



# LAND AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

OBSERVATIONS ON THE DRAFT GENERAL COMMENT BY THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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## 1. INTRODUCTION

Amnesty International welcomes the call from the Committee on Economic, Social and Cultural Rights for comments on the Draft General comment No. 26 (2021) on land and economic, social and cultural rights. The comments below should not be seen as an exhaustive list of issues but include priority suggestions on ways in which key provisions in the draft General Comment can be strengthened. The structure of this document follows the outline of the draft General Comment.

Amnesty International suggests that in **paragraph 1** when recognizing the pressure on land resources in terms of growing populations and environmental degradation, it would also be important to recognize that that some climate change mitigation measures such as compensatory afforestation, bioenergy or bioenergy with carbon capture and storage are highly land-intensive and increase pressure on land.<sup>1</sup>

We therefore suggest the following amendment for inclusion (suggested text in italics): “The question of land tenure systems is becoming increasingly important as the world’s growing population requires ever more food security and as environmental degradation and climate change reduce the availability and quality of land. *At the same time, some climate change mitigation measures such as compensatory afforestation or bioenergy with carbon capture and storage also add additional pressure on land and are increasingly associated with human rights violations against land-dependent communities.*”

Given the important role played by planning policies and processes in exacerbating segregation in terms of housing and land<sup>2</sup>, Amnesty International suggests the following amendment (suggested text in italics) in **paragraph 2**: “In cities, the competition between different groups for access to and control over land is exacerbated by gentrification of certain urban areas and by the financialization of housing markets, which encourage speculation and inflation. In rural areas, competition for arable land is the combined result of demographic growth, urbanization and the sprawl of urban areas, pressures resulting from large-scale

<sup>1</sup> See Amnesty International, ‘*Stop Burning Our Rights! What Governments and Corporations must do to Protect Humanity from the Climate Crisis*’, Index: POL/30/3476/2021, June 2021, pp82 <https://www.amnesty.org/download/Documents/POL3034762021ENGLISH.PDF>

<sup>2</sup> See for example, Amnesty International, ‘*Destination Occupation: Digital Tourism and Israel’s Illegal Settlements in the Occupied Palestinian Territories*’, Index: MDE 15/9490/2019, 2019, pp32 <https://www.amnesty.org/en/latest/campaigns/2019/01/destination-occupation-digital-tourism-israel-illegal-settlements/>

Also see Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context ‘*Right to Housing for Residents of Informal Settlements*’, [A/73/310/Rev.1](#) 19 September 2018

development projects, and the use of land for tourism and other purposes. *Urban and rural planning policies and processes also frequently exacerbate racial and other forms of segregation in housing and land use in both rural and urban areas.*"

In **paragraph 2**, it would also be important to recognize the role of mining and large-scale infrastructure projects in addition to large-scale agriculture as noted in the current draft of the General Comment, as key in the fueling of tensions with small scale subsistence agriculture and other forms of localised land-use.

Furthermore, Amnesty International also recommends that the General Comment provides a definition of the term "land grabs" used in **paragraph 2** as the term is often and variedly used to describe a range of situations including illegal land seizures as well as lawful alienation of land and its subsequent concentration due to existing power imbalances.

In **paragraph 4**, when discussing developments in human rights standards, it would be important to correct footnote 7 which in the current draft includes ILO Convention 169 among 'soft law' instruments. It is important to note that ILO 169 is a convention that has been ratified by several states and cannot be categorized as 'soft law'.

In **paragraph 7**, Amnesty International suggests including language that acknowledges that changes in land use including deforestation and turning forests areas and other ecosystems into grazing land for commercial cattle farming or for commercial agriculture results in higher green-house gas emissions and reduces the capacity of land to act as an important sink for CO2.

## 2. PROVISIONS IN THE COVENANT RELATING TO LAND

Amnesty International suggests the following amendments (shown in italics) to **paragraph 9** in order to strengthen the point concerning the importance of land in realizing the right to adequate housing.

