

**Written Contribution - General Comment on Land and Economic, Social and Cultural Rights of the Committee on Economic, Social and Cultural Rights**

**August 15, 2021**

The American Bar Association (ABA) would like to express its appreciation for the opportunity to respond to the request for input on the draft General Comment No. 26 of the Committee on Economic, Social and Cultural Rights on land and economic, social and cultural rights, prepared by the Co-Rapporteurs, Rodrigo Uprimny and Michael Windfur.

The ABA, the largest voluntary association of attorneys and legal professionals in the world, carries out extensive policy and program initiatives to protect and support human rights defenders and recognizes the importance of sustainable development of lands and resources. While the ABA is engaged in justice-related programs related to land rights, it has not adopted an official position on the topic of access to land.

The ABA welcomes the inclusion of the section on human rights defenders in the draft General Comment and takes this opportunity to share its views on how it could be strengthened. The ABA is also submitting one additional comment on paragraph 32 of the draft General Comment.

**1. Scope of term “Human Rights Defenders”**

The ABA recognizes the important role of human rights defenders in protecting the rule of law, respect for human rights, and justice.[[1]](#footnote-1) The rule of law, as well as good governance, are essential to achieving sustainable development that promotes the economically, socially, and environmentally sustainable future for our planet and future generations.[[2]](#footnote-2) In addition, the ABA urges respect for and protection of Indigenous communities and their land, territory, and resources pursuant to international human rights instruments, including the UN Declaration on the Rights of Indigenous Peoples. [[3]](#footnote-3)

Environmental human rights defenders and indigenous human rights defenders play a vital role in the protection of human rights and thereby, contribute to sustainable development. They are essential to documenting violations, seeking remedies for victims of violations, and combating cultures of impunity that serve to cloak systematic and repeated breaches of human rights and fundamental freedoms. Their work contributes to increased protection, accountability and transparency related to international human rights as well as progress toward ending State corruption that perpetuates violations of these rights.

Lawyers defending human rights in connection with conflicts over land, as part of their professional responsibilities, may also be subject to threats and attacks. Therefore, we recommend including a reference to the UN [Basic Principles on the Role of Lawyers](https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx) (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990) in footnote 70.

**Recommendations:**

* In the first sentence, after “The situation of human rights defenders,” the phrase “including environmental human rights defenders and Indigenous human rights defenders” should be inserted.
* Also insert at the end of footnote 70, “*See also* UN Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990).”

**2. Non-State Actors**

Harassment and killings, among other forms of threats and attacks on persons, may be perpetrated by State authorities but also by non-State actors, including businesses.[[4]](#footnote-4) As the UN Working Group on the issue of human rights and transnational corporations and other business enterprises notes in its June 2021 report to the UN Human Rights Council, businesses may cause, contribute, or be linked to attacks against human rights defenders or fail to prevent such attacks.[[5]](#footnote-5) The ABA’s Center for Human Rights has documented abusive lawsuits by business owners/investors against environmental defenders.[[6]](#footnote-6)

**Recommendation:**

* In the second sentence, after “The Committee has regularly received reports of threats and attacks” insert “, by both State and non-State actors,” to express that threats and attacks aimed at those seeking to protect their Covenant rights or the Covenant rights of others may be perpetrated by State or non-State actors.

**3. Threats and Attacks on Human Rights Defenders**

As the ABA Center for Human Rights has documented, human rights defenders are subject to a wide range of forms of threats and attacks.[[7]](#footnote-7) To emphasize their severity and broad-ranging nature, the ABA suggests that the draft General Comment further detail the specific forms of these threats and attacks based on the various documents in footnote 71.

