

**Draft General Comment No. 26 (2021) on Land and Economic, Social and Cultural Rights**

*Submitted by Landesa August 2021*

This Committee has long recognized land tenure security as a fundamental prerequisite to realizing core Covenant rights to food,[[1]](#endnote-1) housing,[[2]](#endnote-2) an adequate standard of living,[[3]](#endnote-3) water, cultural rights, and gender equality.[[4]](#endnote-4) The Committee has elaborated on the relationship between land and Covenant rights in at least 8 of its 24 General Comments.[[5]](#endnote-5) Numerous other human rights bodies and international and regional standards, guidance, and judicial decisions, both long-established and recent, emphasize the centrality of land to fulfilling human rights.[[6]](#endnote-6)

The current draft accomplishes a herculean task, summarizing decades of progress on land tenure and governance as it relates to human rights, and providing a clear path forward for defining how land relates to Covenant rights. This submission respectfully suggests incorporating the following key changes, detailed below: 1) Recognize a universal right to land; 2) Integrate intersectionality, gender justice, and social inclusion across the General Comment; and 3) Strengthen the emphasis on gender equitable and socially inclusive land governance.

***Recognize a universal right to land.***

Paragraph 52 of the Draft Comment asserts that land is so crucial to peasants’ realization of other Covenant rights that it “functionally equates with a right to land.” The Draft Comment acknowledges that there are other groups for which the treatment of land and other productive resources would warrant this functional equivalence, naming peasants as an example. Ostensibly these other groups include those who depend at least partially on land, totaling an estimated 2.5 billion people worldwide,[[7]](#endnote-7) and including: rural communities, Indigenous Peoples, and other groups with insecure land rights, and marginalized groups within these groups (women, youth, ethnic and religious minorities, disfavored castes, gender and sexual minorities, those living with disabilities, etc.). However, this distinction is still arbitrary, and leaves States Parties without a clear obligation to fulfill Covenant rights related to land for all within their jurisdiction. The need to declare land as a human right is urgent in the face of trends threatening Covenant rights related to land, primarily the climate emergency, but also growing economic inequality, xenophobia and nationalism, technological and demographic shifts, and the migration and displacement that result from and are interrelated with these trends.

In deriving a freestanding right from others explicitly enumerated in the Covenant, the Committee would be following its own precedent, developed in its General Comment No. 15 on the right to water.[[8]](#endnote-8) Article 11 of the Covenant asserts that a range of rights underlie the core right to an adequate standard of living, “including adequate food, clothing and housing.”[[9]](#endnote-9) General comment No. 15 clarifies that the term “including,” implies that the enumerated rights are not exhausted, and that others, including the right to water, also fall within this category.[[10]](#endnote-10) A right to secure land tenure deserves similar recognition as an implied (if unenumerated) right within the Covenant, given key similarities between the two resources. Both water and land are finite natural resources indispensable to an adequate standard of living. Secure rights to each are similarly crucial to addressing a range of intersectional inequalities, empowering individuals and communities, and addressing the widespread challenges of the trends named above, including climate impacts, food security, migration, displacement, urbanization, and youth unemployment or the “youth bulge” faced primarily by African and Asian countries.

An expansion of paragraph 52’s language to a universal right would likewise align with and build on previously established international human rights norms.[[11]](#endnote-11) Women’s rights to land and natural resources have been asserted by numerous international bodies, both as a freestanding right and as implicit in the enjoyment of other human rights.[[12]](#endnote-12) Recognizing a right to land would also be consistent with recommendations to other international bodies. Special Rapporteurs on the rights to adequate housing and the right to food have urged that the Human Rights Council recognize land as a human right, in part due to its inextricable relationship to other key rights.[[13]](#endnote-13)

This General Comment presents an unprecedented and urgent opportunity to articulate a freestanding right to land tenure security, and an obligation on the part of States Parties to establish and maintain land governance that meets agreed upon international standards and guidance, in service of their obligations to Covenant rights.

