



IWGIA and AIPP submission on the draft general comment on Land and Economic, Social and Cultural Rights of the Committee on Economic, Social and Cultural Rights - 11 08 2021

IWGIA and AIPP welcome the opportunity to make comments and inputs to the draft general comment on Land and Economic, Social and Cultural Rights. The right to land is fundamental for the livelihoods, food security, identity and very survival of the worlds more than 450 million Indigenous People, and it is therefore very important that the unique dimensions of Indigenous Peoples' land rights feature clearly in the general comment. While some references to Indigenous Peoples are made in the draft document, IWGIA and AIPP believe that these should be strengthened and further developed.

As for overall comments, IWGIA and AIPP agree with and endorse the comments submitted by the Indigenous Peoples' group convened by Indigenous Peoples' Rights International (IPRI) and the comments submitted by the International Land Coalition (ILC).

IWGIA and AIPP have furthermore made the below concrete text suggestions to the draft general comment text, which are marked with red and bold for ease of reference. We have likewise made comments to specific paragraphs. The suggestions and comments follow the structure of the draft general comment text. Our suggestions and comments are as follows:

I. Introduction

Para. 1:

Line 4: "The sustainable use of natural resources depend largely on how individuals, **Indigenous Peoples, local** communities and others have access **and rights** to land and how land use is governed."

Line 6: "Eradication of hunger and poverty and guaranteeing the livelihoods of individuals, groups, **Indigenous Peoples and local communities** depend on the secure and equitable access to and control over land of those individuals, groups, **Indigenous Peoples** and communities.

Line 11: "Furthermore, land is not only a resource for producing **and generating** food, generating income..."

Line 12: "... it also constitutes the basis for various social, cultural and religious practices **and for their entire identity**, as well as the ..."

Line 14: "Recent years have shown increased competition for access to and control over land and the distribution of geographical space. **In the case of Indigenous Peoples, this often leads to land grabbing, displacement or evictions and forced relocations without their Free, Prior and Informed Consent**"

Line 17: "... being used by peasants, rural communities, pastoralists and indigenous **peoples, communities** or as natural reserves and forests".

Para. 2:

Line 5: "... resulting from large-scale development projects, and the use of land for tourism, **expansion of conservation areas, extractive industries, land grabbing by powerful elites**, and other purposes".

Line 7: "... as well as climate change, combined with a growing demand for agricultural commodities for food, bioenergy, fibre, **minerals** and feedstock."

Line 10: "... to meet the needs of **Indigenous Peoples** and other local communities",

Para. 3:

Line 1: “The lack of **recognition** and protection of tenure rights increases vulnerability, hunger, poverty and socioeconomic inequality and can lead to conflict and environmental degradation. **Indigenous Peoples** and other **marginalized groups** might be forced to abandon the land **they have traditionally owned or otherwise occupied** when competing users fight for control of those resources. Conflicts over land also are frequent in armed conflicts, military occupation in border areas **or due to land taken for military purposes** and in ...”

Para. 4

Line 15: “Other relevant soft law instruments, **such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, have been developed to describe the obligations and ...”

Para. 5

Line 1: “In many social **and cultural** contexts, the value of land cannot be reduced to...”

Line 9: “...its role as a social and cultural good is recognized, **including their property ownership systems.**”

Comment: Para. 5 should also focus on customary law and traditions, customary property ownership systems and collective ownership of land.

Para. 6

Comment: Para. 6 should reflect Indigenous Peoples’ governance rights as recognized in the UNDRIP.

Para. 7

Line 1: “Land use should be sustainable in order to maintain the long-term social, economic, **cultural**, and environmental functions that land provides to human beings. A stewardship approach is vital and needed to protect **biodiversity** and common ecosystem resources, including for the preservation of intact forests, wetlands, **costal areas, watersheds** and grasslands. **Indigenous Peoples have practiced such stewardship approach for generations. Scientific research and data corroborate that Indigenous Peoples effectively steward large tracts of intact forests, freshwater ecosystems, and associated biodiversity in today’s world.**”

Para. 8:

Line 7: “How individuals, **Indigenous Peoples**, communities and business actors gain access ...”

Line 12: “Those systems determine the ways in which individuals, **Indigenous** peoples, communities and others can use specific resources..”

Comment: Para. 8 notes that the aim is to clarify the specific obligations contained in 4 articles of the Convention, including article 1 on the Right to Self-Determination. However, the right to self-determination is not further addressed in the draft General Comment. For Indigenous Peoples, land rights and the right to self-determination are closely linked, and it will therefore be important to elaborate further on the right to self-determination.

