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**TNI SUBMISSION TO UN COMMITTEE ON GENERAL COMMENT NO. 26 (2021) ON LAND AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS, V. 3 May 2021**

The Transnational Institute (TNI) has a long history of working on agrarian change and rural democratization and with social movements and civil society organizations in different countries in the Americas, Africa, Asia, and Europe.[[1]](#footnote-1) We actively work with others to shape the material and social conditions needed for all working people to live flourishing lives. We believe that by virtue of being human, all persons should have broadly equal access to the material and social means necessary to live a flourishing life. Human rights are part of the ethical framework supporting this view of a just society and are key to identifying remedies for when society falls short.

Human rights must grapple with fundamental challenges related to historical patterns of dispossession, expulsion, extraction, and exploitation dating back to colonialism and empire building that have produced the current state of dramatic land inequality and concentration. This has been continued in the 21st century with new modes of financialisation, speculation, grabbing, and commodification in addition to ongoing war, conflict and profiteering.[[2]](#footnote-2)

Moreover, structural changes in the way the economy and politics are organized have affected and negatively impacted ordinary working people in rural, peri-urban and urban areas in fundamental ways, many of whom are neither full-time farmer nor full-time waged worker. Families and households are struggling just to survive. How well households can cope depends on being able to simultaneously increase production for their own consumption, reduce what they buy in the market, and send those able to work out to take on (too often) low-waged ‘3D’ (dirty, difficult, dangerous) work in nearby towns or distant cities or abroad.

Having access to an array of natural resources is crucial for economic production *and* social reproduction; it is part of what enables ordinary people in rural villages, in peri-urban settlements, in urban spaces to cope with crises, calamities, and emergencies; and it is a source of social security and protection. It is a crucial component of the material and social conditions that working people need to just survive, but also to have a chance at building a dignified life.[[3]](#footnote-3) And yet many working people find themselves without access to the natural resources they need while trying to cope in the context of other emergencies as well (e.g., war/armed conflict, climate change, etc.).

The number of people on the planet who are living in situations of deep precarity marked by moderate or severe food insecurity[[4]](#footnote-4) or informal labour status[[5]](#footnote-5) is significant.[[6]](#footnote-6) We live in a time in human history when there is a significant gap between the very rich and the very many working poor. This raises – or should raise - basic ethical questions at the level of whole societies around ‘who owns what, who does what, who gets what, what happens to the wealth, and who decides’[[7]](#footnote-7) – and what can be done to change the situation so that no person must suffer deprivation, exploitation, and dispossession.

In this context, **TNI welcomes the initiative to draft a General Comment on Land and Economic, Social and Cultural Rights**. If nothing else, human rights is an idea that expresses an ethical aspiration that each and every person should have a reasonable chance to live a dignified life. Our societies can and should endeavor to create the material and social conditions needed for *all* (and not just a few) to live and flourish in this basic sense. We have an ethical obligation to see that everyone can make it over at least the minimum threshold, before a few are permitted to reach astronomical wealth. This implies taking remedial steps and measures based on five core and interrelated principles: the ‘5Rs’ (explained further below).

We identify three key substantive points where we believe the General Comment can still be further improved to centre this human rights ethic.

1. Land related human rights are about more than land tenure security. It is about the interconnectedness between landscapes, resources, social relations and how these are embedded within the global political economy.

Many different types of people use and rely on access to land for their economic security and social wellbeing including peasants, fishers, pastoralists, forest dwellers, indigenous peoples, landless persons, migrant workers, peri-urban and urban poor, women, youth as well as those that are part of future generations. These people need access to a range of natural resources for their economic production and social reproduction, as shown by the case of cross-border migrant workers from Myanmar, for example.[[8]](#footnote-8) Land in this sense is also an entry point to many other different types of landscapes including ocean spaces, forest spaces, wetlands, savannahs, deltas, inland waters, watershed areas, etc., which rural working people, their households and communities use, care for and depend upon. Taken together holistically, land is about social relations and human-nature interactions, and land politics is about a ‘bundle of rights’, access mechanisms, tenure systems, and property regimes.[[9]](#footnote-9)

Yet, too often, these complex and interwoven relationships are overridden by linear forms of development and a narrow conception of ‘land tenure security’ which fragments landscapes and the human-nature relationships that are co-constructed around them. Despite promises of economic opportunity or ‘land tenure security’, these forms of ‘development’ often up-end livelihoods and delicate socio-ecological balances.

