**Submission to the Committee on Economic, Social and Cultural Rights**

**on its Draft General Comment on Land and Economic, Social and Cultural Rights**

*August 2021*

The Center for International Environmental Law (CIEL) is pleased to submit these written comments to the Committee on Economic, Social and Cultural Rights regarding its draft General Comment on Land and Economic, Social and Cultural Rights. We commend the Committee for addressing climate change in the Draft General Comment. Given the critical relationship between land and climate change—and the varied impacts that land use and climate change have on economic, social and cultural (ESC) rights—we recommend that attention to climate change be integrated throughout the General Comment, not limited to a single section. To that end, this submission focuses on several issues we believe should be addressed: (1) the human rights impacts of land-based or land-intensive responses to climate change; (2) the inclusion of climate impacts in Free, Prior, and Informed Consent (FPIC) processes related to land use; (3) the intersection between land-related ESC rights and the concept of intergenerational equity; and (4) the duties of States and businesses to ensure proper closure and clean-up of land-based or land-intensive industrial activities.

**ESC rights and responses to climate change**

We commend the Draft General Comment’s acknowledgment that policies and actions intended or represented as “climate change mitigation and adaptation measures” can, like activities that drive climate change, negatively affect human rights and the environment and thus necessitate robust safeguards.[[1]](#endnote-1) **Given the requirement that climate action be both ambitious *and* human rights-compliant,[[2]](#endnote-2) the General Comment should caution States against relying on land-based or land-intensive climate measures** **that are currently unavailable and/or unproven at scale, or whose deployment at scale would undermine ESC rights related to land, including the rights to livelihood, health, food, and water. We recommend that the General Comment elaborate on the specific risks associated with existing land-based mitigation mechanisms (like REDD+) and proposed carbon dioxide removal (CDR) technologies, given serious concerns about their efficacy and adverse impacts.**

*Land-based mitigation measures: REDD+ and offsets*

**The Draft General Comment’s discussion of the need for human rights-based approaches to land use and to climate change mitigation and adaptation measures (paragraphs 37 and 55, respectively) should draw special attention to the risks that land-based mitigation mechanisms like REDD+ and carbon-focused conservation pose to local populations, particularly Indigenous Peoples.** The Committee and other U.N. treaty bodies have recommended that States fully engage Indigenous Peoples and rural communities in climate change response strategies that affect them, both to comply with their human rights obligations and to enhance the efficacy of their climate strategies.[[3]](#endnote-3) Land-based climate mitigation measures planned and implemented without the participation and consent of affected communities are especially likely to result in human rights violations and prove ineffective.[[4]](#endnote-4) The Intergovernmental Panel on Climate Change (IPCC) has warned that certain climate mitigation measures may limit Indigenous Peoples’ access to their territories, threaten traditional livelihoods, and impede transmission of Indigenous knowledge, thereby undermining capacity for adaptation to climate change.[[5]](#endnote-5) The IPCC has also cautioned that large-scale land acquisitions related to mitigation policies threaten livelihood of smallholders farmers, increase local vulnerability to food price shocks, and endanger fragile ecosystems.[[6]](#endnote-6) The physical displacement of local communities and Indigenous Peoples by REDD+ initiatives has curtailed their access to crucial natural resources and jeopardized their food security.[[7]](#endnote-7)

States have a duty not to cause or contribute to rights violations and to take steps to protect individuals from foreseeable violations of rights by third parties under their jurisdiction or control.[[8]](#endnote-8) The foregoing obligations apply both to States in whose jurisdiction mitigation measures are undertaken and to States providing the financial incentives for mitigation measures undertaken in other jurisdictions, such as through carbon markets or other emissions reduction trading mechanisms. **The General Comment should emphasize in its discussion of extraterritorial obligations (paragraphs 38-44) that, just as a State may not engage in, induce, or acquiesce to conduct that violates rights to achieve emissions reductions within its jurisdiction, neither may it cause or contribute to the violation of human rights extraterritorially to support or obtain emissions reductions abroad.[[9]](#endnote-9)**