Overall comments on section I

There is a need to ensure coherence about the use of the term “Indigenous Peoples” as right holders. Different terms are used throughout the document.

The introduction should include a paragraph specifically addressing the diverse dimensions and importance of lands to Indigenous Peoples; their traditional use, ownership, and control of vast territories and regions; the profound relationship they have with their lands and traditional territories; etc. A reference to the UN Declaration on the Rights of Indigenous Peoples and its provisions on lands and territorial rights of Indigenous Peoples should be included.

II. Provisions in the Covenant relating to land

Para. 12:

Line 3: “... such as when the land serves as a basis for their social, cultural and religious practices or for the expression of their cultural identity. **This is often the case for Indigenous Peoples whose cultural identity,**”

collective customs, practices, and institutions are closely linked with their lands and territories and the unique relationship they have with their environment and ecosystems systems.

Para. 13:

Line 4: “ In conjunction with ineffective or absent land-governance laws, policies and urban and rural spatial planning processes, competition for access to and control over land can lead to direct and indirect limitations on the equal access to, use of and control over land. **Lack of recognition of the right to use of and control over land result in lack of protection against land grabbing, dispossession and displacement, particularly of Indigenous Peoples and other marginalized groups.**

Overall comments on section II

The general comment should take into account that not all Indigenous Peoples practice agrarian economies or are agrarian societies.

The general comment should take into consideration that in many cases agrarian reforms have served as means to dispossess Indigenous Peoples from their lands and territories and have led to the distribution of their lands and territories to third parties.

III. Obligations of States parties under the Covenant

A. Non-discrimination and equality

Para. 15:

Line 12: “... in order to encourage “development” of such lands by investors, may exclude such people from access to resources **that they have traditionally owned or used and on which they depend for their survival as distinct peoples.** States therefore have an obligation to guarantee security of tenure for all legitimate land users **and rights holders**, particularly those who depend on collective or communal land use schemes.

Comment to Para. 15: In the case of Indigenous Peoples, it is not only an issue of being excluded from access to resources, it is mainly an issue of violating their inherent rights to lands, territories and natural resources, which are internationally recognized by UNDRIP.

Para. 17:

Line 2: “Land is also important to enhance women’s engagement in ~~household~~ decision-making and for their participation in ~~rural~~ institutions that could strengthen their decision-making power ...”

Comment to Para. 17: In the case of Indigenous Peoples, this section of the General Comment is crucial and a specific reference needs to be included on the importance of access and rights to land for Indigenous women. needs to be improved in order to accurately embrace the importance and nature of Indigenous Peoples’ lands and resources. Either in para. 16 or para. 17 a specific reference to the UNDRIP should be included as it explicitly expresses the distinct needs of Indigenous women in relation to equality and improvement of economic and social conditions.

B. Participation, consultation and transparency

Para. 18:

Line 2: “Individuals, **Indigenous Peoples**, and communities must be informed and meaningfully participate ...”

Line 8: “States parties must ensure, inter alia, the regular and effective production and dissemination of relevant information relating to all those processes **in all relevant languages, including Indigenous Peoples’ languages.** Such processes should be transparent, organized in the relevant languages, widely publicized and grant access to all relevant documents. Affected persons **or peoples** need to be contacted prior to any decision that might affect their livelihood rights”.

Comments to Para. 18:

In Para. 18, there should be added a specific reference to Articles 11, 23, 30 and 32 of the UNDRIP regarding requirements for effective consultation and free, prior, and informed consent (FPIC), which must be guaranteed before carrying out or authorizing any activity of exploitation of Indigenous Peoples’ traditional lands or natural resources.

In the last sentence of Para. 18, which refers to international legal developments in relation to Indigenous Peoples, the General Comment should elaborate further on the provisions of UNDRIP and the ILO Convention 169 regarding Indigenous Peoples' rights to lands, territories and resources.

C. Obligations of States parties under the Covenant as relating to land

Obligation to respect

Para. 20:

Line 4: "In addition, States parties should take immediate measures aimed at conferring legal security of tenure upon those **individuals**, households, **communities or peoples** currently lacking such protection, in genuine consultation with the persons and communities concerned.

Para. 22:

Line 3: "Disadvantaged and marginalized individuals, groups and **communities** should be supported in using those services and their access to justice should be guaranteed."

