

Joint submission for the draft General Comment on Economic, Social and Cultural Rights, and the Environmental Dimension of Sustainable Development

December 2024

Introduction

This submission has been drafted by [Friends of the Earth England, Wales and Northern Ireland](#), [Opportunity Green](#), [Dr Koldo Casla](#), [Just Fair](#) and the [Environmental Rights Centre for Scotland](#). Additionally, it has been endorsed by organisations from across all four nations and jurisdictions of the UK. We wish to begin this submission by welcoming and supporting the draft general comment. The general comment will aid us in our work to better ensure a holistic approach to economic, social, cultural and environmental rights, which are fundamentally interlinked, and in doing so help us to work towards better enjoyment of these rights by rights holders.

In this submission, references to ‘sustainability’ specifically pertain to environmental sustainability and the property of maintaining and safeguarding natural resources in order to maintain human and ecological health. References do not imply a comment on the desirability or feasibility of ‘sustainable development’, nor its relationship to the realisation of human rights.

Our submission covers three main topics:

- 1. Formal recognition and implementation of the right to a healthy environment.**
- 2. Decarbonization of housing.**
- 3. ESCR and ownership in light of the social and ecological function of property.**

The drafters of this submission wish to note that we are supportive of the submission made to the Committee by [ESCR-Net](#).

1. Recognition and implementation of the right to a healthy environment

Recommendation:

Add two new paragraphs after paragraph 68:

- **68 bis:** Realising the right to an adequate standard of living requires that States and public authorities protect and fulfil both the substantive and procedural elements of the right to a clean, healthy and sustainable environment. States must implement the right in line with best practice outlined by the UN Special Rapporteur on the right to a clean, healthy and sustainable environment.¹ Fulfilling the substantive elements (the right to clean air; a safe climate; clean water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems) must include appropriate implementation and enforcement measures. Substantive features should be defined according to the highest available scientific standards, for example to meet World Health Organisation limits on PM 2.5 in order to provide adequate indoor and outdoor air quality.² It must also include state action to identify and remediate contaminated land, ensure that private actors respect the right, and introduce emissions reductions plans in line with the latest Intergovernmental Panel on Climate Change recommendations and the Paris Agreement target of 1.5 degrees.
- **68 ter:** States must provide for the procedural elements of the right to a healthy environment: access to information, public participation in decision-making, and access to justice on environmental matters, with effective legal remedies. Additionally, States must ensure the protection of those who defend the environment, guaranteeing safe civic spaces and avoiding criminalisation of non-violent protest.

Justification:

As noted in paragraph 10 of the draft comment, the right to a clean, healthy and sustainable environment is implicit within the covenant, and directly linked to the realisation of article 11 rights. The United Nations recognized this human right in Human Rights Council resolution 48/13 (2021)³ and General Assembly resolution 76/300 (2022).⁴ By setting out the ways in which states could improve implementation of both substantive and procedural elements the committee could offer a clear route for national governments to ensure coherence between recent progress in recognizing the right to a healthy environment at an international level, and its operationalisation in the domestic context.

The Committee's general comment No. 4 sets out that adequate housing should include 'sustainable access to natural and common resources', encourages States to 'comprehensively apply the Health Principles of Housing prepared by WHO' and warns against allowing housing development 'on polluted sites nor in immediate proximity to pollution sources'.⁵ Other bodies have also acknowledged the potential for development and resource extraction, including by private actors, to negatively impact the right to adequate housing by 'forc[ing] residents to move or caus[ing] environmental degradation' and recommended state action to tackle the risks of pollution and contamination in support of wider human rights.⁶

In their 2024 statement to the United Nations General Assembly, the Special Rapporteur on the right to a clean, healthy and sustainable environment noted that the main challenges to effective protection of the right to a healthy environment include weaknesses in the rule of law, deregulation, and 'limitations on access to information, participation and justice'.⁷

¹ Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, 'Overview of the implementation of the human right to a clean, healthy and sustainable environment', August 2024. Available here: <https://documents.un.org/doc/undoc/gen/n24/228/44/pdf/n2422844.pdf>

² PM 2.5 refers to fine particle air pollution, made up of particulate matter less than 2.5 micrometers in diameter. It is produced through combustion linked to the burning of fossil fuels in power plants, vehicles, and industrial processes, and has been linked to the increasing prevalence of cardiovascular and pulmonary diseases and cancers.

³ Available here:

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRes%2F48%2F13&Language=E&DeviceType=Desktop&LangRequested=False>

⁴ Available here:

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F300&Language=E&DeviceType=Desktop&LangRequested=False>

⁵ UN Committee on Economic, Social and Cultural Rights, 'General comment No. 4: The right to adequate housing' 1991, para 8. Available here:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ICEnwWR8rbeJM8O1ALabP9BWeyFuYGLyYmdqGzgvNrcHN2wfOJ7e7h561aYJ0EMO2J51czkGbs+UgXB3nd9N+A==

⁶ See for example: UN-Habitat, 'Fact Sheet No.21: The right to adequate housing', 2010, p.36, available here: <https://unhabitat.org/the-right-to-adequate-housing-fact-sheet-no-21rev-1>; United Nations Environment Programme, 'Healthy Environment, Healthy People' 2016, available here: https://documents.un.org/symbol-explorer?s=UNEP/EA.2/INF/5&i=UNEP/EA.2/INF/5_9170536

⁷ Special Rapporteur on the right to a clean, healthy and sustainable environment, 'Overview of the implementation of the human right to a clean, healthy and sustainable environment', 2024, p.19. Available here: <https://documents.un.org/doc/undoc/gen/n24/228/44/pdf/n2422844.pdf>

2. Decarbonization of housing

Recommendation:

Add a new paragraph after paragraph 67:

- **67 bis:** Ensuring the sustainable enjoyment of the right to an adequate standard of living requires reducing the carbon footprint of buildings. Standards for the construction or renovation of homes must be adapted not only to ensure resilience to the shocks of the predicted climatic conditions of the future, but also to minimise emissions. This requires implementing policies to improve the energy efficiency of new buildings, as well as the existing housing stock, and to decarbonize the sources of domestic heating, in line with the best scientific evidence available. At the same time, States must ensure that climate change mitigation and adaptation measures taken in the housing sector comply with the principle of non-discrimination and equality. Measures must be taken to ensure that housing affordability is not negatively affected by the implementation of such measures.

