art.9 of the UNDROP), because in order to be able to take part in any participatory action, rural organizations must have the right to associate. In addition, to be able to participate in a proper manner, peasants and other people working in rural areas must be informed. Therefore, participation must also be read in conjunction with the right to information (art.11 of the UNDROP).***

***18bis2. The UNDROP is also key in tackling the question of consultation. In its articles 2.3 and 5, the principle of consultation in good faith is defined and recognized, according to which States should consult and cooperate in good faith with peasants and other people working in rural areas, in order to protect them against the negative effects of land exploitation, also by ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.***

 **Paragraph 19**

At the end of the paragraph, add the following sentence: ***Art.17.3 of the UNDROP further strengthen this principle. States must also recognize customary land tenure rights not currently protected by law, the right of tenure being not a right of ownership but of use and, more in general, all other forms of legitimate tenure (for instance systems and models that are different from those they have instituted).***

 **Paragraph 20**

We propose to add one sentence (in bold): 20. *Notwithstanding the type of land tenure system(s) put in place, States parties should take measures to ensure that all persons possess a reasonable degree of security in relation to their relationship with land, and to protect the legitimate tenure rights holders from eviction, illegal land dispossession, appropriation, harassment and other threats.* ***In case there is a violation of this principle, art.17.5 of the UNDROP is key in recognizing that peasants and other people working in rural areas who have been deprived, illegally or arbitrarily, of their land have the right to return to their land, or to receive just, fair and lawful compensation when their return is not possible. (…)***

In the footnote no.25: Add “See also Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, 2020 and Portillo Cáceres and others v. Paraguay, 2019.”

**Proposal for new paragraphs 23bis**

***23bis. International law recognizes also the right of peasants and other people working in rural areas over land and other natural resources. UNDROP’s art. 5 enshrines the right of peasants and other people working in rural areas – alone, or in association with others or as a community (art. 1.1) – to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, including land, and their right to participate in the management of these resources (art. 5.1). UNDROP’s art. 17 enshrines the right to land of peasants and other people living in rural areas, and it provides that this right can be exercised individually and/or collectively (art. 17.1), alone, or in association with others or as a community (art. 1.1). According to the UNDROP, the right to land of peasants and other people working in rural areas includes the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures (art. 17.1). The right to land in UNDROP includes freedoms and entitlements that states shall respect, protect and fulfil, without any discrimination: freedom from discrimination, protection against forced eviction and displacement, protection against the negative effects of land exploitation, entitlements to agrarian reform, and conservation and sustainable use of land[[3]](#footnote-3).***

**Paragraph 24**

Add a footnote no.32 after “self-governance of land”: ***See UNDROP art.17.3, which recognizes the term “costumary tenure rights”.***

**Paragraph 25**

- We propose to delete the following part: 25. *States should provide all persons with****~~a reasonable degree~~*** *of tenure security that guarantees legal protection against forced evictions.*

- Add in footnote 35 ‘and in the Basic Principles and Guidelines on Development based Displacement and Evictions, A/HRC/4/18, annex 1, para. 25 and 26.

**Paragraph 30**

We propose to add new language (in bold): 30. *States parties should develop laws and policies to guarantee that land-based investments are done in a responsible manner,* ***according to the content of the aforementioned existing norms. (…)***

**Paragraph 31**

At the end of the paragraph, add the following sentence: ***In the case the investments encompass the participation of non-State actors (private individuals and organizations, transnational corporations and other business enterprises, banks and other financial institutions), States shall ensure that those actors are regulated and that they respect and strengthen the rights of rural communities[[4]](#footnote-4).***

Footnote no.41: Add “**See also art.5 of the UNDROP, which is key here as it protects the rights holders against the negative effects of land exploitation and A/HRC/4/18, annex 1, para. 30. urging states to take preventative and regulatory measures to ensure that market forces do not increase the vulnerability of marginalised groups to speculation of land and to displacement”.**

**Paragraph 34**

We propose to add the word “peasants” (in bold): *34. (…) Special attention should be given to* ***peasants,*** *pastoralists and indigenous peoples with regard to their relation to lands and natural resources and land reforms emanating from and required to overcome past colonial and apartheid dispossessions.* (…)

 **Paragraph37**We propose to add new language (in bold): *37. (…) That includes specific measures to support communities and people to prevent, mitigate and adapt to the consequences of global warming.* ***In that sense, they should comply with their international obligations with regard to climate change[[5]](#footnote-5).*** *(…)*

Footnote no.56: Add “**UNDROP art.20**”.

