



# ANGOC's contribution to the UN Committee on Economic, Social, and Cultural Rights' Draft General Comment No. 26 on Land and Economic, Social, and Cultural Rights<sup>1</sup>

## *Introductory Remarks*

The Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) was borne out of country consultations that culminated in the World Conference on Agrarian Reform and Rural Development (WCARRD) in 1979. Its founders from various Asian NGOs all held that agrarian reform was a fundamental element to eradicate poverty. While there have been many shifts in development advocacy through the decades, ANGOC continues to believe that land and resource rights are still essential to the development of

Asian rural communities. Land is NOT just an economic commodity but a necessary instrument of equity for the poor. Access and control to land and resources brings direct relief to rural poverty, but just as importantly, its democratizing effects enable other pro-poor reforms to work more effectively.

Tenure security to land brings livelihood, reduces social tensions and conflicts over resources, achieves sustainable management of lands, and improves overall peace for greater political and economic stability.

The current COVID-19 pandemic has reinforced the crucial need for secure land and housing tenure as never before. As small farmers across Asia remain in the frontlines of this pandemic, by continuing to be major food producers and suppliers, yet small farmers and producers rural artisans and indigenous peoples continue to be deprived of access and control over land, water,

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<sup>1</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is formulating a general comment on Land and Economic, Social and Cultural Rights. Such document seeks 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). As part of the public consultation process, CESCR has invited interested individuals and organizations to send in their comments on the draft. The draft can be accessed at <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCR-draft-GC-land.aspx>



forests and coastlines – resources on which depend for livelihoods.

Land rights are recognized when enforced. It is a continuing political process, since it involves changing power relations. Even after legislative reforms are instituted, there is a need for constant public vigilance and pressure to influence governments to exert political will for land rights. Thus, the ANGO network welcomes this initiative of the Committee of the Economic, Social and Cultural Rights in preparing a General Comment No. 26 on Land and Economic, Social and Cultural Rights.

Many of the land conflicts described in the initial paragraphs of the General Comment are pervasive in Asia. The roots of many land conflicts in Asian countries may be traced to enduring historical injustices, inequitable access to land and resources, faulty and weak implementation of past land and resource reforms, emergent clashes between statutory and customary tenure systems, misappropriation of State domains, and the lack of regard for human rights of the disadvantaged and vulnerable sectors.

On this note, the ANGO Network submits our inputs to this draft General Comment No. 26.

### ***On Women and Land Rights***

In Paragraph 16, the General Comment recognized the discrimination suffered by women as regards their land rights, most commonly their right to own property such as land. In the same paragraph, there is a statement directing States to monitor and regulate customary law as regards the right of women to inherit land.

While this statement dips into the topic of customary law, it fails to acknowledge the far stringent rules in many States against land

ownership by women. Such States usually observe religious laws in their State legislation. Religious laws embedded in national laws are much harder to change. The General Comment should emphasize the non-discrimination clause under Article 2, paragraph 2 of the Covenant as a State obligation to make their laws secular and grant land ownership rights to women, single women other than widowed and girls, with time-bound actions.

Even then, it has been seen in many cases in Asia where patriarchal tendencies overrule legislation giving equal rights of ownership to women. As the draft General Comment recognized such policy incoherence with implementation, the statement cited above was limited to inheritance laws. Such statement should encompass any and all rights pertaining to women owning land to give full effect to the Covenant's non-discrimination clause.

It would also be beneficial to underscore the phenomenon, especially in many parts of Asia, of agriculture being widely a female occupation. It has been observed that men leave farming in pursuit of work in urban cities; leaving the women in the countryside to till the land. This shift in gender profile should be reflected in States' policies, particularly the official recognition of women as farmers and their inclusion in all support services. States should recognize the role of women in food systems as producers and processors and implement policies, as regards land in particular, that support their activities.

Gender equity is a target only reached when women are finally always included and thoughtfully considered – rather than merely mentioned for compliance's sake – in policies, programs, and plans. It is primarily through empowering women and developing their capacities that rural women can learn to push



for sound reforms, not only in terms of land laws and policies concerning women, but including the wider spectrum of women's rights. The interrelatedness of human rights underscore that the mere grant of a right to own land to women does not allow them the full enjoyment of such right. It also means critically examining assumptions and expectations about gender roles – and asserting rights and entitlements of women, as provided in international conventions, national laws, and human rights declarations.

### ***On Indigenous People, Land, and the Environment***

In Paragraph 23, the General Comment should also take into account the unintended consequences environmental initiatives have on indigenous people. In Asia, it has been a common occurrence where government mandates to protect the environment undermine the rights of indigenous people.