In the context of evictions carried out in violation of human rights standards and to dispel any possibility of misunderstanding, we suggest the following amendment (with suggested text in italics):

"The right to housing, that is, the availability, accessibility and affordability of housing, may be violated where people are evicted from land where they had built housing, whether informally or not. Such evictions ~~can be~~ *are often* conducted without respecting the requirements established in the Covenant, which the Committee has clarified in its general comments No. 4 (1991) and No. 7 (1997) *thus resulting in forced evictions which are a human rights violation*".

Furthermore, when exploring the linkages between the access to land and the right to housing, it would be important for the General Comment to recognize that the availability of land is also key for the provision of sufficient and affordable housing. Amnesty International also recommends that in **paragraph 9** and throughout the General Comment, the term 'shelter' is replaced with 'housing'. The use of 'housing' instead of 'shelter' in the General Comment is important as 'housing' is a term defined in international human rights law and standards as a right including components that are beyond merely shelter or a roof over one's head.

To sum up, Amnesty International suggests the following changes to **paragraph 9** of the General Comment:

Secure access to land is a precondition for the enjoyment of several rights under the Covenant. The right to housing, that is, the availability, accessibility and affordability of housing, may be violated where people are evicted from land where they had built housing, whether informally or not. Such evictions ~~can be~~ *are often* conducted without respecting the requirements established in the Covenant, which the Committee has clarified in its general comments No. 4 (1991) and No. 7 (1997) *thus resulting in forced evictions which constitute a human rights violation*. Those standards were further developed in the basic principles and guidelines on development-based evictions and displacement presented in 2007 by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living.<sup>3</sup> *The availability of land is also critical for states to create sufficient affordable housing stock with accompanying infrastructure in order to fulfil its obligations under the right to adequate housing*. Access to land in urban areas not only provides space for ~~a shelter~~ *housing*; household-related areas, including gardens, can also be places for domestic work in the informal and formal economy, as well as non-domestic work performed in the home. Houses in rural areas are normally built on the plot of land that is also used for production purposes. The loss of such land therefore often affects the right to housing, the right to food or access to employment.

Beyond the governance of land tenure and given the fundamental role that access to land plays in the realisation of several human rights, including the rights to housing, food, water, and sanitation, Amnesty International recommends that the language in paragraph 8 is amended to adequately reflect this linkage. We therefore suggest the following amendments (in italics) to paragraph 8: "While the Covenant does not affirm a self-standing "right to land", *access to land is a number of its provisions are fundamental to the realization of a number of economic, social and cultural rights.*" ~~relevant to the governance of land tenure.~~

<sup>3</sup> 'Basic Principles and Guidelines and Development-based Evictions and Displacement', Annex 1, A/HRC/4/18 page 13

In **paragraph 10**, we suggest the explicit inclusion of women among those for whom special measures must be put in place in the context of agrarian reforms aimed at achieving equitable access to land. We therefore suggest the following additions (in italics) to **paragraph 10**

“The Committee is of the view that effective agrarian reforms aiming at equitable access to land will ensure the realization of the right to adequate food and that such reforms should include special measures to address the situation of landless persons, indigenous peoples and other disadvantaged and marginalized groups, *including women who often form a significant portion of these groups*, as echoed in paragraph 8.1 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.”

In **paragraph 11**, we suggest inclusion of the right to sanitation as one of the rights impacted when individuals and communities are denied access to the land that they occupy. The recognition of the right could be included as follows:

“The right to water is infringed where communal grounds are enclosed, depriving people from access to water sources necessary to meet their daily needs. *Additionally, forced evictions that result in homelessness and deny people access to the land that they occupied can also result in the violation of the right to sanitation.*”

## 3. OBLIGATIONS OF STATES PARTIES UNDER THE COVENANT

### 3.1 NON-DISCRIMINATION AND EQUALITY

Amnesty International suggests the inclusion of the term ‘intersectional’ in **paragraph 14** where the General Comment recognizes the different forms of discrimination. We therefore suggest the following amendment (suggested text in italics): “States parties are required to eliminate all forms of discrimination, formal, substantive, direct, indirect, multiple and *intersectional*, and to take appropriate measures to ensure substantive equality.”