**Paragraph 38**

We propose to add new language: *38. (…) In light of those considerations, States parties should take the necessary steps to prevent human rights violations abroad by non-State actors over which they can exercise influence, without infringing the sovereignty or diminishing the obligations of the host States,* ***also by regulating their activities[[6]](#footnote-6). In the case of the adoption of international agreements, as free trade and investment ones, States should interpret and apply them consistently with their human rights obligations[[7]](#footnote-7) [[8]](#footnote-8).***

Footnote no.59: Add “**and UNDROP art.2.5**”.

**Paragraph 45**

We propose to add new language (in bold): *45. (…) Thus, States should make all efforts possible to prevent land dispossession during armed conflicts.* ***They should prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war[[9]](#footnote-9).*** *If dispossessions do nevertheless occur, States are obliged to establish restitution programmes to guarantee to all refugees and internally displaced persons the right to* ***return to their land and/or to*** *have restored to them any land of which they were arbitrarily or unlawfully deprived.[[10]](#footnote-10) (…)*

 **Paragraph 52**

The UNDROP cannot be reduced to one paragraph at the very end of the General Comment. This paragraph should be deleted from here and included just after paragraph 23 on the UNDRIP. And it should also be included in many parts of this General Comment – see our comments in the whole draft General Comment.

 **Paragraph 54**

At the end of the paragraph, add the following sentence: ***Rights holders, in particular peasants and other people working in rural areas, should be able to duly participate in the elaboration of mitigation policies regarding climate change[[11]](#footnote-11).***

 **Paragraph 55**

We propose to add the word “peasants” (in bold): *55. (…) They must also respect the free, prior and informed consent of* ***peasants and*** *indigenous peoples.[[12]](#footnote-12)*

**Paragraph 56**

We propose to add new language: *56. (…) Access to justice is key; States parties must guarantee that even in remote areas, it is accessible and affordable, particularly for disadvantaged and marginalized groups.* ***To do so, States should also provide the rights holders with the necessary legal assistance[[13]](#footnote-13).*** *Remedies should be adequate to address the needs of victims of violations, giving them access to all relevant information and adequate redress and compensation, including, when appropriate, restitution of land and return of refugees and internally displaced persons. Access to justice should include access* ***to fair procedures for the resolution of disputes regarding land, to effective prevention mechanisms[[14]](#footnote-14), as well as to*** *procedures to address the impact of business activities, both in the countries where they are domiciled but also where the violations have been caused.[[15]](#footnote-15)*

Add the following reference in footnote no.84: ***UNDROP art.12 and*** *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, paras. 6.2 and 6.4.*

1. See United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), art. 17.6. [↑](#footnote-ref-1)
2. In particular, as contained in A/HRC/4/18, annex 1, para. 60 stressing the importance of ‘land for land’ in resettlement programmes. [↑](#footnote-ref-2)
3. See C. Golay, *The Right to Land and the UNDROP*, Geneva Academy, 2020, available in English, French and Spanish at <https://www.geneva-academy.ch/research/our-clusters/sustainable-development/detail/13-the-rights-of-peasants>. [↑](#footnote-ref-3)
4. See UNDROP art.2.5 and A/HRC/4/18, annex 1, para. 30. [↑](#footnote-ref-4)
5. UNDROP art.18.3. [↑](#footnote-ref-5)
6. E/C.12/2011/1, paras. 5–6 and UNDROP art.2.5. [↑](#footnote-ref-6)
7. UNDROP art.2.4 and A/HRC/4/18, annex 1, para. 71. [↑](#footnote-ref-7)
8. See also “Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge”, Report of the Special Rapporteur on the right to food, Mr. Olivier De Schutter, 28 December 2009. [↑](#footnote-ref-8)
9. UNDROP art.17.4. [↑](#footnote-ref-9)
10. See **UNDROP art.17.5, A/HRC/4/18, annex 1, para 16 and 65 and** 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-10)
11. See UNDROP art.10. [↑](#footnote-ref-11)
12. The safeguards should be in line with the practice of the Green Climate Fund and those included in the Environmental and Social Policy of the Adaptation Fund established under the Kyoto Protocol to the United Nations Framework Convention on Climate Change to ensure coherence. [↑](#footnote-ref-12)
13. UNDROP art.12.3. [↑](#footnote-ref-13)
14. UNDROP art.12.1 and 12.5. [↑](#footnote-ref-14)
15. Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 49–57. [↑](#footnote-ref-15)