

**Afro-descendant and Indigenous women's rights in development
contexts:**

**Proposals for the draft of a legally binding instrument on the right to
development**

A Report for the Chair-Rapporteur of the Intergovernmental Working Group on the Right to
Development

Submitted by:

MADRE

Proceso de Comunidades Negras

Introduction

As the Inter-Governmental Working Group on the Right to Develop prepares to draft a legally binding instrument on the right to development, it is important that it account for and promote existing protections and rights for Indigenous and Afro-descendant women and their communities. This submission explores the development and application of these protections, with a focus on Colombia, where Afro-descendant and Indigenous Peoples have an extensive history of both challenging and shaping the meaning and practice of development. The Colombian context also exemplifies the possible deadly results of states' failure to consistently and rigorously uphold Indigenous and Afro-descendant rights in state- and large-scale business-driven development projects, a pattern that occurs in various parts of the Americas, and has resonance in other parts of the globe.

In Colombia, Indigenous and Afro-descendant organizations have managed to establish key collective legal protections in relation to state-led, large-scale development—protections that draw on international human rights advancements, and result from movements that have at times highlighted the intersecting gender and cultural interests at stake.¹ Yet even as these groups have been disproportionately targeted in the wave of killings of Colombia's human rights defenders, which has particularly impacted those defending collective territorial rights,² some Colombian government officials have publicly framed Indigenous and Afro-descendant collective rights as being in opposition to a state-led development project—one that ostensibly prioritizes large-scale agro-industrial and extractive industrial expansion.³ Such a stance contributes to an environment of hostility and impunity for violence against these communities and social leaders. It also underscores the need for global commitment to advancing Indigenous and Afro-descendant Peoples' rights in development contexts, to help ensure that government actors and transnational and local business interests act in conformity with human rights law, and contribute to safety for human rights defenders and social leaders.

It is important to recognize that notions of “development” as framed by international financial and development institutions fail to incorporate many Afro-descendant and Indigenous Peoples' worldviews--views that instead bring to the fore the idea of a “right to Buen Vivir” (collective

¹ Proceso de Comunidades Negras et al., Territorio y conflicto desde la perspectiva del Proceso de Comunidades Negras PCN: Colombia, pg. 20 (February 29, 2008); Rights and Resources, Colombian Court Upholds Rights of Indigenous Community, (May 5, 2012), <https://rightsandresources.org/en/blog/colombian-court-upholds-rights-of-indigenous-community/#.XT9CJ9NKg1I>; Charo Mina Rojas et al., Luchas del buen vivir por las mujeres negras del Alto Cauca, In: NÓMADAS 43, pg. 169-170 (October 2015), <http://www.scielo.org.co/pdf/noma/n43/n43a11.pdf>; Proceso de Comunidades Negras, Defeating Invisibility. A Challenge for Afro-descendant Women in Colombia, pg. 5 (April 2012), <http://www.oidhaco.org/uploaded/content/article/389402040.pdf>.

² OHCHR, End of Mission Statement by the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst on his visit to Colombia, 20 November to 3 December 2018, (December 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23960&LangID=E>.

³ UN Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/37/3/Add.3, para. 49 (March 2, 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-37-3-Add_3_EN.pdf.

well-being,)⁴ as described later in this document. Prevailing definitions of development historically focus on economic growth in a context of western development regimes,⁵ neglecting worldviews that reject the idea of territories as a means to continue global market domination.⁶ “Development,” in this conception, serves as a vehicle to reinforce colonial and discriminatory policies that displace Afro-descendant and Indigenous communities. For example, in Colombia advocates report that the Government is dismantling institutions and mechanisms developed to ensure consultation with Afro-descendant and Indigenous communities, in favor of a business-oriented development model, which has contributed to further displacement and criminalization of those communities.⁷ This submission at times uses the imperfect term “development contexts” in an attempt to account for the teleological incoherence between the topic of the proposed binding agreement, and worldviews like that of “Buen Vivir.”

The first section of this submission describes elements of the relevant human rights legal framework that protect Afro-descendant and Indigenous Peoples’ and women’s rights in development decision-making processes. The second section discusses one alternative approach to sustainably improving the lives and livelihoods of impoverished people, in line with rights protections for Indigenous and Afro-descendant women and Peoples, through the notion of “Buen Vivir.” The final section provides recommendations for the furtherance of Indigenous and Afro-descendant collective and individual rights, for consideration in the drafting of a binding instrument on the right to development.

