



**Written Contribution to the United Nations Committee on the Economic, Social and Cultural Rights**

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

**SOUTH CENTRE\***

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**Introduction:**

The South Centre is an intergovernmental policy research think-tank composed of and accountable to developing country Member States. It conducts policy-oriented research on key policy development issues and supports developing countries to effectively participate in international negotiating processes that are relevant to the achievement of SDGs. The South Centre promotes the unity of the South in such methods while recognizing the diversity of national interests and priorities.

As mentioned by the UN Committee on Economic, Social and Cultural Rights (CESCR), the purpose of the general comment is to clarify the specific obligations of States parties relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights (ICESCR). In line with such an objective, the South Centre is keen to submit the following written contribution to the draft general comment on Land and Economic, Social and Cultural Rights (draft general comment). It will consider some of the concerns that developing countries have raised in relation to their development realities and needs, mainly arising from the challenges they face due to the current COVID-19 pandemic crisis and the need for a fair and inclusive recovery.

**1. The right to health, food security and access to land**

The world's food systems are highly dependent on small farming. Almost 80 percent of food consumed in Asia and Sub-Saharan Africa<sup>1</sup> is produced by small-scale agriculture. Similarly, although nearly 1.1 billion people work in agriculture, almost 2/3 of these workers are in developing countries and belong to rural and risk-vulnerable populations.<sup>2</sup> Deep economic and health crises and environmental and climate-related hazards have acute detrimental impacts on the

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<sup>1</sup> See: Kanayo F. Nwanze, *Viewpoint: Smallholders can feed the world*, International Fund for Agricultural Development, available in [https://www.ifad.org/documents/38714170/40706188/Smallholders+can+feed+the+world\\_e.pdf/460ca6c2-7621-40d8-9f79-a56f6f8fa75e#:~:text=There%20are%20some%20500%20million,Asia%20and%20sub%2DSaharan%20Africa](https://www.ifad.org/documents/38714170/40706188/Smallholders+can+feed+the+world_e.pdf/460ca6c2-7621-40d8-9f79-a56f6f8fa75e#:~:text=There%20are%20some%20500%20million,Asia%20and%20sub%2DSaharan%20Africa). (accessed on 15 July 2021).

<sup>2</sup> See: Emily Cassidy and Amelia Snyder, *Map of the Month: How many people work in agriculture*, ResourceWatch (2019) available in <https://blog.resourcewatch.org/2019/05/30/map-of-the-month-how-many-people-work-in-agriculture/> (accessed on 15 July 2021).

communities and peoples working in agriculture (particularly peasants and indigenous peoples), and therefore severe effects on food production systems and adequate nutrition for all.

The current COVID-19 pandemic is a clear example of the linkages between food security and the right of peoples and communities working in agriculture. According to the Food and Agriculture Organization, world hunger increased in 2020. The prevalence of undernourishment (PoU) increased from 8.4 to around 9.9 percent in just one year, heightening the challenge of achieving the Zero Hunger target by 2030.<sup>3</sup> Compared with 2019, almost 117 million more people have been affected by hunger in the world's most vulnerable regions. Peasants, indigenous peoples, and people working in rural areas are significantly affected by these crises. Still, its consequences on food security and malnutrition reach urban households, commodity markets, and the overall economy of States.

The draft general comment recognizes the obligation to protect and fulfill the right to access land, not only for legitimate tenure right holders but also for customary tenure and those at higher risk of being disposed of their land, mainly landless persons and people living in poverty.<sup>4</sup> The Committee's jurisprudence on disproportionate evictions of land and housing has motivated many reforms in legal regimes, particularly on analyzing the proportionality of the measures and analysis of vulnerabilities of evicted persons.<sup>5</sup> Similarly, fiscal and financial reforms could limit the livelihood of peasants and other peoples living in rural areas, and migrating to urban centers for finding other means of income becomes necessary.