In **paragraph 15**, where the current draft of General Comment notes the groups that are at particular risk of discrimination in the governance of land tenure, titling, agrarian reform and land registration, Amnesty International suggests the inclusion of landless peasants and agricultural workers, communities practicing a nomadic way of life, and people who belong to categories identified in General Comment 20 as vulnerable to discrimination including on grounds of sex/gender, sexual orientation and gender identity, marital and family status, disability and nationality. It is equally important that the General Comment recognizes the systemic discrimination faced by groups such as the Roma or Indigenous peoples living in urban settings when accessing land or housing.<sup>4</sup>

Continuing with **paragraph 15**, Amnesty International expresses concern that as currently framed, the draft General Comment appears to suggest that the formalization of customary rights automatically leads to individual titling. However, this does not necessarily have to be the case. The Inter-American Court of Human Rights in *Awas Tingni Community v. Nicaragua* has called for “demarcation and titling of the indigenous communities’ territory, in accordance with their customary law, values, customs and mores.”<sup>5</sup>

Amnesty International also suggests closer and more explicit referencing to CEDAW’s General Recommendation 34 where the General Comment discusses women’s access, control and ownership of land in **paragraphs 16 and 17** by recognizing women’s equal rights to land in the context of agrarian reform, land acquisition and resettlement, and in land registration, titling and certification schemes.<sup>6</sup>

### 3.2 OBLIGATION TO RESPECT

In **paragraph 21**, recognizing that in many instances forced evictions and the unequal concentration of land can be attributed to inadequate and incomplete land registration systems, Amnesty International suggests adding the following (in italics) to the opening sentence: “Land registration *should be carried out as a matter of urgency and priority and along with land administration, should be carried out without any discrimination, including discrimination based on the existing tenure systems, or resulting from change of marital status, lack of legal capacity and lack of access to economic resources.*”

<sup>4</sup> See Amnesty International ‘*Serbia: Roma Still Waiting for Adequate Housing*’ Index: EUR 70/1308/2015, April 2015

<https://www.amnesty.org/download/Documents/EUR7013082015ENGLISH.PDF> and Amnesty International and Community Self-Reliance Centre, ‘*Violations in the Name of Conservation: What Crime Had I Committed By Putting my Feet on the Land that I Own*’, Index: ASA 31/4536/2021 July 2021 <https://www.amnesty.org/download/Documents/ASA3145362021ENGLISH.PDF>

<sup>5</sup> Inter-American Court of Human Rights Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua Judgment of August 31, 2001 (Merits, Reparations and Costs)

<sup>6</sup> CEDAW, ‘*General recommendation No. 34 on the rights of rural women*’, March 2016, paras 57, 58 and 78

In order to strengthen the rights of Indigenous peoples to traditional lands, Amnesty International recommends the following changes (in italics) in **paragraph 23**: “Therefore, indigenous peoples have the right to have their lands demarcated, and relocation is allowed only *after consultations have taken place in order to obtain their free prior and informed consent*. ~~under narrowly defined circumstances and, in principle, with the prior, free and informed consent of the groups concerned.~~ ... Both the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights have taken the view that members of indigenous communities who have ~~unwillingly lost possession of~~ their lands *without their free, prior and consent*, after a lawful transfer to innocent third parties “are entitled to restitution thereof or to obtain other lands of equal extension and quality”.

Amnesty International is also concerned that **paragraph 25** when discussing forced evictions uses the term interchangeably with evictions. The current draft therefore erroneously states ““Forced evictions are prima facie incompatible with the Covenant and **can be justified only in the most exceptional circumstances** [emphasis added].” As reference, the draft General Comment cites paragraph 1 of CESCR’s General Comment 7. However, while paragraph 1 of General Comment 7 (1997) states that forced evictions are prima facie incompatible with the Covenant, it does not state that they can be “justified in the most exceptional circumstances.”<sup>7</sup> The articulation of forced evictions in the current draft of the General Comment is not only inaccurate under international law but also a retrograde step, which risks reversing progress made in the last 25 years towards entrenching the fact that forced evictions constitute a human rights violation and should never be carried out under any circumstances. This is emphasized by the Committee when in Paragraph 3 of General Comment 7 on forced evictions, it specifically clarifies, “The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. **The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights** [emphasis added].

