

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

**Introduction**

Land is a cross-cutting issue that directly impacts the enjoyment of a number of human rights. Broadly, many aspects of life depend directly or indirectly on land. For many people, land is a source of livelihood, and a critical resource in the pursuit of their economic, social and cultural development. Land is fundamentally linked to people’s identities and in more ways than one inexorably tied to social and cultural rights. This nexus accentuates the centrality of land in the realization of covenant rights and affirms the fact that access to, use of and control over land directly affects the enjoyment of an array of human rights.[[1]](#footnote-1)

Today, there is a growing global concern about rights that specifically derive from and are interlinked with land as a resource. Issues that arise therefrom such as food security, climate change, forced eviction and the unsustainable use of natural resources have all contributed to renewed attention to how land is being used, controlled and managed.

These concerns have augmented the need for a comprehensive international legal frame work to address these challenges. It is on this premise that this submission to CESCR is intended to further facilitate the committee with insights and perspectives in the development of the draft General comment on Land. This submission by the Uganda Consortium on Corporate Accountability (UCCA) builds on the submissions from other groups and entities. Hereunder, we specifically look at and address the aspects of environmental protection and climatic change, substantive equality, corporate accountability and indigenous persons.

**Key Aspects**

1. Environmental Protection and Climate change

A safe, clean, healthy and sustainable environment, including land as one of its elements, is a prerequisite for the enjoyment of human rights. Thus, land issues impacting upon human rights go beyond the governance of land tenure to include environmental protection, conservation and sustainable use. Therefore, we welcome the draft General Comment’s cognizance of this aspect in paragraph 37.

However, it is critical that the draft general comment underscores the issue of biodiversity loss and its impact on land related rights. Biodiversity loss and climate change are closely interrelated in how they intersect with land rights and it is important to consider them comprehensively in land rights related measures.[[2]](#footnote-2) The text must explicitly recognize that certain laws and policies[[3]](#footnote-3) 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.[[4]](#footnote-4)

Regarding climate change, Section F of the draft General Comment should emphasize the critical importance of focusing the voices of women and youth in climate related decision-making,[[5]](#footnote-5) more so from communities disproportionately affected by climate change impacts.

1. Substantive equality

Equality and non-discrimination are the hallmark of contemporary human rights safeguards. These duo aspects ensure a fair and levelled application, enforcement and enjoyment of covenant rights and lie at the heart of the human rights framework. Thus, the focus of the draft General Comment on non-discrimination and equality is much welcome.

Under paragraphs 16-17, the draft general comment rightly observes the centrality of land resource to women and points to the vulnerable position of women, particularly the discrimination meted out against them in governance of land tenure. However, the draft fails to adequately highlight that women individually and collectively face higher risk of prejudice and discrimination because of the intersection of particular identities by categorizing women as a homogeneous group rather than considering their diversity.

Relatedly, 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 steps to undo systems of oppression, discrimination and exclusion that hinder women’s access to land.

Thus, it is our recommendation that women’s right to land be addressed looking at the intersectionality of race, ethnicity, religion, tradition and customs, economic status, disability, sexual orientation, gender identity and expression and sex characteristics (SOGIESC). The multi-layered and compounding forms of discrimination that these groups experience are no different in the context of land.[[6]](#footnote-6) The General Comment should adopt a stronger emphasis on intersectional discrimination,[[7]](#footnote-7) in line with reference to substantive equality in paragraph 14 and its past analysis.[[8]](#footnote-8)

1. Corporate Accountability

The growth of industrial agriculture and extractive projects and products has increased the demand for land and consequently led to pervasive violations of rights concerning access to, use of and control over land thereby resulting in large-scale dispossession of indigenous peoples and other land-dependent communities. This is mostly perpetuated by companies and corporations – particularly those operating transnationally.

For the most part, initiatives to ensure corporate accountability have been voluntary. However, with the growing cognizance of the need for respect of human rights in business, it is imperative that the multiple gendered impacts of corporate impunity and corporate capture be made visible through the General Comment.

The tripartite obligations to respect, protect, and fulfil human rights, have been affirmed and States have human rights obligations, including extraterritorially, to effectively regulate businesses under the duty to protect,[[9]](#footnote-9) as well as to provide effective access to remedies for victims of human rights violations by business entities,[[10]](#footnote-10) and that business enterprises have the obligation, at a minimum, to respect Covenant rights.[[11]](#footnote-11) 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.