**Recommendation:**

* In the second sentence, after the phrase “often in the form of” the phrase should be modified to read “harassment, criminalization, *enforced disappearance*, *arbitrary detention*, defamation and killings, *or other arbitrary or retaliatory action, including against family members*, particularly in the context of extractive and development projects.” (added terms are italicized)

**4. States’ Obligations**

States’ obligations include not only an obligation to respect human rights, that is to refrain from interfering with or curtailing the enjoyment of human rights, but also to protect individuals and groups against human rights abuses, as previously acknowledged by the Committee in paragraph 48 of its General Comment No. 24 on State Obligations under the Covenant in the Context of Business Activities and expressed in article 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The ABA notes that abuses by non-State actors may be compounded and encouraged by impunity provided by the failure of State authorities to hold perpetrators of human rights infringements and violations accountable and to provide victims with a remedy in such cases.[[8]](#footnote-8)

**Recommendation:**

* In the third sentence, “and protect” should be inserted after the “measures to respect.”

**5. Additional Suggestion on paragraph 32 in the draft General Comment**

The ABA has, in endorsing the UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs),[[9]](#footnote-9) recognized the State’s duty to protect against human rights abuse by third parties. It also has contributed to the implementation of the UNGPs through an array of policies, programs, and publications over the past decade.[[10]](#footnote-10) The ABA thus welcomes the inclusion of a reference to the UNGPs in discussing States’ obligations to protect against the negative impacts of businesses, as relating to land.

**Recommendation:**

* In the second sentence of paragraph 32, after “framework” and before “requiring,” insert “in line with the UN Guiding Principles on Business and Human Rights.”

1. [Resolution AM 106B](https://www.americanbar.org/content/dam/aba/directories/policy/2018-annual/2018-am-106b.pdf) on Non-Lawyer Human Rights Defenders (2018); [Resolution AM 106A](https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/ebook-of-resolutions-with-reports/2018_annual_electronic_resolution_book.pdf) (2018) of Judges, Lawyers and other Members of the Legal Profession; [Resolution AM 113B](https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/113b-annual-2019.pdf) on the Right to Human Dignity (2019). [↑](#footnote-ref-1)
2. [Resolution AM 108](https://www.americanbar.org/content/dam/aba/directories/policy/2003_am_108.pdf) on Sustainable Development, Good Governance, & Rule of Law (2003); [Resolution AM 105](https://drive.google.com/file/d/1xU3eVFZTSY8A-_GbJOB-c7Gt7W8GLz2H/view) Reaffirming the Commitment to Sustainable Development (2013). [↑](#footnote-ref-2)
3. [Resolution MY 107D on the UN Declaration on the Rights of Indigenous Peoples; [Resolution MY 103C](https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2004/2004_my_103c.pdf) on Ensuring Native American Health Care Access (2004).](https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/107d-midyear-2021.pdf) [↑](#footnote-ref-3)
4. *See* UN Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders,’ (June 2021) A/HRC/47/39/Add.2. [↑](#footnote-ref-4)
5. *Id.,* para. 3. [↑](#footnote-ref-5)
6. *See* American Bar Association, Center for Human Rights, [Communities Under Pressure, Findings from Valbona, Albania](https://www.americanbar.org/content/dam/aba/administrative/human_rights/communities-under-pressure-albania-june-2019.pdf), pages 20-21(2019). [↑](#footnote-ref-6)
7. *See* American Bar Association, Center for Human Rights, [Environmental Defenders, Land Activists, and Indigenous Leaders webpage](https://www.americanbar.org/groups/human_rights/justice_defenders/who-we-serve/environmental-defenders--land-activists--and-indigenous-leaders/). [↑](#footnote-ref-7)
8. *See* American Bar Association, Center for Human Rights, [Tilted Scales: Social Conflict and Criminal Justice in Guatemala](https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/tilted_scales_guatemala.pdf) (2017) [↑](#footnote-ref-8)
9. [Resolution MY 109](https://drive.google.com/file/d/1sYC1LqbdUS9YBc17gY4YPvKgocbFQcPU/view) (2012). [↑](#footnote-ref-9)
10. *See* https://www.americanbar.org/content/dam/aba/administrative/government\_affairs\_office/aba-response-to-unwg-11-30-20.pdf. [↑](#footnote-ref-10)