For example, a case involving the establishment of an industrial tree plantation in Niassa province in Mozambique in the mid-2000s showed how homogenizing forms of development can negatively restructure local food production systems and set in motion a number of biophysical overrides.[[10]](#footnote-10) While the plantation project emphasized environmental integrity and community-based development, the compatibility of the mass planting of non-native pine and eucalyptus trees in a region where families’ livelihoods are based on small-scale agriculture (including the cultivation of beans, peanuts, maize, cassava, sweet potatoes and potatoes and livestock cattle keeping) complemented by hunting and fishing, and the gathering of forest products, must be fundamentally questioned. As a result of the project peasants found themselves cut off from access to fertile land, pastures and forests as their production systems were surrounded by the plantation, leading to fragmentation and dispersion, and an unravelling of traditional practices centred around mobile food production systems, in this case shifting cultivation.

2. Obligations to respect, protect and fulfil ESCR rights related to land must grapple with the complexity of the global economy in the 21st century which is becoming increasing financialised.

Today’s global economy is becoming increasingly financialised as processes of deregulation continue apace: the total value of global financial assets has increased from 120% of global GDP in 1980 to 316% of global GDP in 2010.[[11]](#footnote-11) Following the Great Recession and the collapse of the sub-prime mortgage market, finance capital accelerated into other sectors, including into the booming soft commodities market as part of a renewed global land and resource rush. The implications of the growing influence of finance capital over land, territories, and natural resources can be observed in the following dynamics:[[12]](#footnote-12)

* The emergence of **new actors** including financial actors (investment firms and banks, hedge funds, asset managers, brokerage companies, insurance companies, pension funds, venture capital funds);
* The creation of **new asset classes** as land, water, oceans, forests, biodiversity, natural cycles and other (common) goods are transformed into “investible” resources;
* The use of **new mechanisms** as many of the new assets are not tradeable as normal products (e.g. raw materials), requiring new financial instruments such as futures contracts, index funds, and derivatives;
* The formation of **new markets** in which these asset classes can be traded including in secondary markets, futures markets, and derivatives markets.

To illustrate the point with reference to a number of examples that TNI has analysed:

In Romania, investigative research uncovered that Rabo Farm Fund, a €315 million land investment fund owned by the Dutch Rabobank, was involved, through various subsidiary companies, in the buying up of contested land, sometimes without the consent or even knowledge of villagers.[[13]](#footnote-13) These revelations led to investigations by the national fraud and anti-corruption agency and questions about the fund’s due diligence procedures and ability to access EU Common Agricultural Policy subsidies despite not farming the land directly. The vast majority of Rabo Farm’s profits go to the fund’s shareholders which include Dutch and American pension funds.

In Ukraine, a ‘shadow market’ in grain production and trade leads to billions of dollars in yearly losses to the national budget. The shadow market includes such practices as the setting up of offshore companies to avoid taxation, the understatement of production and trade volumes to lower the taxable base, and the illegal transfer of state-owned land into private hands. Estimates suggest that Ukraine’s shadow market constituted between 40 to 45 per cent of its GDP in 2015, and up to 40 per cent of its grain market.[[14]](#footnote-14) Almost the entire corn export of Ukraine is routed through countries like Switzerland, Cyprus, the Virgin Islands, Panama and the UAE—some of the world’s major tax havens - even as the physical goods are delivered and consumed elsewhere. In this way, large agroholdings - which already benefit from their ability to enter into long-term lease agreements for vast tracts of land (sometimes amounting to tens of thousands of hectares for of up to 99 years) - can further extract and siphon off land-based wealth.