Para. 23:

Line 2: International human rights law provides for the respect and protection of the relationship of indigenous **peoples** with their lands, territories and resources..."

Line 9: "Therefore, indigenous peoples have the right to have their lands demarcated, and relocation is allowed only, in accordance with **the free, prior, and informed consent** of the communities concerned"

Comments to Para. 23:

The text on relocation should be improved. Relating to Indigenous Peoples, UNDRIP, ILO C169 and other jurisprudence must be referred to as they explicitly state that under no circumstances will Indigenous Peoples be forcibly relocated without their consent.

The text should be more clear and specific about the application of Indigenous Peoples' inherent rights regarding lands, territories and resources in order to avoid any misunderstandings about their application to non-Indigenous groups

Para. 24:

Line 12: "In addition, throughout the ~~developing~~ world, many rural households and **Indigenous Peoples' communities** still depend on gathering firewood for cooking and ..."

Para. 25:

States should provide all persons with **the highest** ~~a reasonable~~ degree of tenure security that guarantees legal protection against forced evictions.

Comment: Specific references to the UNDRIP provisions on evictions should be included in Para. 25.

Para. 26:

Line 1: "Where people **or communities** have been relocated and given alternative accommodation, those circumstances must allow for access to the broader needs of a livelihood. **In any case, relocation must enable traditional livelihoods to continue.**

Line 7: "Prior to carrying out any evictions or shifts in land use which could result in depriving individuals **and communities** of access to their productive resources, States parties should ensure that all feasible alternatives are explored in consultation with the affected persons **and communities**, ..."

Para. 27:

Line 1: "Where the State owns or controls land, it should ensure that the legitimate tenure rights of individuals, **Indigenous Peoples** and **local** communities in relation to that land ..."

Line 7: "**Indigenous Peoples and** local communities that have traditionally used the land should be considered in the reallocation of tenure rights."

Para. 28:

Line 4: "...paying particular attention to tenants, **Indigenous Peoples**, peasants ..."

Para. 29:

Line 1: “States parties should protect access to land of legitimate tenure rights holders by ensuring that they are not arbitrarily evicted and that their **traditional ownership** and access rights ...”

Para. 30:

Line 3: In all those processes, affected persons, **communities or** groups should have access to complaint mechanisms that allow them to challenge decisions of local governments, **national governmental institutions, private sector**, investment boards or other relevant parties ...”

Comments to Para. 30:

The first sentence of this Para. should include a clear reference to the UN Guiding Principles on Business and Human Rights.

The reference to early participation is unclear. In the case of Indigenous Peoples, both the UNDRIP and the ILO Convention 169 have specific provisions on “participation”.

Para. 31:

Line 4: “Large-scale land investments risk violating Covenant rights because they normally affect a large number of smallholders and **Indigenous Peoples’ communities**, whose informal land ...”

Para. 32

Comment: Para. 32 should include a clear reference to the UN Guiding Principles on Business and Human Rights.

Para. 33

Comment: Para. 33 does not capture the protection of collective/community lands, including the protection of Indigenous Peoples’ lands as per the UNDRIP.

Para. 34:

Line 1: “States parties must facilitate secure, equitable and sustainable access to, use of and control over land for those who are landless or live in poverty, especially women, **Indigenous Peoples** and **other** marginalized sectors of society”.

Comment: The text of Para. 34 should include an explicit reference to Article 28 of the UNDRIP on Indigenous Peoples’ right to redress.

Para. 35:

Comment: As mentioned in a previous comment, it is important to mention in Para. 35 that there are also numerous examples whereby Agrarian Reforms served as means to dispossess Indigenous Peoples of their lands and territories and distributing these among third parties. Cambodia is a good case in point.

Para. 36:

Line 7: “That implies that States have a duty to support agrarian reform schemes that respect human rights and ensure adequate **respect for customary land rights** and access to land, particularly for **Indigenous Peoples** and small-scale farmers who depend on access to land for their livelihoods

Para. 37:

Line 6: “... to strengthen livelihoods of people based on natural resources and the long-term conservation of land **like those practiced in particular by Indigenous peoples**”

Para. 39:

Comment: A foot note on the World Bank safeguards on Indigenous Peoples should be included in Para. 39.

IV Specific topics of relevance to the implementation of Covenant rights in land-related contexts

It seems a somewhat unfinished chapter, that mixes together very different issues. If there shall be such a chapter specifying some topics, then there should also be a specific section on Indigenous Peoples’ land rights.

Likewise there should be a specific section on main drivers of land dispossession and land grabbing.