

Submission for:

**CESCR calls for written contributions to the draft general comment on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development**

1. Franciscans International (FI) welcomes the draft General Comment and the opportunity to provide inputs. We particularly welcome and support references to the right to a clean, healthy and sustainable environment throughout the General Comment.
2. Before providing recommendations on what is in the current draft, we note two areas which we urge CESCR to consider for inclusion. First, it would be important to contextualize the environmental crisis within the context of colonialism and imperialism. We highlight the 2022 report of the Special Rapporteur on racism, which emphasized “there can be no meaningful mitigation or resolution of the global ecological crisis without specific action to address systemic racism, in particular the historic and contemporary racial legacies of colonialism and slavery.” We note that these legacies and current disparities are often also interlinked and manifested via the wealth and power of transnational corporations.
3. We also call on CESCR to address the interlinkages between the environment, (un)sustainable development and conflict. Military activity,<sup>1</sup> conflict, and the use of weapons<sup>2</sup> generally all exacerbate climate change, biodiversity loss, and pollution. The exploitation of natural resources, including that under the rubric of ‘development’, often also fuels conflict and instability.<sup>3</sup> Accordingly, we note that while the draft General Comment cites the Rio Declaration on Environment and Development, it does not mention the Declaration’s principles related to conflict, which underscore the interconnection between conflict, sustainable development, and the environment. These include Principle 24 and Principle 25.<sup>4</sup>
4. We note CESCR’s General Comment No. 26 on land and economic, social and cultural rights, and paras. 48 and 49 therein on land dispossession and population transfer during armed conflict. We underscore that in certain cases, conflict may make certain areas uninhabitable

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<sup>1</sup> The United States military produces more emissions than many industrialized nations. See for example: ‘Elephant in the room’: The US military’s devastating carbon footprint, Al Jazeera, 12 December 2023, <https://www.aljazeera.com/news/2023/12/12/elephant-in-the-room-the-us-militarys-devastating-carbon-footprint>

<sup>2</sup> Jet fuel, bombs and concrete: The 60 million tonnes of carbon generated by Israel’s war on Gaza, EuroNews 7 June 2024, <https://www.euronews.com/green/2024/06/07/jet-fuel-bombs-and-concrete-the-60-million-tonnes-of-carbon-generated-by-israels-war-on-ga>; See also: Damage to Gaza causing new risks to human health and long-term recovery – new UNEP assessment, UNEP, 18 June 2024, <https://www.unep.org/news-and-stories/press-release/damage-gaza-causing-new-risks-human-health-and-long-term-recovery>

<sup>3</sup> ‘Double attack’: The curse of natural gas and armed groups in Mozambique, Al Jazeera, 16 June 2024, <https://www.aljazeera.com/features/2024/6/16/double-attack-the-curse-of-natural-gas-and-armed-groups-in-mozambique>; Franciscans International and partners statement at 57th Session of the Human Rights Council, Item 4: General Debate, 25 September 2024, [https://franciscansinternational.org/wp-content/uploads/2024/09/HRC57\\_Item4\\_Mozambique.pdf](https://franciscansinternational.org/wp-content/uploads/2024/09/HRC57_Item4_Mozambique.pdf)

<sup>4</sup> Principle 24 states “Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.” Principle 25 states “Peace, development and environmental protection are interdependent and indivisible.” Principle 24 is cited in the preamble of the ILC’s Draft principles on protection of the environment in relation to armed conflicts. It is worth noting that the right to a healthy environment is also cited in the commentary to the ILC’s draft principles.

due to environmental degradation and overall destruction of life-sustaining infrastructure, such as water and sanitation networks. Conflict may also destroy any gains of sustainable development, and can in certain contexts create a context of purposeful “de-development,”<sup>5</sup> including as a result of violations of international humanitarian law, and principles related to natural resources.<sup>6</sup> We further note that these and other interlinkages of environmental degradation, climate change and development have also been addressed at the UN Security Council, including via Presidential Statements and interventions.<sup>7</sup>

5. FI urges CESCR to consider these and other issues related to the environment and sustainable development in conflict and post-conflict settings, and underscore, as previously affirmed, the “concurrent application of international human rights law and international humanitarian law in a situation of armed conflict.”<sup>8</sup>
6. In regard to the current draft text, we recommend the following:

#### **Maximum available resources (Art. 2.1)**

7. We recommend that para. 23 emphasizes and specifically cites the right to self-determination, and that it includes the “right of peoples and nations to permanent sovereignty over their wealth and resources,”<sup>9</sup> and to underscore that this right remains vested in the “peoples of colonial and Non-Self-Governing Territories,”<sup>10</sup> as well as peoples under occupation.<sup>11</sup> We also suggest making the following addition:  
“The Committee recognizes that the unlimited use and exploitation of the environment and natural resources is detrimental to economic, social and cultural rights that depend on a

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<sup>5</sup> See for example the work of UNCTAD on the Occupied Palestinian Territory, where it repeatedly underscored (prior to 2023) that “conflict has accelerated the “de-development” [...] a process by which development is not merely hindered but reversed.” See: Gaza could become uninhabitable in less than five years due to ongoing ‘de-development’ – UN report, 1 September 2015, <https://news.un.org/en/story/2015/09/507762>

<sup>6</sup> The International Court of Justice addressed the issue of the exploitation of natural resources in the context of Israeli’s occupation of Palestinian territory in its 2024 Advisory Opinion (see paras. 124-133 in particular). Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, International Court of Justice, Advisory Opinion of 19 July 2024, <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>