I. International Human Rights Legal Framework

The very existence of numerous Indigenous and Afro-descendant Peoples is testament to their ability to resist models of globalization and development which seek to exploit the world’s remaining natural resources that are found largely in their territories.⁸ In recent decades, as a result of continuous struggle, Indigenous and Afro-descendant Peoples’ demands, particularly those aimed at rejecting hegemonic extractive models of development, have found expression in key developments in international human rights law upholding their right to self-determination, among other advances. Simultaneously, the establishment of gender-based human rights protections, including state obligations to uphold equality and ensure women’s participation in development, have gained meaning among many Afro-descendant and Indigenous women leaders via their efforts to assert gender-based rights, and to establish those rights as interconnected with their enjoyment of all human rights, including collective rights.

⁴ Catherine Walsh, Development as Buen Vivir: Institutional arrangements and (de)colonial entanglements, 53 DEVELOPMENT 15–21, pg. 17 (2010); Communication with Arturo Escobar on August 1, 2019 (on file with MADRE).

⁵ Arjun Sengupta, On the Theory and Practice of the Right to Development, 24 Hum. Rts. Q. 848-849 (2002).

⁶ Catherine Walsh, Development as Buen Vivir: Institutional arrangements and (de)colonial entanglements, 53 DEVELOPMENT 15–21, pg. 17 (2010).

⁷ Interview with anonymous Afro-Colombian human rights defender on August 5, 2019 (on file with MADRE).

⁸ Cathal Doyle and Jérémie Gilbert, Indigenous Peoples and Globalization: From Development Aggression to Self-Determined Development, In: European yearbook of minority issues Vol 7, pg. 221 (2010), https://eprints.mdx.ac.uk/7244/1/Gilbert_-_Indigenous_peoples_%26_globalization_05_2011.pdf; Piedad Córdoba Ruíz, Derechos étnicos y territoriales de las comunidades Negras, In: ReVista Harvard Review of Latin America, (Spring 2003), <https://revista.drclas.harvard.edu/book/derechos-%C3%A9tnicos-y-territoriales-de-las-comunidades-negras-spanish-version>.

These advances, some of which are detailed below, represent key legal safeguards, yet they exist against a backdrop of ongoing rights violations. These violations occur in furtherance of extractive models of development, and can result in dispossession and destruction of Afro-descendant and Indigenous Peoples' livelihoods. This way of proceeding is reflected in the term "aggressive development" as opposed to "self-determined development."⁹ United Nations (UN) Special Rapporteur Erica Deas reported to the UN Working Group on Indigenous Populations that:

[t]he legacy of colonialism is probably most acute in the area of expropriation of Indigenous lands, territories and resources for national economic and development interests. In every part of the globe, Indigenous peoples are being impeded from proceedings with their own forms of development consistent with their own values, perspectives and interests.¹⁰

UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, Rodolfo Stavenhagen, similarly noted that "the concerns of Indigenous peoples who are seldom consulted on the matter, take a back seat to an overriding 'national interest', or to market-driven business objectives aimed at developing new economic activities, and maximizing productivity and profits."¹¹ UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, noted the same trend in 2009.¹² Moreover, as of 2009 the majority of the complaints the International Labor Organization (ILO) received were a result of States' failure to consult Indigenous populations for development projects, especially those relating to the extractive industry.¹³

Afro-descendant Peoples' rights and self-determined development possibilities have similarly been ignored in the implementation of state-led mega-development. For example, despite laws protecting Afro-descendant communities' collective territorial rights and right to free, prior and informed consent,¹⁴ Afro-Colombians in the majority-Black port city¹⁵ of Buenaventura face

⁹ See generally Cathal Doyle and Jérémie Gilbert, *Indigenous Peoples and Globalization: From Development Aggression to Self-Determined Development*, In: *European yearbook of minority issues* Vol 7, pg. 219-262 (2010), https://eprints.mdx.ac.uk/7244/1/Gilbert_-_Indigenous_peoples_%26_globalization_05_2011.pdf.

¹⁰ UN Economic and Social Council, *Human Rights of Indigenous Issues, Indigenous People and their Relationship to Land*, Preliminary working paper prepared by Erica-Irene Daes, Special Rapporteur, E/CN.4/Sub.2/1997/17, para. 49 (June 20, 1991), <https://undocs.org/E/CN.4/Sub.2/1997/17>.