*Land-intensive mitigation measures: Carbon dioxide removal (CDR)*

**The General Comment should acknowledge that the growing emphasis in State and corporate climate policies on proposed CDR technologies that are not yet proven or feasible at scale threatens a range of human rights and detracts from urgently needed climate action today**.The IPCC has cautioned that “CDR deployed at scale is unproven, and reliance on such technology is a major risk in the ability to limit warming to 1.5°C,” noting that “most current and potential CDR measures could have significant impacts on land, energy, water or nutrients if deployed at large scale.”[[10]](#endnote-10) Scenarios presented by the IPCC indicate that the pathway most likely to avert warming above 1.5°C involves near-term, comprehensive, and reliable emissions reductions coupled with some carbon removal by natural ecosystems, with limited to no use of engineered CDR technologies.[[11]](#endnote-11) In the first part of the Sixth Assessment report recently released, the IPCC warns that CDR deployment on land “can also affect water quality and quantity, food production and biodiversity,” and notes that the “largest co-benefits are obtained with methods that seek to restore natural ecosystems or improve soil carbon sequestration.”[[12]](#endnote-12) Yet public and private actors are increasingly relying on engineered interventions, like bioenergy with carbon capture and storage (BECCS) and direct air capture (DAC), in their climate plans.[[13]](#endnote-13)

The intense inputs required for both BECCS and DAC undermine their efficiency and economic viability, and jeopardize ESC rights. If deployed at any significant scale, BECCS would require enormous quantities of biomass, water, and land, compounding global food and water insecurity driven by climate change and other environmental stressors.[[14]](#endnote-14) DAC, which involves capturing carbon dioxide (CO2) directly from the ambient air, could likewise strain water sources, as well as land, because water is required for chemical processing to concentrate and compress the gas.[[15]](#endnote-15) What’s more, neither BECCS nor DAC can deliver their purported climate benefits without the use of carbon capture and storage (CCS) to manage the captured carbon dioxide. CCS brings its own costs and risks, including health and safety hazards associated with the compression, piping, and storage of captured carbon—such as land disturbance, water contamination, and risk of explosions and other accidents.[[16]](#endnote-16) Such risks disproportionately threaten marginalized communities already overburdened by fossil fuel and petrochemical pollution and now targeted for CCS infrastructure.[[17]](#endnote-17)

CDR technologies are also of dubious efficacy from a climate perspective, and thus inadequate means of satisfying a State’s duty to protect human rights from the threat of climate change. When they divert resources from proven mitigation measures such as the replacement of fossil fuels with renewable energy sources or provide a carbon dioxide stream for enhanced oil recovery, these technologies prolong the use of fossil fuels, delaying the needed phaseout and perpetuating the harms caused by climate change. The most viable market for captured CO2  today is for injection into depleted oil wells to produce more oil, which would worsen the climate crisis.[[18]](#endnote-18) Moreover, powering CCS takes additional fossil fuels, adding a significant energy penalty and undercutting the technology’s purported climate benefit.[[19]](#endnote-19) And in the case of BECCS, converting the necessary land to bioenergy generates significant direct CO2 emissions due to loss of forests and grasslands, soil disturbance, and increased use of agricultural chemicals, undermining its climate benefits.[[20]](#endnote-20) Indirect emissions from producing and using bioenergy reduce those benefits still further.

**Given the threats to ESC rights presented by BECCS, DAC, and the CCS on which both rely, particularly when deployed at any significant scale, the General Comment should call on States to ensure that environmental justice and human rights impacts and significant safety risks are central in any decision-making regarding the deployment of these technologies. Additionally, the Committee should discourage States from relying on future deployment of CDR technologies to achieve temperature targets rather than immediate measures available to decarbonize economies.**

**Furthermore, we recommend that the General Comment expressly call on States to take a rights-based approach to *all* climate mitigation and adaptation measures they undertake, finance, or regulate, with particular attention to risks associated with measures requiring significant land use. Such an approach entails ensuring the participation of all communities whose lands or resources could be indirectly or directly affected by the measure and informing them of the associated risks to their rights and livelihoods. The General Comment should urge States to refrain from authorizing any climate response measures that may affect Indigenous, tribal, and other traditional communities without their Free, Prior, and Informed Consent (FPIC), which they may give *or* *withhold*. Moreover, the General Comment should stress that, where appropriate, land-based mitigation measures should be guided by Indigenous and local ecological knowledge, given the demonstrated value of such knowledge in responding to environmental challenges such as those presented by climate change.[[21]](#endnote-21)**