Following this line, it will be essential to include an analysis of the policies and means required to respond to structural and persistent factors that limit access to land and severely impact the economic, social, and cultural rights of the most vulnerable. For example, structural discrimination and inequality might give rise to social conflicts with prolonged periods of rural population displacement. The lack of capacity building and exchange of technology for small-scale farmers could also limit the modernization of their cultivation methods and improvement in productivity, limiting sustainable practices and affecting their capacity to competewith the industrial production of food.

In addition, as rightly pointed out by the draft general comment, the right to health may also be affected when pesticides are used for industrial agriculture. Antimicrobial resistance (AMR) also requires attention given the linkages between the use of antimicrobials in food production, the exposure of antibiotic residues to the environment, and its consequences for the health of humans and ecosystems. The use of antimicrobials for non-therapeutic and growth promotion intensive agriculture might offset poor biosecurity practices. In turn, much of the antimicrobials consumed by animals is excreted, entering manure that might fertilize croplands, making the soil microbiome a potential reservoir of antibiotic-resistant genes. Moreover, some studies have found that exposure to herbicides (glyphosate, glufosinate, and dicamba) increases the prevalence of resistance genes and mobile genetic elements in the environment).<sup>6</sup> Antimicrobials residues can persist in active form, affecting nomadic pastoralism and distressing the food production chain.<sup>7</sup> Traditional forms of agriculture or

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<sup>3</sup> FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021, Transforming food systems for food security, improved nutrition and affordable healthy diets for all* (2021) in available in <http://www.fao.org/3/cb4474en/cb4474en.pdf> (accessed on 15 July 2021).

<sup>4</sup> See: Committee on Economic, Social and Cultural Rights, General Comment No. 26 on land and economic social and cultural rights (draft), UN Doc. E/C.12/69/R.2 (2021), para. 15, 19, 29-37 and 46.

<sup>5</sup> See: Committee on Economic, Social and Cultural Rights, Communication No. 85/2018, UN Doc. E/C.12/69/D/85/2018 (2021) and Communication No. 20/18, UN Doc. E/C.12/67/D/52/2018 (2020) under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

<sup>6</sup> See: Hangpeng Liao, et al., *Herbicide selection promotes antibiotic resistance in soil microbiomes*, *Molecular Biology and Evolution*, Volume 38, Issue 6 (2021).

<sup>7</sup> See: Kathryn E. Arnold, Nicola J. Williams and Malcolm Bennett, *Disperse abroad in the land: the of wildlife in the dissemination of antimicrobial resistance*, *The Real Society* (2016) available in <https://royalsocietypublishing.org/doi/10.1098/rsbl.2016.0137> (accessed 21.07.2021)

agroecological practices that limit herbicides and antimicrobials should be supported and encouraged. Similarly, capacity building from UN agencies, as FAO and OIE (International Organization for Animal Health), on improving biosecurity practices and preventive measures would be essential to reduce the use of antimicrobials in food production non-therapeutic purposes.

## 2. The need to guarantee the rights of peasants and human rights defenders

The draft general comment refers to the right of peasants and human rights defenders as specific topics of relevance to the implantation of the Covenant rights in land-related contexts. In this regard, it will be essential to emphasize that the COVID-19 related measures have increased the pressure over food production, particularly the linkages between urban centres and rural food producers.<sup>8</sup> The contribution of peasants and other people in rural areas is crucial 'in ensuring the right to adequate food and food security.'<sup>9</sup> Therefore, the effective implementation of peasants and other people's rights in rural areas could serve as an important example of how international cooperation and dialogue can improve human conditions under a broader understanding of the promotion, protection, and fulfilment of all human rights. Promoting the rights of peasants at the domestic level could increase the opportunities for lowering the costs of nutritious food and promote a more sustainable food supply chain.<sup>10</sup> In addition, peasants have the right to have access to land, pastures and forests to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures through the implementation of the United Nations Declaration of the Rights of Peasants and other people working in rural areas (UNDROP).<sup>11</sup>