***Integrate intersectionality, gender justice and social inclusion across the General Comment.***

The Draft Comment’s explicit discussion of the fundamental principles of non-discrimination and equality, in paragraphs 14 through 17, provide valuable context to subsequent explanations of state obligations to respect, protect, and fulfil land rights, particularly regarding women and Indigenous Peoples. However, we urge the Committee to explicitly adopt the standards and language included in the UNDROP and the VGGT relating to intersecting forms of discrimination and social inclusion,[[14]](#endnote-14) and to integrate gendered analysis throughout rather than simply a focus on women.

The negative impacts of the global trends listed above on land users are severely compounded by gender inequality[[15]](#endnote-15) and intersecting forms of discrimination (age, race, religion, indigeneity, marital status, disability, sexual orientation, and other grounds).[[16]](#endnote-16) Therefore the General Comment should explicitly recognize intersectional discrimination and include strong provisions requiring states and other actors to affirmatively address such discrimination, including through good practice approaches to shifting social norms.[[17]](#endnote-17) Addressing intersectional discrimination will also reinforce sustainable land management and use, with positive impacts for both rural and urban well-being, including food systems, markets, and migration patterns.[[18]](#endnote-18)

We also urge the Committee to consider the special position of youth and of Indigenous Peoples, and to include specific and expansive language on intersectionality and marginalization to ensure that those whose Covenant rights are most at risk are not excluded or less benefitted by the language of the General Comment.

Women’s land rights continue to be frequently denied.[[19]](#endnote-19) Improvements in statutory laws have begun to address gendered inequality in land and property rights, but widespread de jure and de facto discrimination persists.[[20]](#endnote-20) These realities flagrantly violate women’s human rights, undercutting women’s crucial contributions from household to global levels to natural resource management, climate action, food production, food sovereignty, and food security; reinforcing women’s unequal social, legal, political, and economic position within their families, communities and societies; and seriously limiting their agency and opportunities.[[21]](#endnote-21) This Committee has previously urged States Parties to employ legal solutions to these issues.[[22]](#endnote-22) In the General Comment, the Committee can build on those recommendations by integrating gender equality, justice, and social inclusion as core elements.[[23]](#endnote-23)

Young people represent key members of rural and agricultural communities, essential to their long-term success.[[24]](#endnote-24) Growing youth populations around the world, many of whom reside in rural areas, are often disproportionately not engaged in agricultural practices, stemming in significant part from a lack of access to land, as well as to necessary financing, credit, and training.[[25]](#endnote-25) These barriers intersect with additional discriminatory practices relating to land, creating additional burdens and obstacles for girls and young women, and young members of other historically marginalized communities, including peasants and Indigenous Peoples. Paragraphs 24 and 35 of the Draft Comment call for meaningful youth participation in collective tenure systems, and youth prioritization in redistribution schemes. However, successfully addressing the challenge of insecure youth land rights and discrimination against youth land tenure requires more expansive and multifaceted solutions.

***The following changes are suggested to facilitate an intersectional lens, and better focus specifically on gender-equitable rights and inclusion of youth:***