**Free, Prior and Informed Consent (FPIC) in the context of land use decisions**

We appreciate the Committee’s affirmation of States’ duties relating to the right of Indigenous Peoples to free, prior, and informed consent (FPIC), both in the draft General Comment and prior communications.[[22]](#endnote-22) **However, we recommend that the General Comment make explicit that FPIC processes should be implemented in a manner that adequately considers risks presented by the climate emergency—specifically by ensuring that affected Indigenous Peoples are fully apprised of, and consulted on, the climate impacts of any land use activity that potentially affects their lands, territories, or resources that they have traditionally owned, occupied or otherwise used or acquired.**

Decisions regarding natural resource extraction and other forms of intensive land use can have heightened effects on the ESC rights of Indigenous Peoples, both through their direct and immediate impacts and through their impacts on climate change. Oil and gas development, mining, agribusiness, and other activities that degrade the land and/or result in the extraction and inevitable combustion of fossil fuels not only pose substantial risks to Indigenous communities’ lives and livelihoods by causing local pollution and contamination,[[23]](#endnote-23) threatening water quality and availability,[[24]](#endnote-24) degrading ecosystems,[[25]](#endnote-25) and leading to economic and physical displacement.[[26]](#endnote-26) They also inexorably lead to increased greenhouse gas emissions, both from land use change and combustion of extracted fossil fuels, driving further temperature rise and associated impacts, which only compound the immediate harms caused by the activities.[[27]](#endnote-27)

**The General Comment should acknowledge that, especially in view of Indigenous Peoples’ heightened exposure to the effects of climate change,[[28]](#endnote-28) their consent or refusal to consent to natural resource extraction and other land use decisions cannot be fully informed absent information regarding the climate risks and impacts of the proposed activities.** **To be complete and effective, FPIC or public consultation processes regarding a proposed activity must address its climate-related risks and impacts. The General Comment should clarify that a State’s failure to ensure they do so would constitute a dereliction of its Covenant obligations—one that could endanger the survival of the communities concerned.**

**Intergenerational equity, land, and ESC rights**

The Draft General Comment lacks any explicit reference to the concepts of intergenerational equity and the rights of future generations. We commend the Committee for recognizing that more equitable distribution of land is critical to mitigating existing socioeconomic disparities, reducing poverty, and improving food security.[[29]](#endnote-29) We likewise appreciate that the Draft General Comment calls for the redistribution of land and agrarian reforms “to pay particular attention to access to land for young people.”[[30]](#endnote-30) **However,** **we believe that the General Comment should also expressly acknowledge how current unsustainable land uses**, **which fuel climate change, and erosion of customary and collective land tenure**, **will adversely affect the availability, accessibility, and/or quality of land in the future, driving inequalities between older and younger generations today, and between those alive and those yet born.**

Unsustainable land uses and erosion of customary and collective land tenure pose heightened risks to the ESC rights of children and future generations in at least two ways: (1) by driving climate change, the intensifying impacts of which will harm them disproportionately; (2) by diminishing the amount of ecologically intact and healthy land available to them in the future, hindering their access to economic opportunities, food security, and other basic human rights protected under the Covenant.

Today’s children and future generations are disproportionately exposed to the intensifying effects of climate change. There is legal, intergovernmental, and scientific consensus that climate change poses serious risks to ecosystems and constitutes “a massive threat to the enjoyment of economic, social and cultural rights.”[[31]](#endnote-31) The adverse impacts of climate change are already being felt around the world at 1.2°C of warming above pre-industrial levels,[[32]](#endnote-32) and are only projected to worsen with every fraction of a degree that average global temperature rises.[[33]](#endnote-33) By virtue of their current age, children are more vulnerable to certain adverse health impacts and other socioeconomic harms caused by global warming.[[34]](#endnote-34) Children and future generations also face significantly greater harm from climate change than adults alive today, given that they will live all or significant portions of their lives in the future, when the impacts of climate change will be more severe.