¹¹ UN Economic and Social Council, *Indigenous Issues, Human Rights and Indigenous Issues*, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65, E/CN.4/2003/90, para. 8 (January 21, 2003), <https://undocs.org/E/CN.4/2003/90>.

¹² Cathal Doyle and Jérémie Gilbert, *Indigenous Peoples and Globalization: From Development Aggression to Self-Determined Development*, In: *European yearbook of minority issues* Vol 7, pg. 228 (2010), https://eprints.mdx.ac.uk/7244/1/Gilbert_-_Indigenous_peoples_%26_globalization_05_2011.pdf.

¹³ *Ibid.*, pg. 228-229.

¹⁴ *Proceso de Comunidades Negras et al., Territorio y conflicto desde la perspectiva del Proceso de Comunidades Negras PCN: Colombia*, pg. 20 (February 29, 2008), http://lasa-4.lasa.pitt.edu/otrossaberes/uploads/colombia-report_001.pdf.

¹⁵ Afro-descendant communities in Colombia describe a close relationship between the rural and the urban. Though many have been displaced from their ancestral territories to more urban landscapes as a result of conflict, a permanent connection to their territories of origin accompanies them, shaping their practices and ways of being, a phenomena Afro-descendant communities capture in the term *relación campo-poblado*. Charo Mina Rojas . "Ejes

displacement and violence as a result of mega-port development projects.¹⁶ The city is an important trade hub that has seen major investments, but these have been directed toward mega-projects like port expansion that serve corporate and state economic interests, while local communities live in dire poverty, lacking water, healthcare facilities and other infrastructure.¹⁷

a. Indigenous and Afro-descendant Peoples' Human Rights in Development Contexts

The human rights framework provides valuable norms meant to protect Indigenous and Afro-descendant Peoples from “aggressive development” and resulting destruction of their territories and their existence as Peoples. ILO Convention 169 (ILO 169) and the UN Declaration on the Right to Indigenous Peoples (UNDRIP) recognize Afro-descendant and Indigenous Peoples’ right to free, prior, and informed consent as a requirement in decisions regarding development, as well as their right to self-determination.¹⁸ ILO 169 incorporates an inclusive interpretation of “indigenous and tribal peoples” which applies the term “tribal” to Afro-descendant Peoples,¹⁹ thus certain Afro-descendant Peoples in Latin America are recognized as possessing the same collective rights as Indigenous Peoples under national and international law.²⁰ In addition, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) protects minorities’ rights to their own culture,²¹ which also has implications for development.

As noted by the UN-REDD Guidelines on Free, Prior and Informed Consent²² (FPIC), the UNDRIP has seven provisions that recognize the duty of States to ensure FPIC²³ by Indigenous Peoples in different situations, including in development planning.²⁴ UNDRIP Article 32, for example, specifies that:

Temáticos de la Política Preventiva Para los Pueblos Negro, Afrocolombiano, Raizal y Palenquero”, pg. 6 (*Forthcoming 2019*).

¹⁶ Xavier Sule, Buenaventura, Victims of Development, In: Peace in Progress no. 28, pg. 1 (September 2016), <http://www.icip-perlapau.cat/numero28/pdf-eng/Per-la-Pau-n28-tr-1.pdf>.

¹⁷ Xavier Sule, Buenaventura, Victims of Development, In: Peace in Progress no. 28, pg. 1-2 (September 2016), <http://www.icip-perlapau.cat/numero28/pdf-eng/Per-la-Pau-n28-tr-1.pdf>.

¹⁸ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, art. 3 (September 13, 2007), https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf; International Labour Organization, Indigenous and Tribal Peoples Convention (No. 169), art. 7(1) (June 27, 1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

¹⁹ International Labour Organization, Handbook for ILO Tripartite Constituents, Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169), pg. 2 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf.

²⁰ International Land Coalition, Indigenous peoples’ rights to lands, territories, and resources, pg. 61 (2013), <https://www.landcoalition.org/sites/default/files/documents/resources/IndigenousPeoplesRightsLandTerritoriesResources.pdf>.

²¹ OHCHR, International Covenant on Civil and Political Rights, art. 27 (March 23, 1976), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²² The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries.