Justification:

The buildings sector accounts for 37% of worldwide greenhouse gas emissions.⁸ It is generally agreed that the improvement of energy efficiency standards in buildings is an essential part of decarbonizing the sector; however, it is also recognized that this by itself is not sufficient, and the sources of domestic heating must also be decarbonized.⁹ At the same time, concerns have been raised about 'climate gentrification' - decarbonization measures may increase the value of housing, potentially making it less affordable.¹⁰

The recognition of an obligation to minimise emissions in the housing sector to ensure the enjoyment of the right to an adequate standard of living is in line with recent developments in international human rights law, as observed, among others, by the CESCR in its 2018 statement on climate change and ICESCR.¹¹ In their 2022 report, the UN Special Rapporteur on adequate housing concluded that realizing the right to adequate housing required States to reduce the carbon footprint of buildings.¹² This includes energy efficiency measures,¹³ and transitioning away from using fossil fuels and wood for heating,¹⁴ which is consistent with the reference in paragraph 22 of this draft general comment to 'a just and rapid energy transition'.

⁸ United Nations Environment Programme, 'Not Yet Built for Purpose: Global Building Sector Emissions Still High and Rising', March 2024. Available here: <https://www.unep.org/news-and-stories/press-release/not-yet-built-purpose-global-building-sector-emissions-still-high>

⁹ See for example: International Energy Agency, '7th Annual Global Conference on Energy Efficiency: The value of urgent action on energy efficiency' 2022, available here: <https://www.iea.org/reports/the-value-of-urgent-action-on-energy-efficiency>; IPCC, 'Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' 2023, pp.35-115

¹⁰ Jesse M. Keenan, Thomas Hill and Anurag Gumber, 'Climate gentrification: from theory to empiricism in Miami-Dade County, Florida', Environmental Research Letters, vol. 13, 2018

¹¹ UN Committee on Economic, Social and Cultural Rights, 'Statement on Climate Change and ICESCR', 2018, para 9. Available here: tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2018%2F1&Lang=en

¹² Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 'Towards a just transformation: climate crisis and the right to housing', 2022, para. 5. Available here: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5228-towards-just-transformation-climate-crisis-and-right-housing>

¹³ Ibid., para. 42

¹⁴ Ibid., para. 43

3. ESCR and ownership in light of the social and ecological function of property.

Recommendation:

Add a new paragraph at the end of the section on businesses' extraterritorial obligations:

- **39 bis:** In light of its social and ecological function, States should regulate the right to property to make it compatible with international human rights law obligations to respect, protect and fulfil economic, social and cultural rights, and preserve human rights from the triple planetary crisis of climate breakdown, biodiversity loss and the widespread pollution of air, land and water. The social and ecological function means that private property with regards to the production and delivery of energy services must serve the general interests of the community. Goods and services ought to be used for the goals they exist for, setting limits to *jus abutendi* (consumption, transformation and destruction): A human rights- and social function-based approach to property would not condone the destruction of a good or the sort of use that is contrary to its social function.

Justification:

While States and public authorities are ultimately responsible to respect, protect and fulfil rights, both public and private actors are responsible for global warming. In this general comment, the CESCR can contribute to the recognition, development and operationalization of the principle of the social and ecological function of the right to property. The inclusion of the social function of property in the general comment would be in line with recent trends in international human rights law. The CESCR itself established in general comments No. 17 and No. 25, that intellectual property has a social function, as a result of which States should prevent unreasonably high costs for access to medicines, educational material, and means of food production.¹⁵ In their 2017 report on the financialization of housing, the UN Special Rapporteur on adequate housing called on States to ensure that public and private investment in housing, “recognizes its social function and States’ human rights obligations”.¹⁶ And the Inter-American Court of Human Rights observed in *Chiriboga v. Ecuador* (2008) that, “the right to property must be understood within the context of a democratic society where in order for the public welfare and the collective rights to prevail there must be proportional measures that guarantee individual rights. The social role of the property is a fundamental element for its functioning and for this reason, the State, in order to guarantee other fundamental rights of vital relevance in a specific society, can limit or restrict the right to property...”.¹⁷ The ecological dimension is an important addition borrowed from the Colombian Constitution of 1991 (Article 58).

¹⁵ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author’, 2006, para 35, available here: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnSJZZVQcMZjyZIUmZS43h49u0CNAuJlJwgfzCL8JQ1SHYTZH6jsZteqZOPBtECZh96hyNh%2F%2FHW6g3fYyiDXsSgaAmIP%2BP>; UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 25: Science and Economic, Social and Cultural Rights’, 2020, para. 62, available here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2020-article-15-science-and>

¹⁶ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, ‘Report on Financialization’, 2017, para. 77, available here: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/51

¹⁷ Inter-American Court of Human Rights, ‘*Salvador Chiriboga v. Ecuador*’, Preliminary Objection and Merits, Judgment (6 May 2008), para. 60. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_179_ing.pdf