Financialisation is also occurring at the intersection between conservation and economic growth, for example with regards to coastal and ocean territories under so-called Marine Protected Areas (MPAs) driven by the global ‘30 by 30’ agenda where 30% of coastalines should fall under MPAs by 2030. Coastal territories (e.g. mangrove forests and reefs) are targeted given their ability to sequester more carbon than most land-based ecosystems. This has opened them up as prime targets for off-setting schemes through investments in MPAs and associated carbon credits under the ‘blue carbon’ mechanism. However, as TNI and others have pointed out, this off-setting mechanism will allow corporations (e.g. energy companies) to “continue to pollute and destroy one place, as long as a coastal ecosystem that stores and absorbs carbon somewhere else is ‘protected’”. [[15]](#footnote-15)

Questions have also been raised as to what these MPAs mean for coastal communities and small-scale fishers. South Africa has been a leading country in the promulgation of MPAs yet communities all along the coast complain about the lack of representation in decision making and loss of access to the coast and natural resources as a direct result of top-down decision making. This follows the 2016 Marine Spatial Plan which enables the government to issue permits, permissions and licences for coastal mining, oil and gas exploration and aquaculture faster than ever, opening up coastal lands, including land under costumary law, to national and overseas private company takeover.[[16]](#footnote-16)

All these examples show that safeguards against the negative effects of large-scale land investments, corporate abuses, and business activities require seriously updating in order to come to grips with how control over land is exercised in today’s global, financial economy. Proposals for the creation of a European Land Observatory[[17]](#footnote-17) to bring greater transparency to access to and control over (farm)land in Europe or for tighter regulations around the transfer of shares in agricultural companies as are being discussed in France and Germany offer some promising pathways forward.

3. Obligations to respect, protect and fulfil ESCR rights must go beyond narrow legal framing of issues to address substantive questions around social, economic, and political justice based on a 5Rs approach

Legal mechanisms can also be used to dispossess and dis-empower people. In many countries today, land laws are in play or being enacted that are impeding or undermining rural working people’s access to the land and related natural resources they need to construct a decent livelihood and future. Examples include laws that designate unregistered land as ‘vacant’, ‘idle’, ‘marginal’ or ‘unused and therefore ‘available’ for reallocation to big investors and big projects, such as Myanmar’s pointedly named ‘Vacant, Fallow, and Virgin Land Management Law’.[[18]](#footnote-18) A human rights view on land and related natural resources and ESC rights ought to address, not ignore or downplay, the underlying question of who has the power to claim/assert their rights, make use of legal protections, access judicial remedies, etc. For this reason, obligations to respect, protect and fulfil ESCR rights must go beyond a narrow legal framing of issues, to raise and address substantive questions around social, economic, and political justice, by endeavouring to apply basic human rights principles. Access to land is a crucial area for human rights application.

**The ‘5Rs’ in the context of land and natural resource governance refers to a package of five interrelated ethical *principles* - Recognition, Restitution, Redistribution, Regeneration, and Representation – that ought to be at the core of a human rights approach.[[19]](#footnote-19)** Applying all five principles to the ‘land problem’ is necessary to defend against a variety of economic and extra-economic processes that combined tend to dispossess working people and concentrate access to and control of land and related natural resources in the hands of a relative few powerful actors (including corporate actors). In many societies, the ‘land problem’ is not one-dimensional, but complex and multidimensional. Deliberately linking all 5Rs together has the best chance of handling the complexities of the land problem in the world we live in today. It is designed to detect and address the multidimensional character of land-based injustice.

Deepening economic inequalities are fuelling working people’s demands for more egalitarian distribution of wealth. Non-recognition or mis-recognition of certain ethnic, religious and sexual groups and of racial and gender differences is fuelling ‘identity’ framed demands for recognition. The two kinds of demands are often framed as opposed to each other. But the 5Rs start from the belief that neither recognition nor redistribution alone is sufficient for achieving deep social change. Advocating only for working people’s economic interests without regard to social and cultural identity concerns, or conversely, advocating only for social-cultural identity recognition without regard for the class position of working people within social-cultural communities - each ignores strategic issues. Indeed, both are integral parts of a single pillar; one without the other falls short. Both types of injustice shape exploitation and subordination and both types of struggle seeking redress have emancipatory aspects. The 5R approach assumes that it is possible and necessary to integrate the emancipatory aspects of both struggles into a single frame that also *guarantees* a basic minimum range of access to an array of land and natural resources for rural working people.