For instance, the right of indigenous peoples to administer and manage the resources on their lands are taken over by government pursuant to environmental protection laws. This is most significant in Asia where 70 percent of indigenous peoples originate and such percentage is indicative of the vast area of their ancestral domains.<sup>2</sup>

The campaign of certain environment causes to protect wildlife and forests have also succeeded in establishing reserves and protected areas.

Unfortunately, such efforts have also displaced the indigenous peoples from their ancestral domains, where they have co-existed with wildlife and have tended the land's resources for centuries. In many Asian countries, indigenous communities

<sup>2</sup> *Indigenous Peoples in the Asia-Pacific Region* (FAO, 2018). <http://www.fao.org/3/ca2045en/CA2045EN.pdf>

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live in the remaining frontiers where biodiversity and forest ecosystems have been kept intact over many decades through customary practice, traditional management and sustainable use.

Therefore, States should recognize their obligation to respect indigenous peoples' rights and not subvert such rights in advancing other agenda. Furthermore, States should recognize the contribution of indigenous peoples in ecosystem conservation over the years by strengthening their collective rights in governing their ancestral domain.

In paragraph 23, the General Comment cited the remedies provided by the Inter-American Court of Human Rights and the African Commission on Human and People's Rights, but stopped short of declaring the provision of remedies a State obligation under the Covenant. It should be a State obligation to initiate independent inquiries and provide appropriate restitution to indigenous peoples removed from their lands through whatever means. In case where lands cannot be restituted, it should also be a State obligation to ensure the provision of safe and proper relocation, just compensation, and rehabilitation.

### ***On Defining Land Grabs***

Land grabs should find more emphasis in Paragraphs 25, 30, and 31. Apart from forced evictions, land grabs must be addressed, as they



are more insidious violations of land rights. In land grabs, people unknowingly lose their lands since many land grabs are legal in nature. Forced evictions are just one of the consequences of land grabs. Thus, the General Comment, being one focused on land rights, should adopt a definition of land grabs. Available definitions to consider are those from EcoRuralis,<sup>3</sup> which was endorsed by FAO.

Land grabs are characterized by gaining control over land, usually large areas, through means usually involving fraud or the assertion of dominance or force. This is possible due to the more “superior positions of money, power, knowledge, and influence” by land grabbers. As already indicated, many land grabs are legal as they are pursued under the auspices of government policies and legislation.

In Asia, it has been seen that massive land acquisitions by big business or conglomerates are attended by corruption and manipulation. Hence, land rights holders lose their rights because they are not given the opportunity to be involved with the process that lacks transparency. It is imperative that land grabs be defined in Paragraph 32 in order for States to be properly guided on their policies and to better protect its citizens.

Hand in hand with States’ obligations to protect persons from land grabs, is a shift in policy that emphasizes diversified and sustainable agriculture. This is most true in Asia where

conglomerates have been acquiring large areas of land for their home country’s food demands. Meanwhile, 75 percent of home farms are located in Asia; 80 percent of which are small scale. The latter constitute 87 percent of the world’s farms.<sup>4</sup> Together, they have been the backbone of Asian agriculture. Therefore, Articles 12 (a) and 12 (b) of the Covenant should not be interpreted to refer to industrial farming, but rather include small farms in the global food chain. This thrust should be elaborated in Paragraph 28.

### ***On Human Rights Defenders***

The paragraph dedicated to Human Rights Defenders lack reference to the pervasive shrinkage of civil space in many countries, including many States in Asia. This issue is at the front and center of Human Rights Defenders’ concerns, most especially those involved in the defense of land rights. In line with the Covenant, States should adopt effective measures to combat the culture of violence and impunity, and to protect human rights defenders, land and environmental defenders, including indigenous leaders and peasant activists.

### ***On Climate Change and Displacement***

The Sub-section on Climate Change needs to further elaborate on the displacement of people as a result of weather becoming more severe. It should be underscored that the root cause of land conflict may arise because of the effects of climate change. For instance, land erosion may result in the loss of food sources or shelter. It may also alter boundaries. Coastal areas of delta countries and tiny islands may sink or low-lying areas may become permanently flooded.

Any of such consequences further result in the displacement of peoples.