As discussed above, unsustainable land use and management practices compound climate risks, in addition to causing localized environmental harm and economic and physical displacement of local communities. Once underway, these activities can degrade and overexploit the land and host ecosystems beyond their productive capacities, affecting both their socioeconomic value and ecological integrity.

**We recommend that the General Comment explicitly cite intergenerational equity as further reason to hold States to “the highest possible ambition”[[35]](#endnote-35) in responding to the existential threat of climate change. As the Committee has previously emphasized, States must work to ensure that rights “can be realized for present and future generations.”[[36]](#endnote-36)** **In light of the disproportionate effect of climate change on the ESC rights of children and future generations, and the relationship of land to climate change, the General Comment should make clear that a State’s failure to take adequate measures to combat climate change, including through ensuring sustainable land use and strengthening customary and collective land tenure, would violate its duties under articles 2 (2) and 3 of the Covenant to ensure non-discrimination and equal protection of rights.**

**Land remediation after industrial activities**

The General Comment acknowledges how industrial activity and unsustainable land management practices reduce the availability and quality of land,[[37]](#endnote-37) but does not address States’ positive obligations to ensure that actors responsible for degrading a given tract of land are held accountable for its remediation. The Committee articulates the need for States to “create the conditions for regeneration of biological and other natural capacities and cycles” and ensure that “land use for agricultural and other purposes respects the environment and does not accelerate soil depletion and exhaustion of water reserves.”[[38]](#endnote-38) However, **we recommend that the Committee more specifically address the duty of States to guarantee, consistent with the polluter pays principle, that businesses—not the public—bear responsibility for returning land they degrade or contaminate to a safe and healthy state, including through proper decommissioning.**

The pervasive environmental and health impacts associated with the improper closure and clean-up of oil and gas operations provide a clear example of the harmful legacy that intensive land use activities can leave behind. Improperly closed oil and gas wells can leak methane and other toxic substances like radioactive brine and known carcinogens into the water and soil, compounding the damage they cause throughout their operation.[[39]](#endnote-39) For communities on the frontlines of oil and gas production—who tend to be already economically, politically, and/or socially marginalized segments of the population, including low-income and Indigenous communities[[40]](#endnote-40)—the negative health and environmental consequences of unplugged wells and un-remediated drilling sites compound existing inequalities and threats to human rights.

**Thus, to preserve the quality and health of land where industrial activities have taken place for both existing and future generations, we urge the Committee to include the following recommendations in the General Comment:** **(1) In line with the “polluter pays” principle, States should ensure that public and private operators of land-based or land-intensive industrial activities anticipate, plan for, and cover the costs of closure and cleanup of their activities, so that neither the financial burden nor the risk of harm associated with decommissioning and/or environmental remediation falls on the public and future generations. (2) States should require that environmental impact assessments for land-based or land-intensive industrial activities, including agribusiness and natural resource extraction, address decommissioning-related risks and post-closure environmental remediation measures up front, to enable informed public consultation and environmental decision-making.**

**Conclusion**

CIEL thanks the Committee for the opportunity to present this submission. For any questions or clarification, please do not hesitate to reach us at ukhatri@ciel.org or nreisch@ciel.org.