On the other hand, the role of human rights defenders in promoting the right to land has gained relevance in the face of increasing social repression linked to agribusiness and resource-intensive business practices, particularly extractive industries. Although special emphasis has been given to the security facet of human rights defenders, the broader well-being of human rights defenders, their families, and communities does require attention.<sup>12</sup> Human rights defenders have critical psychological consequences from their work, linked to the mental and emotional effects of stigmatization and constant fear, and the difficulties surrounding the financial aspects of their work.<sup>13</sup> Human rights defenders can be relocated to reduce their risk, given the number of physical security and well-being threats. Nonetheless, such relocation might increase the struggle that human rights defenders face regarding social and cultural contexts, such as access to education and health for their families and housing. In such cases, the rights of

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<sup>8</sup> See: FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021*, p. 101.

<sup>9</sup> Maria Natalia Pacheco Rodriguez y Luis Fernando Rosales Lozada, *The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas: One Step Forward in the Promotion of Human Rights for the Most Vulnerable*, Research Paper No. 123, South Centre (2020), p. 42 in <https://www.southcentre.int/wp-content/uploads/2020/11/RP-123.pdf>

<sup>10</sup> See: FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021*, p. 101.

<sup>11</sup> United Nations Declaration on the Rights of Peasants, adopted by the United Nations General Assembly in its 55<sup>th</sup> Plenary Meeting, UN Doc A/RES/73/165 (2019) in <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Declaration%20on%20the%20rights%20of%20peasants.pdf> (accessed 26.07.2021) See also: Luis Fernando Rosales,

*The implementation of the UN Declaration on the Rights of the Peasants and other people living in rural areas: what is next?*, Policy Brief, South Centre (forthcoming)

<sup>12</sup> See: Michel Forst, *World Report on the Situation of Human Rights Defenders*, United Nations Special Rapporteur on the Situation of Human Rights Defenders (2018), p. 10 available in [https://media.business-humanrights.org/media/documents/files/documents/UNSR\\_HRDs- World\\_report\\_2018.pdf](https://media.business-humanrights.org/media/documents/files/documents/UNSR_HRDs- World_report_2018.pdf) (accessed 20.07.2020)

<sup>13</sup> See: Alice M. Nah, et al, *Wellbeing, Risk and Human Rights Practice*, Human Rights Defenders Hub, University of York, Policy Brief 1 (2017) available in <https://static1.squarespace.com/static/57ab08756a49635fe426003e/t/58ee2a3debbd1a718d29553c/1505738548404/HRD+Hub+Policy+Brief+1+EN.pdf> (accessed 21.07.2021)

human rights defenders should not only be limited to physical security but also consider the financial support and adequate housing arrangement to facilitate recovery and well-being of them and their families.<sup>14</sup>

### 3. Human rights and business enterprises

Agroindustry and resource-intensive businesses have been responsible for increasing food prices and food shortages since the beginning of the century as large land transactions between 'host' governments and corporations have included thousands of hectares, putting at risk food security and poverty, alleviation, and sustainable livelihoods.<sup>15</sup> Although corporate social responsibility (CSR) intends to create sustainable and responsible business practices, CSR has not been able to cope with the dynamics of economic globalization where the wealthiest 1% of the population has accumulated more wealth than the rest of the whole world. 40% of the global wealth concentrates in 147 transnational corporations.

Nevertheless, the effects of agroindustry are not limited to land ownership but have also impacted rural workers' lives. The financial processes required for food production are not linked with the territory where production occurs. On the contrary, financing processes are detached from rural and local structures, which creates more speculative pressures on markets and products,<sup>16</sup> thereby limiting access to finance for small producers and increasing land inequality.

Given the significant role that the private sector plays in the appropriation of land and the exploitation of natural resources, it is vital to continue the negotiations for the adoption of a legally binding instrument on business and human rights<sup>17</sup> while promoting the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs).<sup>18</sup> Private actors must adopt a corporate culture based on respect for human rights and establish adequate measures for compliance with human rights obligations, including the prevention, mitigation and remediation of human rights abuses.<sup>19</sup> The effective recognition of the right to development could provide an essential basis for developing public policies and international cooperation towards the full enjoyment of human rights and reducing poverty and inequalities.