²³ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 11(2), 19, 28(1), 29(2), 30(1), 32(2) (September 13, 2007), https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

²⁴ UN-REDD, Guidelines on Free, Prior and Informed Consent, p. 14 (January 2013), <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>.

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.²⁵

ILO Convention No. 169 also upholds the FPIC rights of Indigenous and Afro-descendant communities. For example, Article 6 requires governments to consult communities “through appropriate procedures” and with the appropriate representatives regarding legislative or administrative measures that directly impact them, and to establish ways for them to participate at all decision-making levels with the goal of achieving their agreement or consent.²⁶ Article 7 establishes Indigenous and Afro-descendant Peoples’ “right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”²⁷ Article 15 affirms their right to participate in the “use, management and conservation” of natural resources on their lands and requires governments to ensure their consultation before undertaking any exploration or exploitation of the resources.²⁸

The Office of the High Commissioner for Human Rights further interpreted the right to development in relation to private sector natural resource, energy and mining companies, stating that “the right to development means that Indigenous peoples have the right to determine their own pace of change, consistent with their own vision of development, and that this right should be respected, including the right to say 'no'.”²⁹ In effect, the right “to say no”, to dissent, is a crucial aspect of the right to FPIC when read in connection with the right to self-determination. Similarly, the UNDRIP also recognizes that a project which would have a significant or direct impact on Indigenous Peoples’ lives or territories should not move forward without their consent.³⁰ In a case involving the Saramaka people of Suriname, the Inter-American Court of Human Rights (IACHR) also upheld FPIC, finding that the State had a duty to consult with and obtain the free, prior and informed consent of the Saramaka according to their customs and

²⁵ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, art. 32 (September 13, 2007), <https://undocs.org/A/RES/61/295>.

²⁶ International Labour Organization, Indigenous and Tribal Peoples Convention (No. 169), art. 6 (June 27, 1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

²⁷ *Ibid.*, art. 15.

²⁸ *Ibid.*, art. 15.

²⁹ UN Economic and Social Council, Report of the Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, E/CN.4/Sub.2/AC.4/2002/3, para. 8 (June 17, 2002), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=7660.

³⁰ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34, para. 47 (July 15, 2009), <https://undocs.org/A/HRC/12/34>.

traditions before approving large-scale development or investment projects.³¹ Similarly, Colombia's Constitutional Court, in the case C-175/09, affirmed that effective FPIC must ensure the full participation of Afro-descendant and Indigenous communities when development projects are planned within their territories.³² This duty requires that the State act in good faith, provide information, ensure constant communication between the parties, and use culturally appropriate processes that must be oriented towards reaching an agreement.³³ Importantly, the Constitutional Court found that Afro-Colombians and their communities are not required to have formal land titles in order to demand their rights as Peoples, including FPIC.³⁴

The UN Committee on Economic, Social and Cultural Rights (CESCR) has also recognized Afro-descendant and Indigenous Peoples' right to free, prior and informed consent in decisions regarding major development projects. In its 2010 Concluding Observations following review of Colombia, for example, it found that "infrastructure, development and mining megaprojects are being carried out in the State party without the free, prior and informed consent of the affected Indigenous and Afro-Colombian communities."³⁵ It recommended that the State party "adopt legislation in consultation with and the participation of [I]ndigenous and Afro-Colombian people," to further clarify the establishment of "the right to free, prior and informed consent in conformity with [ILO] Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as the relevant decisions of the Constitutional Court"³⁶ which had found the state constitutionally obligated to uphold FPIC rights.³⁷ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has also stressed the need to involve Afro-descendant and Indigenous communities in the planning and decision-making regarding development projects that impact them.³⁸

The right to self-determination is a major safeguard against development projects that undermine Indigenous and Afro-descendant Peoples' rights, and is considered complementary to the right to FPIC.³⁹ They are mutually embedded, since neglecting the right to FPIC denies Indigenous and Afro-descendant communities a say in projects affecting their own lands, which is deeply linked to their self-determination as Peoples. The ILO Convention offers valuable norms that recognize the right to self-determination, granting Indigenous and Afro-descendant communities the right

³¹ *Ibid.*

³² Corte Constitucional, Sentencia C-175/09, 18 March 2009. Available at <http://www.corteconstitucional.gov.co/relatoria/2009/C-175-09.htm>

³³ Corte Constitucional, Sentencia C-175/09, 18 March 2009. Available at <http://www.corteconstitucional.gov.co/relatoria/2009/C-175-09.htm>

³⁴ Corte Constitucional, Sentencia T-576/14, (August 4, 2014) par. 5.29, 5.30 http://www.corteconstitucional.gov.co/relatoria/2014/t-576-14.htm#_ftnref134.

