

BHRE Research Series. Research Brief no. 1. March 2023**The CESCR General Comment No. 26 on ~~the right to~~ Land and Economic Social and Cultural Rights.**

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In December 2022, the Committee on Economic Social and Cultural Rights (CESCR) adopted a General Comment on the relationship between land and the ICESCR's provisions (GC26). The adoption comes after several years of discussions and based on the CESCR's review of States' parties reports, its own general comments and its views on communications. In this General Comment the CESCR clarifies the specific State parties' obligations in relation to Articles 1, 2, 3, 11, 12 and 15 as they are affected by land.

In our previous contributionⁱ we proposed the CESCR should consider the recognition of **a human right to land** under Article 11 on the right to an Adequate Standard of Living within the Covenant. Our main argument relied on the ineffectiveness of an already recognised but subordinate right to access to land. Such ineffectiveness was framed in a shift in the political economic context, where the State ceded the control of land in favour of transnational corporations. To address this gap a new -evolutive-interpretation was proposed. This evolutive interpretation demands the recognition of a specific right: a right not just to access but to use, and more importantly, a right to control the land. The final wording of the General

Comment No. 26 (GC26) does not recognise a right to land but expands a subordinate right to access to land into a right to use and control land under **a new concept of 'land-related Covenant Rights'**.ⁱⁱ This brief outlines the main points addressed in the General Comment.

The CESCR begins by acknowledging the close relationship between a number of economic social and cultural rights and land, as established in previous general comments, asserting the link between land and the right to food, housing, water and to take part in cultural life. It further **links land to other rights of the Covenant for the first time on a general comment**. These include: the right to the highest attainable standard of physical and mental health and the right to self-determination (paras. 6-11). All these rights are now framed as 'Covenant rights related to land' (paras. 22, 26 and 32) or 'land-related rights of the Covenant' (para.59).

As a foundation for addressing the issue of land and related rights of the Covenant, the CESCR affirms that although land is essential for the realisation of these rights, the current use and management of land are not conducive to such realisation. Some of

the factors identified are the increased competition for access and control over land; financialisation of housing markets; competition for arable land in rural areas; land degradation due to overuse; global trends including climate change and lack of strong legal and institutional framework for the governance of land (para. 2).

GC26 addresses the typology of State obligations to 'respect, protect and fulfil', nationally and extraterritorially, as it ordinarily does in its general comments. However, **it opts to not recognise land as a human right; in fact, the framework does not refer to a particular right. Instead, it develops specific States Parties' obligations to respect, protect and fulfil 'access to, use of and control over land' when this is necessary to guarantee the rights to food, housing, water, culture, health and self-determination: the new so called 'land related Covenant rights'**. It must be said that these entitlements, especially the control over land, had been consistently endorsed by scholars and civil society organisations as a central element of a human right to land and strongly suggested to be included in this General Comment. Nonetheless, by not being included a part of the content of a self-standing human right to land, land will continue to perform as a subordinate right whose guarantee is limited to the realisation of the aforementioned rights, which have been the human rights approach to land of the CESCR since it started to develop the link of land and the rights in the Covenant, approach that was expected to be changed with the adoption of this General Comment. In elaborating on the obligations to respect, protect and fulfil, **the General Comment focuses on land tenure security and the prohibition of forced evictions**. It calls states to

comply with specific duties such as respect and protect the user's legitimate rights and avoid, under any circumstances, the use of forced evictions; adopt legislative and other measures (including due diligence frameworks) to provide clear standards for non-State actors such as business entities in the context of large scale-land acquisitions and leases; and use the maximum of its available resources to progressively realise Covenant rights related to access to productive resources including agrarian reforms (paras. 22, 26, 30 and 37). Regarding extraterritorial obligations, the General Comment calls States to ensure that their activity or that of private actors do not deprive communities of access to land they depend on; that international agreements do not have an adverse impact on access to productive resources in other countries; and that they focus international cooperation and assistance on securing access to and security in land tenure (paras. 43, 45, 47).

Furthermore, GC26 pays special attention to particularly affected and discriminated groups such as women, indigenous peoples and peasants. Land is recognised to be a pivotal resource for women to meet their subsistence needs, access goods and services, enable political participation, foster independence and reduce their exposure to violence. **Also recognised is the central importance of land for the livelihoods of both indigenous peoples and peasants, and deriving from this, their definition as holders of the right to land** (paras. 13-19). GC26 highlights the impact of forced evictions and displacement on the enjoyment of land-related rights of the Covenant, considered a major threat for these groups. It further elaborates on the land issue in the context of internal armed conflicts and post-conflicts

situations; the impact of corruption in land administration; the particular risk faced by human rights defenders, especially those engaged in environmental protection; and the impact of climate change. Finally, the need to ensure that States effectively implement policy and legal frameworks relating to land and Covenant rights, and that they provide effective remedies is considered crucial in this context (paras. 59-61).

Positive outcomes for advancing in the protection of a human right to land may

derive from the adoption of the GC26. However, the endorsement of such important elements for the enjoyment of land-related Covenant rights, whilst **failing to recognise the existence of right to land as an standalone human right, represents a missed opportunity**. Indeed, in our view most of the factors that jeopardises the realisation of these rights, are the result of State's policies which facilitates control of land by third parties. Recognising a self-standing right to land would have contributed to bridge this gap.

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Dr Verónica Torres-Marengo is an associate member of the BHRE. She obtained her PhD at the University of Greenwich. Her dissertation entitled 'A Human Right to Land for Local Communities: A Proposal in the Context of Transnational Corporations' Control of Land Use' explored the protection of local communities' rights to land with a particular focus on Article 11 ICESCR on the right to an adequate standard of living. She has a law degree from Universidad del Norte (Colombia) and an LL.M degree in International Legal Studies from American University Washington College of Law (USA). Her work focuses on socio-economic rights, transnational corporations and global value chains. She has served as a consultant and taught several courses on Business and Human Rights. Before her studies at Greenwich, she was a lecturer at the law faculty of the Universidad del Norte (Colombia).

ⁱ [Veronica Torres-Marrenco, Towards a Human Right to Land: An evolutive interpretation of the International Covenant of Economic, Social and Cultural Rights. Submission in response to the Call for written contributions to the draft general comment \(No. 26\) on Land and Economic, Social and Cultural Rights. BHRE Research Series. August 2021.](#)

ⁱⁱ Further elaboration on this new standard can be found in the forthcoming book on the right to land and transnational corporations by Dr.Verónica Torres-Marengo to be published by Routledge.