### 4. Just transition, climate change and access to land

The international community has widely recognised that mitigation and adaptation to address the effects of climate change require an "enhanced action in an effective and appropriate international response following their common but differentiated responsibilities and respective capabilities."<sup>20</sup> Developing countries face development challenges linked to chronic food insecurity and malnutrition, natural resource degradation and climate change, and just

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<sup>14</sup> See: *The Barcelona Guidelines on Wellbeing and Temporary International Relocation of Human Rights Defenders at Risk*, para. 18-24, available in <https://static1.squarespace.com/static/58a1a2bb9f745664e6b41612/t/5de6a0d7ae38e0103312349b/1575395544981/The+Barcelona+Guidelines+-+EN+%28Final%29.pdf> (accessed 22.07.2021).

<sup>15</sup> See: Land Matrix public database, available in <https://landmatrix.org/> (accessed 21.07.2021)

<sup>16</sup> Ward Anseeuw and Giulia Maria Baldinelli, *Uneven Ground: Land Inequality at the Heart of Unequal Societies*, Research Findings from the Land Inequality Initiative, International Land Coalition and Oxfam (2020) in [https://d3o3cb4w253x5g.cloudfront.net/media/documents/2020\\_11\\_land\\_inequality\\_synthesis\\_report\\_uneven\\_ground\\_final\\_en\\_spr\\_ead\\_low\\_res\\_2.pdf](https://d3o3cb4w253x5g.cloudfront.net/media/documents/2020_11_land_inequality_synthesis_report_uneven_ground_final_en_spr_ead_low_res_2.pdf) (accessed 21.07.2021)

<sup>17</sup> Daniel Uribe and Danish, *Designing an International Legally Binding Instrument on Business and Human Rights*, South Centre (2020), in [Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf](#) (southcentre.int) (accessed 22.02.2021)

<sup>18</sup> UN Guiding Principles on Business and Human Rights (UN HRC, UN Doc A/HRC/17/31).

<sup>19</sup> *Ibid*, Principle 11 (commentary).

<sup>20</sup> Conference of the Parties, Report of the Conference of the Parties on its Twentieth Session, UN Doc. FCCC/CP/2014/10/Add.1, (2014), p. 6.

transition to renewable energies. Indeed, climate variability and extremes are not only threatening food security and nutrition but can also trigger human displacement and migration and increase poverty, inequality, and vulnerability.<sup>21</sup>

While the production of and access to renewable energy to address environmental degradation and poverty<sup>22</sup> is one solution, it brings with it several challenges directly linked to access to land. Energy transition, particularly in the renewable sector, is land-intensive, and it could present a threat for people and communities that depend on land for their survival. Moreover, a baseline study focusing on the impacts of renewable energies on human rights has shown that less than 50% of companies have not included any human rights commitment in their internal policies.<sup>23</sup> Therefore, it would be necessary to promote a just transition that preserves the right to land and abides with the principles of transparency and inclusiveness.

Engaging collaboration at all levels of public decision making and paying particular attention to the participation of grassroots and vulnerable groups can play a crucial role to realize the right to access land through the exchange of relevant experiences and good practices, and the provision of innovative solutions for tackling the unique challenges faced by developing and least developed countries in this area.

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<sup>21</sup> See: FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2021*, p. 65

<sup>22</sup> Adrian J. Bradbrook and Judith G. Gardam, *Human Rights Quarterly*, Vol. 28, No. 2 (May, 2006), pp. 389-415

<sup>23</sup> Business and Human Rights Resource Centre, *Renewable Energy Risking Rights & Returns: An analysis of solar, bioenergy and geothermal companies' human rights commitments*, September 2018 in <https://www.business-humanrights.org/sites/default/files/Solar%2C%20Bioenergy%2C%20Geothermal%20Briefing%20-%20Final%200.pdf>