* We encourage the Committee to recognize marginalized groups and individuals as soon as possible in the General Comment, in the form of a “chapeau” statement, with a footnote to say that inclusive language will be integrated throughout, and to extrapolate on what inclusion means and how it is defined, so it can then be summed up by using “marginalized groups” at least in some places in the General Comment to save space.
* *Para. 1, sentence starting with, “Eradication of hunger…” Suggested edit: “*…communitiesand especially women, youth, and other marginalized populations within groups and communities, as well as a focus on marginalized communities themselves (indigenous, rural, pastoralists, fishers, ethnic minorities, etc.).”
* *Para. 16, sentence starting with “In many countries…” Suggested edit:* “Women and girls are disproportionately adversely impacted by violations and abuses of Covenant obligations relating to land, and they are vulnerable to intersectional discrimination. States parties should recognize that gender inequalities and biases will be present in all arenas relating to land, and efforts to address and overcome them will be needed to fulfill women’s Covenant rights related to land.”
* *Para. 17, starting with “…but also by making women’s household’s… Suggested edit:* “…also by making households more secure economically (likely reducing perpetration of violence), enhancing women’s ability to realize and exercise their agency, and by engaging men to realize and champion women’s agency and full and equal social, familial, and community status and participation.” The current language frames women’s subjugation as a women’s issue, without including men as actors or providing any gendered analysis or accountability.
* *Para. 17, starting with “removing traditional structures that discriminate against women.” Suggested edit:* Replace “removing” with “transforming”
* *Para. 18, sentence starting with “In that regard, States parties should develop relevant laws…” Suggested edit at end of that sentence:* “…in all land-related policies,and should pay particular attention in their development to integration of provisions providing explicitly for equitable treatment (including temporary special measures where needed) of women, youth, and other marginalized groups.”
* *Para. 21, sentence starting with “Land registration and land administration…” Suggested edit:* “Land registration and land administration must be carried out with careful efforts to address social norms that discriminate on the basis of gender, to avoid further entrenching and even erasing the rights of women.”[[26]](#endnote-26)
* *Para. 35, sentence starting with “Redistribution of land and agrarian reforms…” Suggested edit:* “Redistribution of land and agrarian reforms should pay particular attention to access to land by young people, and to the fulfillment of equal treatment of women (CEDAW, Art. 14(2)(g)), and respect…”
* Explicit acknowledgement of marginalization faced by youth in accessing land in paragraph 10, and in discussion of equitable distribution through agrarian reform.
* Inclusion of youth as a group facing risk of discrimination in governance of land tenure, as well as emphasis on the intersectional nature of discrimination against youth, particularly girls and female youth, in non-discrimination and equality paragraphs.
* Paragraph 24 acknowledges the need for youth participation in collective tenure systems. This should also be reflected in areas of the Comment addressing participation in other decision-making bodies. Similarly, paragraph 24 could articulate measures to foster youth participation, including encouragement to address customs that subordinate youth in inheritance and use of land.
* Paragraph 28 should explicitly acknowledge the need for youth participation in recognition of informal tenure systems.
* Paragraph 35 prioritizes youth access to land in agrarian reforms. However, it should also explicitly prioritize youth participation in and benefit from measures intended to support land use, to ensure that youth beneficiaries of agrarian reform can make land productive.

***Fulfill rights to equal participation and representation in land administration and governance.***

The Draft Comment notes several arenas where women remain disadvantaged in paragraph 17 (inheritance, representation among title holders, recognition of tenure), and why land rights are important for women and development outcomes, and Para. 16 also notes women’s exclusion from decision-making processes. But integration within the General Comment of States’ obligation to realize gender-equitable participation at a higher level would help fulfill women’s Covenant rights specifically, but would fulfill Covenant rights for all more effectively.

Gendered inequalities with regard to decision-making, control, and economic opportunity and power related to land and natural resources are often exacerbated by women’s lack of representation in positions of political power. Parliaments and executive branches worldwide do not equitably represent the voices of those whose Covenant rights are most affected by their decisions.[[27]](#endnote-27) Women and other marginalized groups have a human right to political participation; but land and natural resource management law and policy are among the most exclusive arenas, especially with regard to gender.[[28]](#endnote-28) Legislative bodies with inadequate representation of women in turn inadequately protect and benefit women.[[29]](#endnote-29)

The following changes are suggested:

* Paragraph 17 should include a sentence noting that gender-equal representation in legislative and land administration bodies can and should be achieved via temporary special measures.
* Paragraph 18 addresses the importance of engaging with Indigenous Peoples through free, prior and informed consent in land governance decisions. However, it does not address pervasive social norms or legal standards in areas like family law, both of which undermine women’s meaningful participation in these decisions.[[30]](#endnote-30) It should explicitly require women’s participation in decision-making, coupled with relevant mechanisms to ensure those rights to participation are not violated, and that contributions are meaningfully incorporated.[[31]](#endnote-31)
* *Para. 24, sentence starting with “It is important that…” Suggested edit:* “It is important that traditional institutions for collective tenure systems work to ensure equal representation of women in decision-making bodies, as well as meaningful participation and inclusion of all members, including young people, in decisions regarding the distribution of user rights.”
* The reference in Paragraph 24 and other references to customary tenure could be qualified by the obligation for states to respect custom and customary tenure to the extent that it does not violate fundamental principles of non-discrimination and gender equality.
* Paragraph 30 references participation in investment decisions, and access to complaint mechanisms. Both should likewise emphasize gender equality.
1. UN Human Rights Council, Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Interim Report, Aug. 11, 2010, A65/281, para. 24. [↑](#endnote-ref-1)
2. Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 28. See also, general comment No. 7 on the right to adequate housing: forced evictions, para. 10. [↑](#endnote-ref-2)
3. Article 25 of the Universal Declaration of Human Rights; Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). [↑](#endnote-ref-3)
4. ICESCR Article 2. *See also* Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, A/RES/34/180; CEDAW, Article 5(a): States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. See also, General recommendation No. 28 (47th sess., 2010); The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 31 (“States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”); *and see generally* GIESCR et al, ‘The International Covenant on Economic, Social, and Cultural Rights at 50: The Significance from a Women’s Rights Perspective,’ available at: http://globalinitiative-escr.org/wp-content/uploads/2016/10/ICESCR-and-Womens-ESC-Rights-FINAL.pdf [↑](#endnote-ref-4)
5. CESCR, General Comment No. 4 (1991) on the Right to Adequate Housing, at paras. 8(a) and (e); CESCR, General Comment No. 7 (1997) on Forced Evictions, at paras. 2, 3, 7, 9, 15 and 16; CESCR, General Comment No. 12 (1999) on the Right to Adequate Food, UN Doc. E/C.12/1999/5, at paras. 12, 13 and 26; CESCR, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4, at para. 27; CESCR, General Comment No. 15 (2002) on the Right to Water, UN Doc. E/C.12/2002/11, at paras. 16(c)-(d); CESCR, General Comment No. 16 (2005) on the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, UN Doc. E/C.12/2005/4, at para. 28; CESCR, General Comment No. 21 (2009) on the Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21, at paras. 3, 15(b), 36, 49(d), and 50(c); and CESCR, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, at para. 8. [↑](#endnote-ref-5)
6. The 2018 United Nations Declaration on the Rights of Peasants and other people working in rural areas includes numerous specific references to land tenure, gender equality in access to land and resources, and the rights of indigenous peoples and customary communities U.N.G.A.,U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas, U.N. Doc. A/C.3/73/L.30, (Oct. 30, 2018), at Art. 7(3), Art. 17(3), Art. 4(1-2), Art. 2(3); the CESCR Committee’s work dovetails with the standard set by the Committee for the Elimination of Discrimination Against Women (CEDAW), explicitly declaring “Rural women’s rights to land and natural resources to be fundamental human rights” (CEDAW General Recommendation No. 34, at para 56).

