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Written contributions – GC on land and ICESCR

Contribution to invitation by CESCR for written contributions to the draft general comment on Land and Economic, Social, Cultural Rights

August 2021

Submitted by:

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**KEY MESSAGES**

1. This contribution is to relate the draft of General Comment on Right to Land (GC RTL) to the United Nations Declaration Rights of Peasants and Other People Working in Rural Areas (UNDROP); and drawing key enumerations of “anti-discriminatory measures”. The enumerations contain the scope of subject (“challenges”), normative content, (contribution of) elaboration of standard set by the GC RTL.
2. This contribution is on sea nomads (based on the scope and definition in the article 1, 2, 3,4 of the UNDROP The reason on proposing these subjects is to seek and to develop applied framework into protection of “sea nomads” in the land and economic, social, and cultural rights.
3. The normative contents refer to articulation and intersections among rights in GC RTL (right, access to) and the UNDROP. We are of the opinion that these normative contents should be visibly reflected in the GC RTL.

**NON-DISCRIMINATION**

1. The principle of non-discrimination and equality shall apply towards sea nomads with particular attention to 2 (two) key context where they live: (1) the condition and the status of tenure, (2) fredoom of movement. The ESCR General Comment no.20 on non-discrimination in economic, social, cultural rights draws the formal and substantive discrimination, and the context of direct and indirect discrimination. Sea Nomads will be categorised into context of “member of group” and “multiple discrimination”.
2. On the tenure rights of Sea Nomads, this principle should consider the their vunerability arising from their way of life in which they identify themselves as part of the aqua-ecosystem. This should not interpreted as owning or as an exclusive control of a land and its ecosystem. Sea nomads lives the aqua-ecosytem, i.e. islands, shallow littoral ecosystem, forests and tributaries connecting to sea, and various natural resources. They manages them in sustainable ways, as a family livelihood, in non-wholesaly commercial use. They also depends on the climate -and disproportionately affected by climate change. The tenure defines their right to life.
3. On the freedom of movement, this principle should consider the their vulnerability arising from the way they sustainably manage a big area in their tenure. The movement is strongly associated with their adaption to seasons and to the need to manage their livelihood -how they connect with land people.
4. The discrimination could impact them in the context of citizenship and certification which are not particularly fit with the tenure of Sea Nomads. This could be particularly worse in the context of women Sea Nomads.
5. The discrimination could also relate with them of being nomadic. The regulatory context of a state could be alien to Sea Nomads. Sea Nomads could possibly adapt to this, but, it is clear that they are facing hard times to live in them. A state could be also unaware of this situation, or yet to catch to develop a framework to protect them. In this matter, UNDROP provides an important frame of protection towerds them.

**FRAMEWORK OF UNDROP**

1. The articles 1, 2, 3, 4 of the UNDROP enumerate and develop a protection of the rights of the small holder and communities of rural population. The definition and scope on the sea nomads is arising from the provision on, i.e.,

“….any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale “agriculture” [aquaculture and aqua-ecosystem] for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and non-monetized ways of organizing labour, and who has a special dependency on and attachment to “land” [“aqua-ecosystem”].

….any person engaged in artisanal or small-scale [aquaculture], agriculture, crop planting, livestock raising, pastoralism, fishing, … hunting or gathering, and handicrafts related to “agriculture” [aquaculture and aqua-ecosystem], or a related occupation in a rural area. It also applies to dependent family members of “peasants” (sea nomads).

… indigenous peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities…

…hired workers, including all migrant workers regardless of their migration status, and seasonal workers, …..in aquaculture ….

1. Sea nomads lives mostly in sea (blue and green water), aqua-ecosystem, in parcels and/or wide ecosystem of islands. They live mostly lives in vast areas, possibly covering several countries altogether, mostly in archipelagic areas. “Bajau”, the sea nomads of Southeast Asia, live mostly in Indonesia, but also moves and lives in the Philippines, and Malaysia. They strongly identified themselves with aqua-ecosystem where they live and foster their historical position, and values the meaning and practice of “movement in the water”. In several cases, they move across states (administrative term of country), and did not fit fully with the established system of tenure.
2. For quick reference, this contribution attach an annex a reference on Indonesian Sea Nomads.