**Recognition** means taking steps to protect and support rural working people who manage to remain on the land and the spaces they need to survive (for production and social reproduction as explained above), including areas under customary systems of collective ownership, use and management, such as shifting cultivation, artisanal fishing and mobile pastoralism. Access to land is important in itself and as an entry point for accessing forest and aquatic resources as well. Rural working people need a range of access to an array of natural resources for their economic production and social reproduction activities in order to survive and flourish. The range of access that rural working people need to build a life with is diverse, flexible and dynamic – combining individual freehold plots, with commons; combining hard boundaries (homelots for example); semi-porous boundaries (access to gather fallen fruit or tree branches, but not to cultivate or graze animals); and shifting boundaries (seasonal floodplains for example). A 5R approach to recognition means statutory and customary recognition and protection but with restitution and redistribution in order to ensure recognition not only to those who currently have access, but also to those who once had it but were dispossessed as well as to check or correct highly unequal distribution of access within existing customary tenure systems. Recognition is thus *also* for those who *should*, but no longer, or do not yet have, access to land, according to the 5R principles.

**Restitution** means restoring access to land for both production and social reproduction, starting with the most vulnerable and distressed living in harsh conditions e.g., IDPs and refugees, and people displaced by megaprojects, big conservation projects, and natural disasters. Land restitution requires that what is restituted is not only farmland or house lots (i.e. plots of land for people’s houses), but rather the full range of access to an array of land and resources, and the social infrastructure that working people need to benefit from such access (such as village health clinics, schools and playgrounds, places of worship and cemeteries, transportation routes for villagers’ mobility etc.), must be restituted. But again, it should be restitution with recognition and redistribution, because failing to link these principles risks restoring old land inequalities that may have existed before, or inaugurating new ones.[[20]](#footnote-20)

**Redistribution** means redistributing public land and big private estates to impoverished landless and near-landless people. Land redistribution is about changing agrarian structures inherited from the past in order to address land concentration and its related effects of poverty, inequality and structural unemployment.[[21]](#footnote-21) All successful land redistribution in the world historically involved the central state expropriating big private estates and distributing state lands to working people. Clear priorities about which lands to redistribute and which people to benefit must of course be discussed and agreed. In identifying which lands to target for redistribution, care must be taken in relation to lands currently under customary systems and lands currently claimed by displaced persons and communities. In customary lands, parts of the land of those with very large land claims will have to be shared with those without land or with too little or poor-quality land. Targeted for redistribution would be lands controlled by a single individual or entity (private or public) above a pre-set ‘land size ceiling’.

**Regeneration** is about strengthening the ecological foundation and requirements for ensuring the biological health and survival of future generations. Regeneration has two parts. One part starts with a moratorium on any new projects that damage local ecologies and harm people, and then proceeds to identifying and rolling back the most ecologically damaging, degrading, contaminating, and destructive land/ocean uses (various mining and drilling; large-scale dams; toxic monoculture plantations; etc.). The other part involves encouraging and expanding ecologically beneficial uses including agroecological farming systems; and here, many already existing examples and initiatives could be amplified and initiated in more areas. But regeneration means that (re)establishing working people’s range of access without also challenging and changing the logic of the global industrial agrofood system (i.e.. chemical-based, synthetic fertilizer-dependent, using anti-biodiversity seeds and technology) will undermine rural working people in the long run and contribute further to climate change. This means that building agroecological farming systems and food sovereignty is not possible without a 5Rs program. At the same time, land redistribution, restitution and recognition will not matter without also linking with a regeneration plank.

Democratic **representation** at all levels is vital for democratic decision-making, both individual and collective. Acknowledging the widespread and persistent calls for democratic representation, the benefits of democratization should be self-evident: more democratic and inclusive processes can lead to better and more legitimate outcomes. In practical terms it would mean: recognizing civil society organizations representing different kinds of rural working people and taking their views and knowledge into account in land and land-related decision making; and recognizing customary authorities and taking their views and knowledge into account in decision making processes that affect their lands and territories.