Human rights bodies have also issued survey reports on the right to land, including the Office of the High Commissioner for Human Rights (*see* HR/Pub/13/04 and HR/PUB/15/5/Add.1, and E/2014/86), and UN Women, on women’s rights to land and natural resources (HR/Pub/13/04). These standards join longer-standing human rights law implicating land: the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization’s Convention No. 169, and the Convention on the Elimination of all forms of Discrimination Against Women, which in addition to specific reference to women’s equal rights to land (Art 14) has issued a host of Concluding Observations relevant to women’s land, housing, and property rights. These hard law developments in international law are complemented and bolstered by a host of soft-law guidance on land at international and regional levels, including the Voluntary Guidelines on the Governance of Tenure (VGGT); the United Nations Guiding Principles on Business and Human Rights, the New Urban Agenda, and the African Union’s Framework and Guidelines on Land Policy in Africa, and a host of decisions on land rights from regional human rights courts; *see e.g.,* Minority Rights, “Legal cases: Land Rights,” available at: https://minorityrights.org/our-work/law-legal-cases-introduction/land-rights/. [↑](#endnote-ref-6)
7. Rights and Resources Initiative (RRI), Who Owns the World’s Land? A global baseline of formally recognized indigenous and community land rights, September 2015, at 1, available at http://www.rightsandresources.org/wp- content/uploads/GlobalBaseline\_web.pdf. [↑](#endnote-ref-7)
8. General comment No. 15 (2002), on water. [↑](#endnote-ref-8)
9. ICESCR, Article 11. [↑](#endnote-ref-9)
10. General comment No. 15, para. 3. [↑](#endnote-ref-10)
11. VGGT, Special Rapporteurs. [↑](#endnote-ref-11)
12. Freestanding: CEDAW General Rec 34 – rural women; implicit: CESCR, UNDROP, VGGT, others. [↑](#endnote-ref-12)
13. E/C. 12/1999/5, para. 13 (on right to adequate housing); cited and affirmed in Report of Rapporteur on right to food, A/65/281, 11 Aug. 2010. [↑](#endnote-ref-13)
14. UNDROP Art. 2(2), 3(3); VGGT 3B Principles of Implementation. [↑](#endnote-ref-14)
15. CEDAW, General Recommendation No. 34 on the rights of rural women (2016), UN Doc. CEDAW/C/GC/34. “Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in accessing land and natural resources. They carry most of the unpaid work burden due to stereotyped gender roles, intra- household inequality, and lack of infrastructure and services, including with respect to food production and care work.” Id. at para. 5. [↑](#endnote-ref-15)
16. “Women working in rural areas, including peasant, pastoralists, migrants, fisherfolk and landless, also suffer disproportionately from intersecting forms of discrimination.” Id at para. 14. *See also* Id at para. 15 for guidance for States Parties with regard to intersectional discrimination related to gender. [↑](#endnote-ref-16)
17. CEDAW Art 5(a). “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women…” [↑](#endnote-ref-17)
18. *See* UN Habitat, New Urban Agenda (2017), UN Doc A/RES/71/256, at. paras 35, 49, 72, 95, 96, 107, available at: http://habitat3.org/wp-content/uploads/NUA-English.pdf [↑](#endnote-ref-18)
19. Landesa, The Law of the Land: Women’s Rights to Land, 2016, infographic available athttps://www.landesa.org/resources/property-not-poverty/ [↑](#endnote-ref-19)
20. CEDAW General Recommendation No. 34 on the Rights of Rural Women contains comprehensive langauage on women’s rights to land and productive resources under Art. 14 of the Convention on the Elimination of all Forms of Discrimination against Women (UN Doc. CEDAW/C/GC/34, 2016), as well as the position paper of the UN Working Group on the issue of discrimination against women in law and in practice on ‘Insecure land rights for women threaten progress on gender equality and sustainable development,’ 1 July 2017. See also: Food and Agriculture Organization of the United Nations (FAO), ‘Gender and Land Rights: Understanding Complexities, Adjusting Policies,’ Economic and Social Perspectives Policy Brief 8, 2010. [↑](#endnote-ref-20)