Amnesty International is therefore calling for urgent steps to amend paragraph 25. We suggest that in line with General Comment 7, which has further developed the articulation and understanding for forced evictions as a human rights violation and the UN Basic Principles and Guidelines on Development-based evictions and Displacement, paragraph 25 is amended as follows:

“States should provide all persons with a reasonable degree of tenure security that guarantees legal protection against forced evictions. More generally, the Covenant imposes on States a duty to abstain from interfering with land users’ legitimate tenure rights, in particular by evicting occupants from the land on which they depend on for their livelihoods. Forced evictions are prima facie incompatible with the Covenant ~~and can be justified only in the most exceptional circumstances.~~<sup>8</sup> The relevant authorities must ensure that ~~forced~~ evictions are *only* carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality between the legitimate objective of the eviction and its consequences for the evicted persons.”

Amnesty International also strongly recommends that the General Comment includes the requirement for states parties to introduce and implement national level legislation that explicitly prohibits forced evictions and sets out a framework for eviction and resettlement processes to be carried out in line with international human rights law and standards including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

In order to ensure that resettlement meets the standards required as per the right to adequate housing, Amnesty International suggests the inclusion of the following (in italics) in **paragraph 26**: “The standards for alternative ~~accommodation~~ *housing* must *meet the criteria of adequacy as outlined in General Comment 4* and require that the ~~accommodation~~ *housing* ~~be~~ is safe and that it provides *security of tenure, accessible* access to public services, including education, health care, community engagement and livelihood opportunities.

### 3.3 OBLIGATION TO PROTECT

In **paragraph 19**, while acknowledging the Committee’s clarification that the term “legitimate tenure rights holder” was developed during the negotiations of the Voluntary Guidelines in 2012 in order to clarify the fact that legitimate tenure rights holders include not only those with formal land titles, but also those with customary, collective or traditional tenure rights that might not be recognized by law.” Amnesty International is concerned that the term may exclude many urban dwellers whose

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<sup>7</sup> The confusion probably arises because paragraph 18 of the preceding General Comment 4 (1991) on the right to adequate housing states “In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” The later General Comment 7 developed the concept of forced evictions further and made clearer the distinction between evictions – including by force - and forced evictions, which are unequivocally recognized as a human rights violation and therefore can never be justified.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 1.

use of land in urban and peri-urban areas may not be covered by customary, collective or traditional tenure systems even though their occupation and use of the land is essential in order for them to access their rights to food, housing, water and work. Amnesty International therefore suggests the following changes (in italics) to paragraph 19 and for these to be reflected throughout the General Comment where the term 'legitimate tenure rights' may be used.

"19. States parties should recognize and respect existing access to land ~~for~~ ~~of~~ ~~all~~ ~~those~~ ~~who~~ ~~legitimate~~ ~~tenure~~ ~~right~~ ~~holders~~, ~~depend~~ ~~on~~ ~~the~~ ~~land~~ ~~given~~ ~~that~~ ~~secure~~ ~~access~~ ~~to~~ ~~productive~~ ~~resources~~ ~~such~~ ~~as~~ ~~land~~ ~~is~~ ~~crucial~~ to realize their right to food and the right to housing, *among other human rights*. That requires safe access to a place for ~~shelter~~ housing and home-based formal sector employment economic activities, as well as domestic economic activities. ~~The term "legitimate tenure rights holder" was developed during the negotiations of the Voluntary Guidelines in 2012 in order to clarify the fact that legitimate tenure rights holders include not only those with formal land titles, but also those with customary, collective or traditional tenure rights that might not be recognized by law. States should refrain from any infringement of legitimate tenure rights, as such infringements would be inconsistent with the Covenant.~~

In line with the formulation of 'security of tenure' in General Comment 4, which notes "Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats." Amnesty International recommends that **paragraph 29** is amended as follows: "States parties should protect access to land ~~of legitimate tenure rights holders~~ by ensuring that *no one is they are not arbitrarily forcibly* evicted and that their access rights to land are not otherwise extinguished or infringed by third parties."

In order to strengthen the protection of human rights in the context of land-based investments Amnesty International suggests the following amendments (in italics) to **paragraph 30**: "*Human rights Ex ante* impact studies assessments must ~~need to~~ be conducted to identify potential harm and options to mitigate it.