1. Draft General Comment No. 26 at para. 55. [↑](#endnote-ref-1)
2. Paris Agreement to the United Nations Framework Convention on Climate Change, Preamble, Dec. 12, 2015, T.I.A.S. No. 16-1104) (“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”). [↑](#endnote-ref-2)
3. *See, e.g.*, CESCR, Concluding observations on the sixth periodic report of Canada, Doc. No. E/C.12/CAN/CO/6, para. 54 (2016) (requesting that States fully engage Indigenous Peoples in related climate policy and program design and implementation); Comm. on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined eighteenth and nineteenth periodic reports of El Salvador, U.N. Doc. CERD/C/SLV/CO/18-19, para. 21 (2019); Comm. on the Elimination of Discrimination against Women (CEDAW), 44th Session, Statement of the CEDAW Committee on disaster risk reduction, gender and climate change (2009). [↑](#endnote-ref-3)
4. Interim Report of the Special Rapporteur on the Right to Food, U.N. Doc. A/70/287, para. 67 (2015) *See also* U.N. Special Rapporteur on the Rights of Indigenous Peoples, Thematic Study on the Impacts of Climate Change and Climate Finance on Indigenous Peoples’ Rights, U.N. Doc. A/HRC/36/46 at para. 50 (2017)(explaining that that “[c]limate change projects may create barriers to indigenous landownership” as they often occur on Indigenous territory absent consultations “to ensure the free, prior and informed consent of the affected peoples”). [↑](#endnote-ref-4)
5. IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Part A: Global and Sectoral Aspects, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Chapter 7, p. 517 (2014) [hereinafter IPCC Working Group II Contribution to AR5]. [↑](#endnote-ref-5)
6. IPCC, *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, Chapter 7, p. 750 (2019). [↑](#endnote-ref-6)
7. *See, e.g.,* Interim Report of the Special Rapporteur on the Right to Food, U.N. Doc. A/70/287, para. 68-69 (2015). [↑](#endnote-ref-7)
8. *See, e.g.*, CESCR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, U.N. Doc. E/C.12/GC/24, para. 10 (2017). [↑](#endnote-ref-8)
9. *See* Center for International Environmental Law, [*Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement*](https://www.ciel.org/wp-content/uploads/2021/02/Rights-Carbon-Caution.pdf), p. 10 (2021). [↑](#endnote-ref-9)
10. *See* IPCC, *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, at Summary for Policymakers, p. 17, para 3.3.4; Technical Summary, p. 34 (2018) [hereinafter IPCC 1.5SR]. [↑](#endnote-ref-10)
11. *See* IPCC 1.5SR, Summary for Policymakers, at p. 14, fig. SPM.3b (Pathway P1); Technical Summary, at p. 34; Chapter 2, at p. 115, para. 2.3.3, p. 121-24, para. 2.3.4.1; Chapter 2-Supplementary Materials, at p. 2A-28, Table 2.SM.12. [↑](#endnote-ref-11)
12. IPCC, *Technical Summary*, in: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Sect. TS 3.3.2 (2021). [↑](#endnote-ref-12)
13. For example, the U.S.’s new Nationally Determined Contribution (NDC) makes a reference to supporting CCS for the industrial sector. *See* The White House, Statement, [*FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*](https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/)(Apr. 22, 2021). And the bipartisan infrastructure package moving through the U.S. Congress contains significant subsidies for DAC, as well as other carbon capture technology. *See* Alleen Brown, [*Bipartisan Infrastructure Bill Includes $25 billion in Potential New Subsidies for Fossil Fuels*](https://theintercept.com/2021/08/03/bipartisan-infrastructure-bill-climate-subsidies-fossil-fuel/), The Intercept (Aug. 3, 2021). Regarding private actors, *see, e.g.*, Press Release, Chevron, “[Microsoft, Schlumberger Collaborate on Carbon Negative Bioenergy](https://www.chevron.com/stories/chevron-microsoft-and-schlumberger-partner-on-carbon-negative-bioenergy),” (Mar. 4, 2021); Press Release, ExxonMobil, “[ExxonMobil expands agreement with Global Thermostat, sees promise in direct air capture technology](https://corporate.exxonmobil.com/News/Newsroom/News-releases/2020/0921_ExxonMobil-expands-agreement-with-Global-Thermostat-re-direct-air-capture-technology),” (Sept. 21, 2020). [↑](#endnote-ref-13)