<sup>3</sup> “Land grabbing can be defined as being the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any person or entity (public or private, foreign or domestic) via any means (‘legal’ or ‘illegal’) for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights.” *What is Landgrabbing? A Critical Review of Existing Definitions.* (EcoRuralis, 2016). [https://drive.google.com/file/d/0B\\_x-9XeYoYkWSDh3dGk3SVh2cDg/view?resourcekey=0-NEtyTMQ5NXEHKvjMW96KNw](https://drive.google.com/file/d/0B_x-9XeYoYkWSDh3dGk3SVh2cDg/view?resourcekey=0-NEtyTMQ5NXEHKvjMW96KNw)



Mass rally against land encroachment by Trust (Guthi) in Dang, Nepal. Photo by CSRC.

On this aspect, States should have the obligation to ensure that policies are in place to protect those susceptible to loss of land as a result of climate change. There should be available remedies, safe and appropriate relocation, including compensation, for those who lose their lands. Moreover, in anticipation of the worsening impacts of climate change, States should take into consideration sustainable land use and management in their policy formulation.


The sub-section should also highlight that high poverty levels along with the lack of tenure security heighten the risks and vulnerability of people to the effects of climate change and natural disasters. This has led to rising casualties in terms of deaths and injuries, destruction to property, and people displaced by such events.

<sup>4</sup> Land Governance in Asia: Understanding the debates on land (Quizon, 2013). <https://d3o3cb4w253x5q.cloudfront.net/media/documents/FramingtheDebateLandGovernanceAsia.pdf>

While the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) was referred in the General Comment in other contexts, it was not mentioned in this sub-section on Climate Change. States should promote and utilize the VGGT as a “mandate” to protect tenure rights in the event of climate change and disasters. The VGGT is one of the few international documents that expressly mentions the linkages of tenure to climate change and natural disasters.

### ***On Global and Regional Shocks***

Under Part IV, it is recommended that a section dealing with global or regional shocks be added as sub-section “G”. The world has seen how economic crises and pandemics amplify the hardships of vulnerable and marginalized peoples and communities. Economic crises are cyclical in nature and the next economic bubble bursting may come soon after the economic recovery



from this pandemic. Epidemiologists have also predicted that zoonotic viruses causing outbreaks will become more common in light of rapid urbanization.<sup>5</sup>

These events have adverse effects on land rights. In the current pandemic, reports of human rights abuses related to land rights dramatically increased. Such abuses also extend to human rights defenders.

It is in these challenging circumstances where the free, prior, and informed consent is not observed in land dealings. Worse, it is also in these circumstances where communities, out of desperation, easily waive their right to free, prior, and informed consent, in exchange for ephemeral economic benefits.

Thus, in global or regional shock events, States should not waver in their efforts to protect land rights and any other right that affect the enjoyment of land rights. States should also implement social protection measures during such times, not only in terms of providing for subsistence, but also to alleviate peoples' vulnerabilities.

States should not use economic crises or pandemics as an excuse to suspend efforts at protecting land rights or withhold or divert resources from its instrumentalities engaged in land rights protection, whether directly or indirectly. States should ensure that judicial bodies and other instrumentalities providing

remedy to victims are able to resolve cases and disputes as far as practicable during crises.

Most importantly, in the recovery phase following a crisis, States should not employ economic recovery policies that give preference to huge investments in land or in the extraction of resources at the expense of land rights, which to some extent is an application of Article 2, paragraph 3 of the Covenant. States should be mindful of all interests in developing a recovery plan.

### ***On the UN Guiding Principles on Business and Human Rights***

The General Comment makes no mention of the UN Guiding Principles on Business and Human Rights (UNGPs). It is understood that the General Comment seeks to define State obligations under the Covenant as regards land rights. However, the pillars of the UNGPs address many gaps in systems that give rise to land conflicts. States should adopt and implement the UNGPs in land and resource governance and hold corporations accountable for upholding human rights. As an initial effort, governments should implement the UNGPs in the management and operations of State-owned enterprises. ■

<sup>5</sup> *How urbanization affects the epidemiology of emerging infectious diseases* (Neiderud, 2015). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4481042/>; *Does urbanization make emergence of zoonosis more likely? Evidence, myths and gaps* (Ahmed, Davila, Allen, et al., 2019). <https://journals.sagepub.com/doi/full/10.1177/0956247819866124>; *Urbanization and Disease Emergence: Dynamics at the Wildlife–Livestock–Human Interface* (Hassel, Begon, Ward, and Fevre, 2017). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5214842/>; *Urbanisation brings animals and diseases closer to home* (The Conversation, 2014) <https://theconversation.com/urbanisation-brings-animals-and-diseases-closer-to-home-34415>