³⁵ UN Economic and Social Council. Concluding Observations of the Committee on Economic, Social and Cultural Rights, Colombia, E/C.12/COL/CO/5, para. 9 (June 7, 2010), <https://undocs.org/E/C.12/COL/CO/5>.

³⁶ *Ibid.*

³⁷ Corte Constitucional, Sentencia T-769/09, (October 29, 2009), <http://www.corteconstitucional.gov.co/relatoria/2009/t-769-09.htm>.

³⁸ Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Colombia, 24 February 2004, E/CN.4/2004/18/Add.3

³⁹ UN General Assembly, Final study on Indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2011/2, para. 13, 18 (May 26, 2011), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=18820.

to determine their own development priorities and control implementation. Article 7(1) of ILO Convention No. 169 reads:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.⁴⁰

Article 3 of UNDRIP states, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁴¹ Articles 25 and 29(1) of UNDRIP recognize the special spiritual and intergenerational relationship of Indigenous Peoples with their resources as well as their right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Articles 20(2) and 32(3) recognize that Indigenous Peoples who were deprived of their means of subsistence and development are entitled to just and fair redress, and that States should implement effective mechanisms for reparation.⁴²

Indigenous and Afro-descendant communities’ right to culture, as stipulated under article 27 of the ICCPR, also can take precedence and should be considered in economic development decision-making and planning.⁴³ For example, in a case where the Government of Peru diverted water from the Andean Altiplano region, causing the gradual drying out of the wetlands where traditional Indigenous customs were practiced, the UN Human Rights Committee affirmed that economic development that denies a community its right to culture is incompatible with article 27.⁴⁴

States have incorporated this framework in domestic law through different means. In addition to ratifying ILO 169, the UNDRIP, and the ICCPR, most Latin American countries, for example, have included specific legislation that recognizes the obligations to uphold international human

⁴⁰ International Labour Organization, Indigenous and Tribal Peoples Convention (No. 169), art. 7(1) (June 27, 1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

⁴¹ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, art. 3 (September 13, 2007), https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁴² United Nations, United Nations Declaration on the Rights of Indigenous Peoples, art. 20(2), 25, 29(1), 32(3) (September 13, 2007), https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁴³ Article 27 states “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” OHCHR, International Covenant on Civil and Political Rights, art. 27 (March 23, 1976), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴⁴ UN International covenant on civil and political rights, Communication No. 1457/2006, Withdrawal of water from indigenous land, Angela Poma Poma v Peru, CCPR/C/95/D/1457/2006, para. 7.4 (April 24, 2009), <https://undocs.org/CCPR/C/95/D/1457/2006>.

rights treaties.⁴⁵ Colombia, for example, has ratified ILO 169,⁴⁶ approved the American Declaration on the Rights of Indigenous Peoples,⁴⁷ included related protections in its Constitution, and passed specific legislation that echoes their provisions.⁴⁸

a. At the Intersections: Indigenous and Afro-descendant Women's Human Rights in Development Contexts

Afro-descendant and Indigenous women face barriers, stemming from long-standing racial, gender and class discrimination, to full enjoyment of their human rights, which have significant bearing on their rights in development contexts. Recent shifts in international development and related human rights norms are marked by efforts to redress the historic failure to recognize both women's productive role in non-monetized work and the impacts of gender and other forms of discrimination in contributing to their poverty, though these norms have not necessarily translated to gains for women globally.⁴⁹

International and regional human rights experts have also recognized the disproportionate, harmful impacts that prevailing development models can have on Indigenous and Afro-descendant women. For example, when third parties limit women's access to natural resources necessary to provide for their families, Indigenous and Afro-descendant Peoples' way of life is disrupted, which negatively impacts women's life-sustaining roles in their communities.⁵⁰ Women may be forced to find other ways to provide for their families, including migrating to urban centers where they face discrimination.⁵¹ The CEDAW Committee also warns that new development projects can trigger displacement of Indigenous women.⁵² The IACHR notes that certain development projects contribute to poverty and vulnerability amongst Indigenous women

⁴⁵ That is the case of Argentina, Bolivia, Brazil, Colombia, Ecuador, Peru and Venezuela. Peter Bille Larsen, The 'New Jungle Law': Development, Indigenous Rights and ILO Convention 169 in Latin America, In: International Development Policy | Revue internationale de politique de développement Art 7.1, para. 8 (2016), <https://journals.openedition.org/poldev/2220#tocto1n4>.

