

To the Committee on Economic, Social and Cultural Rights, Office of the United Nations High Commissioner for Human Rights

Thank you for the opportunity to comment on the draft General comment No. 26 (2021) on land and economic, social and cultural rights. The International Council on Archives is a neutral global nongovernmental organization which is the archival profession's official partner with UNESCO. Its membership includes governmental and nongovernmental archives in 199 countries.

Land records are one of the most fundamental forms of archives, with examples dating from antiquity.

Land rights are a crucial international issue, and records are essential for understanding land rights. As the draft notes (para. 2) when land tenure is insufficiently documented conflicts are fuelled. The High Commissioner for Human Rights has recognized the linkage between transitional justice and archives in its *Rule-of-Law Tools for Post-Conflict States: Archives*, published in 2015.¹

Land is used in many ways, and records of both governments and nongovernment entities document that diversity:

- holding (occupying, traditionally using, renting, survey and boundary marking);
- transferring (acquiring, inheriting, disposing, separating such as granting easement or leasing, valuing);
- managing/using (cultivating, irrigating, harvesting, conserving, abandoning);
- regulating (controlling access);
- taxing (assessing and appraising, collecting, foreclosing); and
- expropriating (evaluating, taking, compensating, adjudicating).

A great variety of institutions and individuals are involved in systems of landownership and use. Government land registries hold fundamental records, but so do government offices handling zoning, transportation, hydroelectric and other power utilities, relations with indigenous peoples and traditional communities, among other. Nongovernmental records creators include:

- rights holders (individuals, partnerships, corporations, joint stock companies, syndicates, trusts, estates);

information and private services providers (private brokers, appraisers, surveyors, lawyers including probate specialists, insurers, title search companies, notaries, media);

finance suppliers (banks, credit firms, individuals, public lenders, insurance companies);

public service providers (educational institutions such as extensions services, regulatory agencies that control uses such as for agricultural purposes, construction agencies such as roads offices); and

adjudicators (courts both civil for property disputes and criminal, enforcement agencies such as property protection bodies, and administrative arms for zoning control)

Given the central role that all these types of archives play in the rights to the enjoyment of land, it is essential that General comment No. 26 state unequivocally the need for protection and preservation of land records, both those in State possession and those held by key nongovernment bodies. We propose the following amendments to the draft:

Para. 18. Following sentence 7, insert: "States must ensure the protection and preservation of land title records and other tenure and use records in its custody and, through focused regulation and financial support, ensure that non-governmental records important for proving title and tenure and use rights are preserved."

Para. 46. Add point (e): "States should consider the possibility of relocating critical land title records from regions in which armed conflict may risk their destruction or confiscation to a safe haven within or outside the State."

Thank you again for giving the International Council on Archives the opportunity to comment on this important draft. We stand ready to provide additional information about the records of land, as you require.

The International Council on Archives would be pleased to provide any further comment or explanation on our recommendations above.

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