<sup>7</sup> For example, “In the 12 October 2022 debate hosted by Gabon on “Climate and Security”, Gabon’s Foreign Minister, Michael Moussa-Adamo, presented a blueprint for addressing the climate crisis that emphasised: “developing and articulating the linkage between peacebuilding and development strategies and climate change adaptation; and linking international policy frameworks, in particular the range of different international approaches to the related issues of peacebuilding, development, adaptation and disaster management.” [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/unsc\\_climatechange\\_2022.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/unsc_climatechange_2022.pdf)

<sup>8</sup> E/C.12/ISR/CO/4

<sup>9</sup> General Assembly resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources”; See also: Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, Art. 1(2), which states:

“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”

<sup>10</sup> Activities of Foreign Economic and Other Interests Which Impede the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories Under Colonial Domination, G.A. res. 50/33, U.N. Doc. A/RES/50/33 (1995)

<sup>11</sup> UN General Assembly Resolution 37/135 of 17 December 1982.

healthy environment. Such unsustainable use of natural resources and related environmental degradation may be a driver of armed conflict or instability.”

8. It is important that para. 24 explicitly states that where relevant, the free, prior and informed consent (FPIC) of Indigenous Peoples to exploit their land and natural resources must be attained. We also suggest amending para. 24 to read:  
“Any exploitation of natural resources must ensure the effective and equitable distribution of tangible benefits to the population and the promotion of economic, social and cultural rights, and conform to international humanitarian law.”
9. We recommend amending para. 25 to the following:  
“Where natural resources are exploited for the financial gain of national or foreign entities, including State-owned enterprises, without tangible benefits for the enjoyment of ESCRs by the population of that country, the State has likely failed in its obligation to fulfil Covenant rights through the use of maximum available resources. States must prevent corporate capture of government spaces; in doing so, States must ensure that measures related to taxation, subsidies, and licensing effectively mobilize resources for the realization of ESCRs, and do not unduly benefit corporations, businesses, or government officials via corruption schemes. With respect to pollution and other environmental degradation, States must first seek to prevent such adverse impacts by mandating that companies conduct human rights and environmental due diligence processes. States must also take measures to ensure that polluters are held responsible for the costs associated with environmental harm, rehabilitation, and related effects on ESCRs, avoiding the use of State resources to pay for pollution caused by private actors.<sup>53</sup>
10. We recommend that a reference to FPIC is also made in para. 26.

### **Extraterritorial obligations and business entities (2.1)**

11. In para. 35, we recommend amending the first sentence to:  
“The sustainable enjoyment of ESCRs is threatened by tax evasion, illicit financial flows, environmental crimes, global corruption, and the continued impunity of actors committing human rights abuses and violations, including businesses.”
12. In regard to para. 38, we recommend that the General Comment calls for States to ensure appropriate human rights and environmental due diligence for all business activities, not only those related to natural resource extraction. This can also be explicitly added to para. 39, which mentions that business entities should “prevent such harm.” We also recommend that the principle of FPIC is again reiterated. Many Indigenous partners have also underscored their concern over the conflation of Indigenous Peoples and local communities. We note the 2022 statement by the International Treaty Council which not only underscores the specific rights of Indigenous Peoples, but also notes that States “are using this conflation of rights [i.e. with local communities] and identity to undermine their rights to lands, territories, resources and

FPIC on the ground in their own homelands.”<sup>12</sup> It would be important that these distinctive rights are underscored in para. 38, which now mentions “local communities, peasants, and Indigenous Peoples.”

### **Non-discrimination (Art. 2.2)**

13. In regard to the principle of non-discrimination, and the global structures that perpetuate discrimination and the disproportionate harm experienced by certain peoples and communities, CESCR should include language on colonialism in paragraph 40 to fully contextualize issues. We recall the 2022 report by the Special Rapporteur on Racism that highlights the “racist colonial foundations of ecological crisis” and how this has been linked to development – including the creation of sacrifice zones.<sup>13</sup>

14. In regard to para. 42, we suggest amending the second sentence to:  
“States must protect against discrimination by private actors who threaten human rights, with special attention being paid to marginalized groups – either through [...]”

### **Protection of the family (Art. 10)**

15. We support the General Comment underscoring the particular harm to children, including the rights of future generations, as a result of climate and environmental harm. We recommend specific mention of the principle of intergenerational harm, which can be raised further in section VI. Remedies & Accountability.

### **Right to take part in cultural life and to enjoy the benefits of scientific progress (Art. 15)**

16. We support the Committee’s inclusion of language on the “unprecedented loss and damages to material and immaterial cultural heritage” in para. 78, and given their work on non-economic loss and damage and role in preserving culture and traditions, we suggest adding “faith-based organizations” to the list of groups in para. 79.

17. We suggest that para. 97 concludes with “In cases where armed conflict arise, States must uphold their obligations under international humanitarian law.”<sup>14</sup>

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<sup>12</sup> IITC Statement of Support for UN Recommendations Addressing the Matter of “Local Communities”, 24 June 2022, <https://www.iitc.org/iitc-statement-of-support-for-un-recommendations-addressing-the-matter-of-local-communities/>

<sup>13</sup> Ecological crisis, climate justice and racial justice, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, 25 October 2022, A/77/549

<sup>14</sup> See: Art. 28 and 55 of Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Art. 33 of IV Geneva Convention.