In **paragraph 33**, and in order to also ensure that titling processes do not further entrench existing power imbalances, Amnesty International suggests the inclusion of the following sentence: "*States must ensure that any titling process that involves determining competing claims to land protects the rights of those most at risk of marginalization and discrimination whilst addressing historic injustices*".

In **paragraph 35**, Amnesty International would like to highlight that while it is important for states to support beneficiaries of land redistribution schemes to use the land productively, it is equally important for states to support the beneficiaries to engage in sustainable agricultural practices in order to, *inter alia* sustain the productivity of land. Continuing in **paragraph 35**, Amnesty International highlights the importance of adding the following groups of people (in italics) "Redistribution of land and agrarian reforms should pay particular attention to access to land by young people, *women, communities facing racial and descent-based discrimination, and others belonging to marginalised groups*, and respect and protect collective and customary tenure of land."

## 4. SPECIFIC TOPICS OF RELEVANCE TO THE IMPLEMENTATION OF COVENANT RIGHTS IN LAND-RELATED CONTEXTS

### 4.1 ASSESSMENT AND MONITORING

In **paragraph 49**, in order to strengthen monitoring of access to land, Amnesty International recommends that the General Comment includes a requirement for states parties to develop human rights consistent benchmarks and indicators which would not only evaluate access to land but also do so from an equality and non-discrimination perspective.

### 4.2 HUMAN RIGHTS DEFENDERS

In light of the increasing cases of violence including killings, gender-based violence, forced evictions and displacement faced by human rights defenders raising concerns around access to land, Amnesty International highlights the urgent need for states to put in place all necessary measures and resources to protect human rights defenders including through individual and collective protection measures in line with the Resolution on 'Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development'<sup>9</sup>. Amnesty International also recommends the inclusion of requirements on non-state actors including businesses to respect the rights of human rights defenders including those working on land issues.

<sup>9</sup> See para 9 of A/HRC/RES/40/11

## 4.3 CLIMATE CHANGE

Acknowledging that climate change is already impacting access to land, Amnesty International suggests the following changes (in italics) to **paragraph 54** “The impact of climate change on access to land, affecting ~~legitimate~~ user rights, ~~will be~~ *is* severe in many countries. Sea level rise has an impact on coastal zones for housing, agriculture and access to fisheries. The rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods ~~will~~ affects access to land

In the same paragraph, Amnesty International would like to emphasize the impact of climate change on land and therefore suggests adding the following in italics: “*Climate change contributes to land degradation and desertification.*”<sup>10</sup> The rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods will affect access to land.” When referring to states’ duty to mitigate emissions Amnesty International recommends that, besides mentioning obligations under the Paris Agreement, the Committee stresses that states also have such duty under human rights law, in particular by referring to some of the Committee’s statements in this regard.<sup>11</sup> In addition, Amnesty International recommends highlighting that among climate change mitigation measures that lead to absolute emission reductions and particularly to the phasing out of fossil fuel production and use should be prioritized over offsetting measures and CO2 removal mechanisms that would delay climate action and have serious negative implications for access to land and other related human rights of Indigenous peoples and local communities.

In **paragraph 55**, in order to mitigate the impact of climate change related adaptation and mitigation measures on local communities, Amnesty International suggests including the requirement for states to put in place just transition measures. We suggest including this point (suggested text in italics) as follows: “Cooperation mechanisms for climate change mitigation and adaptation measures must provide *and implement* a robust set of environmental and social safeguards *and just transition mechanisms* to ensure that no project negatively affects human rights and the environment whilst guaranteeing access to information for and to meaningful consultation with those affected by such projects.”

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<sup>10</sup> See [https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM\\_Updated-Jan20.pdf](https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf) (section A2)

<sup>11</sup> See ‘*Climate change and the International Covenant on Economic, Social and Cultural Rights*’ Statement of the Committee on Economic, Social and Cultural Rights, 8 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=Ehttps://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998> also UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 37: Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 7 February 2018, UN Doc. CEDAW/C/GC/37, para 43; and UN Human Rights Committee (HRC), General Comment 36: Article 6: Right to life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 62

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