14. *See generally* Fajardy, Mathilde et al, Grantham Institute, Briefing paper No. 28, “[BECCS deployment: A reality check](https://www.imperial.ac.uk/media/imperial-college/grantham-institute/public/publications/briefing-papers/BECCS-deployment---a-reality-check.pdf),” (2019). *See also* Center for International Environmental Law, [*Fuel to the Fire: How Geoengineering Threatens to Entrench Fossil Fuels and Accelerate the Climate Crisis*,](https://www.ciel.org/reports/fuel-to-the-fire-how-geoengineering-threatens-to-entrench-fossil-fuels-and-accelerate-the-climate-crisis-feb-2019/) at pp. 31-33 (2019) [hereinafter *Fuel to the Fire*]. [↑](#endnote-ref-14)
15. *See* June Sekera and Andreas Lichtenberger, *Assessing Carbon Capture: Public Policy, Science, and Societal Need* 5(14) Biophys. Econ. Sust*.* (2020) (finding that using DAC to remove 1 gigaton of CO2 may require a land area roughly 10 times the size of Delaware and could use prodigious amounts of water). [↑](#endnote-ref-15)
16. *See* IPCC SR 1.5, Chapter 2, Section 2.3.4.2 (pointing out that “DACCS and BECCS rely on CCS and would require safe storage space in geological formations, including management of leakage risks and induced seismicity”). *See also* Center for International Environmental Law, [*Confronting the myth of carbon-free fossil fuels: Why carbon capture is not a climate solution*](https://www.ciel.org/wp-content/uploads/2021/07/Confronting-the-Myth-of-Carbon-Free-Fossil-Fuels.pdf), Environmental Working Group, pp. 10-11 (2021). [↑](#endnote-ref-16)
17. *See*, *e.g.*, David E. Dismukes et al., *Integrated Carbon Capture and Storage in the Louisiana Chemical Corridor* (2019). [↑](#endnote-ref-17)
18. *See Confronting the myth of carbon-free fossil fuels: Why carbon capture is not a climate solution*, supra n. 16, at 8. [↑](#endnote-ref-18)
19. *See id.*, at 4; *see also* *Fuel to the Fire*, supra n. 14, at 23-27 (discussing the energy intensity of DAC and how it props up fossil fuels). [↑](#endnote-ref-19)
20. *See “*BECCS deployment: A reality check,” *supra* n. 14, at 5-6. [↑](#endnote-ref-20)
21. *See*, *e.g.*, IPCC Working Group II Contribution to AR5, *supra* n. 5, at 517 (observing that while Indigenous and local knowledge will be challenged by climate change and is often ignored in climate change policy and research, “their mutual recognition and integration with scientific knowledge will increase the effectiveness of adaptation”). [↑](#endnote-ref-21)
22. *See*, *e.g.*, Draft General Comment No. 26 at para. 55; CESCR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, U.N. Doc. E/C.12/GC/24, para. 12 (2017). [↑](#endnote-ref-22)
23. Inter-American Commission on Human Rights (IACHR), *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47/15, para. 27 ( 31 Dec 2015) [hereinafter IACHR Extractive Industries Report]; Oxfam America, [*Free, Prior, and Informed Consent in Africa An Emerging Standard for Extractive Industry Projects*](https://s3.amazonaws.com/oxfam-us/www/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF) p. 27 (2014); World Health Organization, [*Mercury and Health*](http://who.int/en/news-room/fact-sheets/detail/mercury-and-health) (31 Mar 2017) (last accessed Aug. 2, 2021). [↑](#endnote-ref-23)
24. *See* Sarah Wingfield et al., *Challenges to Water Management in Ecuador: Legal Authorization, Quality Parameters, and Socio-Political Responses*, 13 Water 1017 (2021). *See also* Marlon Puertas, [*Water sources under threat from mining in Ecuador’s mountain*](https://news.mongabay.com/2017/11/water-sources-under-threat-from-mining-in-ecuadors-mountains/)*s,* Mongabay (Nov. 22, 2017). [↑](#endnote-ref-24)
25. IACHR Extractive Industries Report, *supra* n. 23, at para. 17, 274, 294. [↑](#endnote-ref-25)
26. *Id.* at para. 304-315. *See also* Human Rights Watch*, “*[*When We Lost the Forest, We Lost Everything” Oil Palm Plantations and Rights Violations in Indonesia*](https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_web.pdf) (2019); Matthew Bozigar et al., *Oil Extraction and Indigenous Livelihoods in the Northern Ecuadorian Amazon,* 78 World Dev. p. 125–135 (2016). [↑](#endnote-ref-26)
27. IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers,* p. 5 (2014) (“Emissions of CO2 from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010 (high confidence)”); IPCC, *Climate Change and Land*, *supra* n. 6, at p. 42 (noting that land use contributes 25% of GHG emissions, particularly CO2 emissions from deforestation). [↑](#endnote-ref-27)