21. UN-Women/OHCHR, ‘Realizing women’s rights to land and other productive resources,’ 2013. [↑](#endnote-ref-21)
22. Establish women’s right to own, use or otherwise control land on an equal basis with men, and to access necessary resources to do so, and women’s equal inheritance rights, UN Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (UN Doc. E/C.12/2005/3, 2005); Recognize that the capacity of women to own property, including land, may not be restricted on the basis of marital status or any other discriminatory ground, UN Human Rights Committee, General Comment 28 on the Equality of Rights between Men and Women, Article 3 (UN Doc. CCPR/C/21/Rev.1/Add.10, 2000); prevent discrimination in access to food or resources for food, including by guaranteeing full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land, UN Committee on Economic, Social and Cultural Rights, General Comment 12, Right to adequate food (UN Doc. E/C.12/1999/5, 1999); and address the disproportionate and negative impact of extractive industries and large scale land acquisitions on women’s land rights, CESCR General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24. “…among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, [and] indigenous peoples, particularly in relation to the development, utilization or exploitation of lands and natural resources…”Id at para. 8. *See also,* CESCR Conclusing Observations on Uganda, 2015; *and* Landesa, *What do we know about gender and large-scale land acquisitions?* (2016), hereinafter “Gender LSLA,” available at: https://landportal.org/blog-post/2016/02/what-do-we-know-about-gender-and-large-scale-land-acquisitions [↑](#endnote-ref-22)
23. *See* CEDAW/C/GC/34 (supra note 12, 13) at para 14, 15 for guidance on gender and social inclusion and intersectionality. *See also,* Landesa (2018), Responsible Investments in Property and Land: Vulnerable Groups Primer, at 4, available at: http://ripl.stage.s3.amazonaws.com/uploads/primer\_link/file/25/RIPL\_Vulnerable\_Groups\_Primer\_-\_Final.pdf [↑](#endnote-ref-23)
24. Youth Land Rights – Landesa Fact Sheet, available at: https://www.landesa.org/wp-content/uploads/Youth-Issue-Brief-FINAL.pdf [↑](#endnote-ref-24)
25. YouthPower, <https://www.youthpower.org/youthpower-issues/topics/what-works-youth-and-agriculture> [↑](#endnote-ref-25)
26. *See e.g.,* Namati (2019). Gendered Aspects of Land Rights in Myanmar II: Evidence from Paralegal Casework, at 3-4, available at: <https://namati.org/wp-content/uploads/2019/07/Gender-Brief_English_Online-Version-.pdf> “The move towards land registration [in Myanmar] in its current state is formalizing a gender imbalance in land rights that could have serious and far-reaching effects on the socioeconomic status of women for decades to come.” [↑](#endnote-ref-26)
27. “Only 24.3 per cent of all national parliamentarians were women as of February 2019…” UN Women, Facts and Figures, available at: https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures [↑](#endnote-ref-27)
28. *See e.g.,* UNFCCC (2019). ‘Gender Equality on the Rise at UN Climate Meetings,’ noting that despite marked progress under the UNFCCC’s Gender Action Plan, the number of women leading national delegations is less than 30%. <https://unfccc.int/news/gender-equality-on-the-rise-at-un-climate-meetings>; *see also,* Elizabeth Daley, et al. (2013). *Women’s Land Rights and Gender Justice in Land Governance: pillars in the promotion and protection of women’s human rights in rural areas,* International Land Coalition, at 10, hereinafter ILC, available at: <https://www.ohchr.org/Documents/HRBodies/CEDAW/RuralWomen/InternationalLandCoalition.pdf>; and Landesa (2012). *Women’s Secure Rights to Land: Benefits, Barriers, and Best Practices. Available at:* https://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf [↑](#endnote-ref-28)
29. Women Deliver, ‘Strengthen Women’s Political Participation and Decision-Making Power,’ https://womendeliver.org/investment/strengthen-womens-political-participation-decision-making-power/ [↑](#endnote-ref-29)
30. See, e.g. Gi-ESCR, ”CESCR at 50” [↑](#endnote-ref-30)
31. E.g. High Commissioner/UN Women Report on Right to Land (2013). [↑](#endnote-ref-31)