**NORMATIVE CONTENT IN THE GC RIGHT TO LAND**

1. Para 4, 6, 7

They set the scope and extension of land in terms of/ in forms of natural resources, ecosystem (including aqua-ecosystem) which defines the life of sea nomads. These paras relate with the articles of 16 and 17 of UNDROP on the adequate standard of living and recognition of the “sea nomads” in the place and ecosystem where they live. Land, in terms of aqua-ecosystem, is fundamental in the livelihood of sea nomads

*We would propose a reference to aqua-ecosystem. If not the word/term, then, there should be a paraphrase of the article 16 and 17 articulating aqua-ecosystem.*

1. Para 5, 1, 21, 23

This provision explains a land [aqua-ecosystem] as social and cultural reality. This para relates with the article 17.3, 19.1.(c), 20.2 of the UNDROP on the “identity” and/or “rights holder” i.e. sea nomads. They live with a set of traditional knowledge, small-scale and indigenous pattern of livelihood.

*We would propose a reference to “sea nomads” as key term in explaining social and cultural (and historical) reality*

1. Para 25

This provision set a protection against forced eviction. These paras relate with the article of 17.4 and 24.2 of the UNDROP on the protection against forced eviction. The rule on tenure in one country often based on the regulatory foundation of the state -meaning based on one address or schedule, and on regulations which foster sedentary life. This disproportionately affects sea nomads, and could forcibly evicts them from the route of seafaring or of livelihood.

*We would propose a reference to additional explanation into “forced evictions”. Those should highlight the aqua-ecosystem and the vulnerability of sea nomads on matter of “forced evictions”.*

9. Para 38

This provision explains an extraterritorial obligation on implementation of Covenant obligation. This para relates with the article 7.2 and 27 of the UNDROP on freedom of movement and international cooperation. The reality of sea nomads hosts a wide forms and histories of “movement”. The obligation of the state is on facilitating and recognising this pattern of life.

*We would propose a reference into one form of extraterritorial obligation governing the movement of sea nomads, and undertaking an international cooperation onto it.*

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**Annex**

*“Suku laut”, norm and recognition*

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“Suku Laut” is known by Indonesian and by scholars around the world as “sea nomads” and “semi-nomadic communities” living in archipelago. Here, archipelago denotes Indonesia, and, by lesser extent to ecosystem of islands in the sea. “Suku laut” could be transliterated as sea-wanderer community though this transliteration is not precisely correct. At any rate, though, “Suku Laut” is to drawn here as “semi-nomadic communities living in archipelago”.

The communities are truly semi-nomadic. Both in pre-republic and during republic period, this communities living in semi-nomadic way in a very expansive maritime ecosystem. In a simple term, it is safe to say that they are living in aqua-ecosystem as vast as an area of Europe (though Europe is a land massive while archipelago is more of the sea than land). Living their life, they develop their traditional knowledge, code of leadership, navigation analysis and skill, and a projection of worldview towards the archipelago. Their way of life is so different with a legal system developed by “normal” nation-state. They are in constant moving, though not in a short period time. This makes them cannot fit into a system of “identification card” or “population management” (in Indonesian legal system: “adminduk”).

In reality, the study on “suku laut” is an expansive one. In principle, though, a concept of recognition should be assessed.

The study

By a background, the “expert testimony” in which our member served in the Indonesian Constitutional Court in 2011 will bring some normative context and the discussion into “islands reality” of Indonesia. The court ruling in favor of petition in which case the Court stroke down key provision on “exclusivity” in a maritime ecosystem area. In this, also, there is a strong push by the court towards enumeration of “parties” in the marine ecosystem. This is, to date, the only key source of legal enumeration of recognition in the context of the marine ecosystem.

The process of, which one of our members has been part of, the UNDROP -United Declaration Rights of Peasants and Other People Working in Rural Areas- since its very start in 2008 in UN Human Rights Council to adoption in 2018 in UN General Assembly (“the process of La Via Campesina”) set a norm and develop an implementation of protection for small-holder, community of rural population. Still, the development of body of law, body of knowledge still in progress. In the UNDROP, the maritime community is recognised as one of several groups in the rural areas who claim the protection of human rights. The UNDROP is an expansive legal document, but it is a very concise in formulation. It needs various follow-up and in-depth process so as to be formative in the human rights protection towards this category.

C. key framework

The key framework, when it is developed carefully, should address the “nomadic”, “semi-nomadic reality”, “maritime reality”, “(problem of) identity” and the role and the limit of “regulatory state”. It is sure that a state should frame the protection towards Suku Laut (as recognition), while attend to the limitation, so far, wordings of law and effective engagement towards Suku Laut.

For comparative look, available publication in public are of several, including the work of Cynthia Chou on Indonesian Sea Nomads, and several working papers from Indonesian Institute of Science (LIPI) mainly of the work of Dedi Adhuri.

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