These are the five Rs. But in order for the 5Rs to work together and not at cross-purposes, they must be ‘sandwiched’ together by two core measures: **1. A ‘guaranteed minimum access’ to land for all working people for production (farm plot) and social reproduction** (houselot and others, as mentioned above), which is crucial for survival especially in times of crisis; and **2. A society- and system-wide ‘land size ceiling’ or the maximum size of land that an individual or corporation can own.** Without a land size ceiling, powerful actors will be able to buy or grab land as much as they want and can, leaving nothing for working people even when on paper the latter is guaranteed a minimum access. Without a guaranteed minimum access, even where there is a land ceiling, an egalitarian distribution of land access will not be ensured. The minimum access and the land size ceiling must go together. These two measures have been the ‘heart’ and ‘soul’ of all successful land reforms in world history.[[22]](#footnote-22) This is what distinguishes mainstream land policy, which too often mainly brings rights and benefits to companies and large investments, from a social justice land policy which brings rights and benefits to those who work and live on the land in an equal way.

Applying these two core transversal measures with recognition, restitution and redistribution is crucial for addressing inequalities and ensuring that working people have access to the material and social conditions needed to build a good life. Deploying any one of the five principles in isolation from the others will result in a negative overall outcome and more conflict. Applying the 5R package with a land access ‘floor’ (guaranteed minimum) and ‘ceiling’ (allowable maximum) enables all working people to move forward, and not just a few.