28. *See* Directorate-General for External Policies of the European Union, *Indigenous Peoples and Climate Change*, Doc. No. EXPO/B/DROI/2009/03 p. 12 (2009); FAO*,* [*Forest Governance by Indigenous and Tribal Peoples: An Opportunity for Climate Action in Latin America and the Caribbean*](http://www.fao.org/3/cb2953en/cb2953en.pdf), p. 31 (2021). [↑](#endnote-ref-28)
29. Draft General Comment No. 26 at para. 35. [↑](#endnote-ref-29)
30. *Id.* at para. 35. [↑](#endnote-ref-30)
31. Press Release, CESCR, “Climate change and the International Covenant on Economic, Social, and Cultural Rights,” para. 6 (Oct. 8, 2009) [hereinafter CESCR statement on climate change and the ICESCR]. *See also* CEDAW; CESCR; Comm. on the Protection of the Rights of All Migrant Workers and Members of their Families; Comm. on the Rights of the Child; Comm. on the Rights of Persons with Disabilities; Joint Statement on “Human Rights and Climate Change,” para. 2 (2019) (noting that the effects of climate change “threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights.”) [hereinafter Joint Statement on Human Rights and Climate Change]. [↑](#endnote-ref-31)
32. IPCC, *Climate Change 2021: The Physical Science Basis*, *Summary for Policy Makers*, SPM-5, para. A.1(2021) (“It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.”). [↑](#endnote-ref-32)
33. *See* CESCR statement on climate change and the ICESCR, *supra* n. 31, at para. 4 (explaining that “[p]rojected increases in average seasonal temperatures and the frequency and intensity of heat waves will contribute to an increase in heat-related deaths,” and “put between 100 million and 400 million more persons at risk of hunger and could result in over 3 million additional deaths from malnutrition each year.”); World Health Organization, [*Climate Change and Health*](https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health.), Fact Sheet (1 Feb, 2018). [↑](#endnote-ref-33)
34. *See, e.g.*, Resolution adopted by the Human Rights Council on 1 July 2016, at preamble, para. 13, A/HRC/RES/32/33 (July 18, 2016) (recognizingthat children are among the most vulnerable to climate change); Office of the U.N. High Commissioner for Human Rights (OHCHR), *Analytical Study on the relationship between climate change and rights of the child*, paras. 20, 55, U.N. Doc. A/HRC/35/13 (May 4, 2017) (noting that “[a]ll children are exceptionally vulnerable to the negative impacts of climate change”); *see also* John H. Knox (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Report on the relationship between children’s rights and environmental protection*, paras.22-26, 69, U.N. Doc. A/HRC/37/58 (Jan. 24, 2018); Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change: Fact Sheet No. 38*, p. 24 (2021). [↑](#endnote-ref-34)
35. CESCR statement on climate change and the ICESCR, *supra* n. 31, at para. 6 (echoing the language of the Paris Agreement at art. 4.3). *See also* U.N. Human Rights Council, Resolution adopted by the Human Rights Council on July 12, 2019, “Human rights and climate change,” U.N. Doc. A/HRC/RES/41/21, p.2 (2019); Joint Statement on Human Rights and Climate Change at para. 2. [↑](#endnote-ref-35)
36. CESCR, General Recommendation No. 15: The Right to Water, E/C.12/2002/11, para. 11 (2002). *See also* CESCR,General Recommendation No. 12: The Right to Adequate Food (Art. 11), E/C.12/1999/5 (1999). [↑](#endnote-ref-36)
37. Draft General Comment No. 26 at para. 2. [↑](#endnote-ref-37)
38. *Id.* at para. 37. [↑](#endnote-ref-38)
39. Center for International Environmental Law, [*Toxic Assets: Making Polluters Pay When Wells Run Dry and the Bill Comes* *Due*,](https://www.ciel.org/wp-content/uploads/2021/04/Toxic-Assets-Report.pdf) p. 6 (2021). [↑](#endnote-ref-39)
40. *Id. See also* United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, *Implications For Human Rights Of The Environmentally Sound Management And Disposal Of Hazardous Substances And Wastes*, UN Doc. A/75/290, para. 11 (Aug. 5, 2020) (“Around the world, industrial plants, landfills and other hazardous exposures are placed near areas where indigenous peoples, people of colour and racial and ethnic minorities, people of certain religions and low-income populations live, posing grave risks to their health and environment.”) [↑](#endnote-ref-40)