Specifically, under Section C. Obligations of State Parties under the Covenant relating to land, we propose express mention and inclusion of, under the obligation to respect, the critical obligation by corporations at a minimum, to respect Covenant rights, including in relation to rights concerning the use of, access to and control over land. Further, we call for substitution of ‘human rights impact assessment’ with the phrase ‘human rights and environmental impact assessments’ so as to aptly capture environmental aspects. We also call for express protection of the integrity of the legal and policymaking space, its participants, and outcomes from corporate interests under paragraph 30, Section C. Under Extraterritorial Obligations (Section D), we propose textual changes to expressly include ‘environmental due diligence’ in paragraph 32.

1. Indigenous Peoples and Self-Determination

Secure land rights are an essential element of the right to self-determination of Indigenous Peoples,[[12]](#footnote-12) to determine their political status and freely pursue their economic, social and cultural development. 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.[[13]](#footnote-13) 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,[[14]](#footnote-14) and the General Comment on the Right to Water,*[[15]](#footnote-15)* in both of which the Committee explicitly recognized the fundamental nature of land rights for Indigenous Peoples in the realization of other rights. Therefore, the draft General Comment on land should clearly indicate and emphasize the interlinkages that land rights have with the enjoyment and realization of rights of indigenous people.

**Conclusion**

We thank CESCR for the opportunity to make this submission and commend its efforts in developing the draft General Comment on land. Please feel free to reach out to Joseph Byomuhangyi at jbyomuhangyi@iser-uganda.org, Kiira Brian Alex at bkiira@iser-uganda.org and Dalton Bakashabaruhanga at po@ucca-uganda.org for any further engagements and inquiries.

1. See OHCHR, Land and Human Rights: Standards and applications, available at <https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf> [↑](#footnote-ref-1)
2. See generally, IPBES-IPCC co-sponsored workshop report on biodiversity and climate change, 24 June 2021,available at: [https://zenodo.org/record/5101133https://zenodo.org/record/5101133](https://zenodo.org/record/5101133https%3A//zenodo.org/record/5101133) [↑](#footnote-ref-2)
3. For example, in relation to carbon markets and protected areas or exclusionary conservation. See, ActionAid, Not-their-lands: The land impact of Royal Dutch Shell's net zero climate target, 2021, <https://actionaid.org/sites/default/files/publications/Not-Their-Lands_Media%20Briefing.pdf>; John Knox & Victoria Tauli-Corpuz, To conserve nature, protect human rights, Thomas Reuters news, 3 June 2021, <https://news.trust.org/item/20210603135601-wshfn/> [↑](#footnote-ref-3)
4. See for example, Arthur Nelsen, Kyoto Protocol’s Kyoto protocol's carbon credit scheme ‘increased emissions by 600m tonnes’, The Guardian, 24 August 2015, available at: <https://www.theguardian.com/environment/2015/aug/24/kyoto-protocols-carbon-credit-scheme-increased-emissions-by-600m-tonnes>; Ben Elgin, These Trees are Not What they Seem, Bloomberg Green, December 9 2020, available at: <https://www.bloomberg.com/features/2020-nature-conservancy-carbon-offsets-trees/>; Lara Domínguez and Colin Luoma, Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment, Land, 25 February 2020, available at: <https://bit.ly/3irO74d> [↑](#footnote-ref-4)
5. UN Women Watch, Women, Gender Equality and Climate Change, available at: <https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf> [↑](#footnote-ref-5)
6. 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-6)
7. See generally, Intersectionality in Promoting Equality, Interview of Kimberlé Crenshaw and Patricia Schulz, The Equality Review, Vol. 16, 2016. [↑](#footnote-ref-7)
8. 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-8)
9. CESCR General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, at paras. 14-27, 30-35, available at: <https://undocs.org/en/E/C.12/GC/24> [↑](#footnote-ref-9)
10. CESCR General Comment No. 24, ibid at para. 43-44. [↑](#footnote-ref-10)
11. CESCR, Statement on universal affordable vaccination for COVID-19, international cooperation and intellectual property, 12 March 2021, para 8, available at: <https://www.ohchr.org/Documents/HRBodies/CESCR/E_C_12_2020_2_AUV.docx> [↑](#footnote-ref-11)
12. 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-12)
13. 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](https://www.refworld.org/publisher%2CCESCR%2CCONCOBSERVATIONS%2CBRA%2C4b1d04010%2C0.html) [↑](#footnote-ref-13)
14. 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-14)
15. “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), *20* January 2003*,* para. 7, available at: <https://www.refworld.org/docid/4538838d11.html> [↑](#footnote-ref-15)