# Submission by Human Rights Watch to the Committee on Economic, Social and Cultural Rights

Written Contribution to the Draft General Comment on Land and Economic, Social and Cultural Rights
August 2021

## Introduction

Human Rights Watch is pleased to have the opportunity to offer input to the Committee’s Draft General Comment on Land and Economic, Social and Cultural Rights. Human Rights Watch has documented challenges to land rights faced by Indigenous peoples, forest-dependent communities, minority ethnic groups, traditional communities, and peasants around the world. This written contribution focuses on an argument for the General Comment acknowledging the right to land as a stand-alone right based on interpretation of relevant human rights provisions affecting governance of land tenure, including the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples, and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. The General Comment should make clear that States should have an obligation to protect the right to use, control, and transfer land for people and communities that have a legitimate right to do so

## A Right to Land as a Self-Standing Human Right

Existing international human rights law and standards address a wide range of land issues and protect rights related to land and security of tenure, including the rights to property and to an adequate standard of living, and not to be subjected to forced evictions.

Everyone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of their property.[[1]](#footnote-2) The right to property as enshrined in human rights instruments encompasses land and land use. The Universal Declaration of Human Rights refers to the right to property, stating, “[e]veryone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of his or her property.”[[2]](#footnote-3) The African Charter on Human and Peoples’ Rights (Banjul Charter) also guarantees the right to property, and a right to economic, social, and cultural development.[[3]](#footnote-4) The American Convention on Human Rights guarantees the right to property,[[4]](#footnote-5) and the European Convention on Human Rights guarantees the right to peaceful enjoyment of possessions.[[5]](#footnote-6) International tribunals, including the Inter-American and African human rights courts and commissions have repeatedly found that the right to property protects land rights of individuals, communities and Indigenous peoples[[6]](#footnote-7) and other groups with historic connection to land.

International, and regional human rights instruments protect individuals and communities, including those with customary land tenure, from arbitrary interference with their rights to property and land, and protections on property do not hinge on individuals or a community holding formal title to land or property. The UN Committee on Economic, Social and Cultural Rights has emphasized that rights protections apply whether or not individuals hold formal title. The Committee noted in its General Comment No. 4 that legal security of tenure “takes a variety of forms, including … occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” [[7]](#footnote-8)

Case law from international, regional and national human rights jurisprudence have also highlighted the link between land and human rights.[[8]](#footnote-9) In the case of Center on Housing Rights and Evictions (*COHRE) v. Sudan,*the African Commission found that “[i]t doesn’t matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14 [right to property]” of the African Charter on Human and Peoples’ Rights.[[9]](#footnote-10)

Land rights specific to Indigenous peoples are protected within international law, including their rights to lands they have traditionally owned occupied or otherwise used or acquired.[[10]](#footnote-11)

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas in article 17 states that “[p]easants and other people living in rural areas have the right to land individually and/or collectively, in accordance with article 28 [General] of the present Declaration, including the right to have access to, sustainably use and manage land …, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.”[[11]](#footnote-12) Under the Declaration, “States shall take appropriate measures to provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems.” [[12]](#footnote-13) Based on this analysis land tenure security stems from States recognizing and protecting existing tenurial arrangements, including the right to access and control over land and natural resources by people whose livelihoods depend on it.

The General Comment should therefore acknowledge the self-standing right to land under human rights law, including for Indigenous peoples, peasants and other people working in rural areas.

1. Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 17. See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, art. 5(d)(v). ICERD upholds the enjoyment of civil rights, including “(v) The right to own property alone as well as in association with others.” [↑](#footnote-ref-2)
2. UDHR, art. 17. [↑](#footnote-ref-3)
3. African Charter on Human and Peoples’ Rights, article 14, "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, arts. 14, 20, 21, 22. [↑](#footnote-ref-4)
4. American Convention on Human Rights, article 21, “(1) Everyone has the right to the use and enjoyment of his property. … (2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.” [↑](#footnote-ref-5)
5. The European Convention on Human Rights, article 1, protocol 1 states that “(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” [↑](#footnote-ref-6)
6. See: Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Series C No. 79, Inter-American Court of Human Rights, August 31, 2001; Center for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples’ Rights, February 4, 2010; African Commission on Human and Peoples’ Rights v. Kenya, Application No. 006/2012, African Court on Human and Peoples’ Rights, May 26, 2017. [↑](#footnote-ref-7)
7. UN Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III, art. 114 (1991). [↑](#footnote-ref-8)
8. United Nations, *Land and Human Rights: Annotated Compilation of Case Law*, 2015, HR/PUB/15/5. [↑](#footnote-ref-9)
9. *Center on Housing Rights and Evictions (COHRE) v. Sudan*, Communication No. 296/2005*,* African Commission on Human and Peoples’ Rights, July 29, 2009, para. 205. [↑](#footnote-ref-10)
10. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/47/1. [↑](#footnote-ref-11)
11. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Resolution, adopted by the Human Rights Council, September 28, 2018, A/HRC/RES/39/12, art. 17. [↑](#footnote-ref-12)
12. Ibid. art. 17(3). [↑](#footnote-ref-13)