⁴⁶ International Labour Organization, Ratifications for Colombia, (2017), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102595.

⁴⁷ Cancillería de Colombia, Cancillería celebró aprobación de Declaración Americana sobre Derechos de Pueblos Indígenas, (June 16, 2016), <https://www.cancilleria.gov.co/newsroom/news/cancilleria-celebro-aprobacion-declaracion-americana-derechos-pueblos-indigenas>.

⁴⁸ Articles 1, 70, 7, 8, 80, 10 and 68 of the Constitution, as well as Law 21 of 1991 that ratifies ILO 169 and Law 70 of 1993 that recognizes Afro descendant communities land rights. Congreso de Colombia, Constitución Política de Colombia, (July 20, 1991), <http://www.secretariassenado.gov.co/index.php/constitucion-politica>; Congreso de Colombia, Ley 21 de 1991, (March 6, 1991),

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=37032>; Congreso de Colombia, Ley 70 de 1993, (August 31, 1993), <https://www.minagricultura.gov.co/Normatividad/Leyes/Ley%2070%20de%201993.pdf>.

⁴⁹ Fareda Banda, Women, human rights and development, In: Realizing the Right to Development, Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development, pg. 151-152, 158 (September 2013), https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf.

⁵⁰ IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, OEA/Ser.L/V/II., Doc. 47/15, para. 318 (December 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>.

⁵¹ *Ibid.*

⁵² UN CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women, Guatemala, CEDAW/C/GUA/CO/7, para. 33 (February 12, 2009), <https://undocs.org/CEDAW/C/GUA/CO/7>.

and their communities, and can lead to forced sex work, trafficking, and negative physical and psychological effects on Indigenous women's health and culture.⁵³

International human rights norms provide interconnected protections that apply to Afro-descendant and Indigenous women in development planning, decision-making and implementation. These norms prioritize their right as women to participate in all stages of development. In addition, Afro-descendant and Indigenous women's right as Peoples to free, prior, and informed consent (FPIC) is enhanced by rural women's right to FPIC. Rural women's human rights frameworks include and recognize Indigenous and Afro-descendant women as particularly marginalized rural women, and establish specific protections for them. They also obligate states to mitigate harm to them stemming from macro-economic policies and extractive industries. In addition, Afro-descendant and Indigenous women's right to self-determination as Peoples is intrinsically linked to their rights as women to participate in and benefit from development, and to be free from discrimination and violence.

International human rights norms recognize women's right to participate equally at all development planning levels and to benefit equally from development. Beginning in the 1970s,⁵⁴ the UN General Assembly (UNGA) promoted women's participation in development through resolutions on women's financial inclusion, educational and training programs for rural women, and women's inclusion in the formulation, design, and implementation of development projects.⁵⁵ In 1979 the UNGA adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 14 of which obligates states to ensure that rural women in particular participate in and benefit from development:

“States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) To participate in the elaboration and implementation of development planning at all levels.”⁵⁶

In its 1999 Report on Women and the Right to Development, the Sub-Commission on the Promotion and Protection of Human Rights urged States to take measures to eliminate discriminatory laws or policies, particularly those pertaining to land, property and housing, that inhibit women's economic rights, and to encourage transformation of customs and traditions that

⁵³ IACHR, Indigenous Women and Their Human Rights in the Americas, OEA/Ser.L/V/II., Doc. 44/17, para. 100 (April 17, 2017), <https://www.iwgia.org/images/documents/popular-publications/indigenous-women-americas.pdf>.

⁵⁴ Fareda Banda, Women, human rights and development, In: Realizing the Right to Development, Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development, pg. 149-150 (September 2013), https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf.