1. For more of TNI’s work on agrarian and environmental justice, see: https://www.tni.org/en/agrarian-environmental-justice [↑](#footnote-ref-1)
2. Sandwell, K., Castañeda Flores, A., Fernanda Forero, L., Franco, J., Monsalve Suárez, S., Nuila, A., Seufert, P. (2019), *A View from the Countryside: Contesting and constructing human rights in an age of converging crises.* Transnational Institute, FIAN International, ERPI. Available at: https://www.tni.org/en/countryside [↑](#footnote-ref-2)
3. Franco, J. and Borras, S. 2021. The 5Rs in Myanmar: Five principles for a future federal democratic system where rural working people can flourish. Amsterdam: Transnational Institute; available online at: https://www.tni.org/en/publication/the-5rs-in-myanmar. [↑](#footnote-ref-3)
4. Two billion people are suffering from moderate to severe food insecurity according to the FAO (FAO 2019). [↑](#footnote-ref-4)
5. Two billion workers are pursuing economic activities that are not covered or insufficiently covered by formal arrangements in law or in practice according to the ILO (ILO 2018). [↑](#footnote-ref-5)
6. See also Shah and Lerche’s discussion of low-waged migrant workers (Shah, A. and Lerche, J. 2020. ‘Migration and the invisible economies of care: Production, social reproduction and seasonal migrant labour in India,’ *Transactions of the Institute of British Geographers*; and Li’s discussion of surplus populations and agrarian change (Li, T. 2011. ‘Centering labor in the land grab debate’, *Journal of Peasant Studies*, 38(2). [↑](#footnote-ref-6)
7. Bernstein, H. 2010. Class Dynamics of Agrarian Change. Nova Scotia and Winnipeg, CA: Fernwood Publishing. [↑](#footnote-ref-7)
8. Borras, J., Franco, J., Ra, D., et al. 2021. ‘Rurally rooted cross-border migrant workers from Myanmar, Covid-19, and agrarian movements’. Accepted and forthcoming in *Agriculture and Human Values*. [↑](#footnote-ref-8)
9. For a reflection on different relationships of access, see Ribot, J.C. & Peluso, N. (2003), ‘A Theory of Access’, *Rural Sociology* 68(2); and for a discussion of natural resource property regimes, see, Alonso-Fradejas (2020), *Protecting Injustice. How a Reformed Resource Property Regime Maintains Inequality.* Amsterdam: Transnational Institute. Available at: https://www.tni.org/en/protecting-injustice [↑](#footnote-ref-9)
10. FIAN (2012). The Human Rights Impacts of Tree Plantations in Niassa Province, Mozambique. FIAN for the Hands Off the Land Alliance, available at: <https://www.tni.org/en/publication/human-rights-in-niassa-province>. See also a discussion of the case in the Environmental Justice Atlas at: https://ejatlas.org/conflict/malonda-tree-farms-in-niassa-mozambique. [↑](#footnote-ref-10)
11. Thomson, F. & Dutta, S. (2018), *Financialisation. A Primer.* Amsterdam: Transnational Institute. Available at: https://www.tni.org/en/publication/financialisation-a-primer [↑](#footnote-ref-11)
12. As outlined in Seufert, P., Herre, R., Monsalve, S. & Guttal, S. (Eds.). (2020). *Rogue Capitalism and the financialisation of land and territories.* FIAN International, Focus on the Global South, Transnational Institute. Available at: https://www.tni.org/en/rogue-capitalism [↑](#footnote-ref-12)
13. Dale-Harris, L. & Semeniuc, S. (6 November, 2015), ‘Land Grabbing in the EU: How Rabobank is Profiting of Theft and Abuse in Romania’, *De Correspondent.* Available at: https://www.europeanpressprize.com/article/land-grabbing-in-the-eu-how-rabobank-is-profiting-of-theft-and-abuse-in-romania/ [↑](#footnote-ref-13)
14. Kravchuk, A., Neboha, M. & De Los Reyes, J. (2018), *Offshoring Prosperity. Agroholdings and tax avoidance in Ukraine.* Available at: https://longreads.tni.org/offshoring-prosperity-ukraine [↑](#footnote-ref-14)
15. Barbesgaard, M. (2016), *Blue Carbon: Oceangrabbing in Disguise?* Amsterdam, Copenhagen, Jakarta: Transnational Institute, Afrika Kontakt, Indonesia Traditional Fisherfolks Union KNTI. Available at: https://www.tni.org/en/publication/blue-carbon-ocean-grabbing-in-disguise [↑](#footnote-ref-15)
16. Joshua, M., Isaacs, M. & Dennis, T. (2017), *Bottom-Up Accountability Initiatives to Claim Tenure Rights in Sub-Saharan Africa: Country Report on South Africa,* Transnational Institute, FIAN International, PLAAS, ISS, Masifundise. Available at: https://www.tni.org/en/publication/country-report-on-south-africa [↑](#footnote-ref-16)
17. European Parliament (2017), State of play of farmland concentration: how to facilitate access to land for farmers, Own-initiative procedure 2016/2141. Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0197\_EN.html [↑](#footnote-ref-17)
18. See Thein, U San, Diepart, J.-C., Moe, U Hlwan, and Allaverdian, C. 2018. ‘Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes’. Mekong Region Land Governance Thematic Study. [↑](#footnote-ref-18)
19. The discussion in this section on the 5Rs in land and natural resource policy is drawn from: Franco, J. and Borras, S. 2021. The 5Rs in Myanmar: Five principles for a future federal democratic system where rural working people can flourish. Amsterdam: Transnational Institute; available online at: https://www.tni.org/en/publication/the-5rs-in-myanmar. [↑](#footnote-ref-19)
20. See Walker, C. *Land Claims and Land Restitution in South Africa*. Auckland Park, South Africa: Jacana Media. [↑](#footnote-ref-20)
21. See Borras, S. and Franco, J. 2010. ‘Contemporary discourse and contestations around pro-poor land policies and land governance’. *Journal of Agrarian Change* 10(1) 1-32. For the South Africa case for redistribution, see Cousins, B. 2019. ‘Land policy must change South Africa’s agrarian structure’, available online at: https://www.dailymaverick.co.za/article/2019-04-23-land-policy-must-change-south-africas-agrarian-structure/ [↑](#footnote-ref-21)
22. See Griffin, K., Khan, A.R., and Ickowitz, A. 2002. ‘Poverty and Distribution of Land’. *Journal of Agrarian Change* 2(3), 279-330. [↑](#footnote-ref-22)