⁵⁵ Resolution 3522 (XXX): Improvement of the economic status of women for their effective and speedy participation in the development of their countries, Resolution 3523 (XXX): Women in rural areas, and Resolution 3524 (XXX): Measures for the integration of women in development. UN General Assembly, Resolutions adopted on the reports of the Third Committee, pg. 97-99 (December 15, 1975), <https://www.un.org/documents/ga/res/30/ares30.htm>.

⁵⁶ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, art. 14(2) (December 18, 1979), <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article14>.

deny women's right to development.⁵⁷ The Sub-Commission further invited the CEDAW Committee to specifically address women's economic rights, including their right to an adequate standard of living, when examining State party reports, and to adopt a General Recommendation on CEDAW's Article 14.⁵⁸

CEDAW's 2016 General Recommendation 34 on Rural Women highlights macroeconomic roots of women's poverty and affirms that States, including development partners, should ensure that economic policies and assistance take into account the needs and rights of rural women.⁵⁹ It recognizes that rural women face specific threats due to climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, biopiracy and the loss of biodiversity, in particular agro-biodiversity, and it obligates states to alleviate those threats.⁶⁰ In addition, the Recommendation calls for States to eliminate discrimination against marginalized groups of rural women, including conflict-affected women, and Indigenous, Afro-descendent, and other ethnic and religious minority women; and to ensure their access to education, healthcare, water and sanitation and other services.⁶¹ The General Recommendation further obligates states to address the negative impacts of macro-economic policies on women, including agricultural and trade liberalization, and the commodification and privatization of land, water, and other natural resources.⁶²

The Recommendation reaffirms rural women's right to participate in decision-making at all levels, including through the establishment of gender-responsive rural decision-making structures.⁶³ Among different measures, it recommends that States ensure that development projects are implemented only after "participatory gender and environmental impact assessments have been conducted with the full participation of rural women" and that they have complied

⁵⁷ UN Economic and Social Council, REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS ON ITS FIFTY-FIRST SESSION, E/CN.4/2000/2, E/CN.2/1999/54, res. 1999/15(4) (November 10, 1999), http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1847.

⁵⁸ *Ibid.*, res. 1999/15(8).

⁵⁹ UN CEDAW, General Recommendation No. 34 (2016) on the rights of rural women, CEDAW/C/GC/34, para. 11 (March 7, 2016), <https://undocs.org/CEDAW/C/GC/34>.

⁶⁰ *Ibid.*, para. 12.

⁶¹ *Ibid.*, para. 15.

⁶² *Ibid.*, para. 11; In its Concluding Observations to Jamaica, for example, the Committee interprets Article 14 in relation to the impact that economic adjustment and trade liberalization programs have on women: "The Committee is concerned that insufficient attention is being paid to the gender-specific impact on women, particularly rural women, of economic adjustment and trade liberalization programmes as a cause of poverty. It is also concerned with the poor living conditions rural women face, especially in the country's interior. While noting the number of interventions for rural women, it is concerned that these are scattered and welfare oriented rather than aimed at rural women's empowerment, and indicate the absence of a holistic approach to implementation of article 14 of the Convention. While noting that the State party has placed a high priority on its National Poverty Eradication Programme, the Committee regrets the lack of data provided on its impact on women." UN CEDAW, Concluding comments of the Committee on the Elimination of Discrimination against Women: Jamaica, CEDAW/C/JAM/CO/5, para. 37 (August 25, 2006), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FJAM%2FCO%2F5&Lang=en.

⁶³ UN CEDAW, General Recommendation No. 34 (2016) on the rights of rural women, CEDAW/C/GC/34, para. 53, 54(c) (March 7, 2016), <https://undocs.org/CEDAW/C/GC/34>.

with the right of rural women to free, prior and informed consent (FPIC).⁶⁴ In doing so, the Committee lists women's participation as a specific requirement of FPIC.

The Inter-American Commission on Human Rights (IACHR) explicitly links Indigenous Peoples' right to self-determination to Indigenous women's rights to participation and non-discrimination. In a set of guiding principles in a 2017 report regarding Indigenous women's rights, it reaffirmed Indigenous Peoples' right to self-determination and control over their lands and resources, in recognition that violations of these rights disproportionately impact Indigenous women. The IACHR found that imposition of extractive activities and mega-development projects in violation of FPIC and self-determination underscore the important interconnections between "respect for Indigenous peoples' right to self-determination, to integrity of their territories and natural resources, the right to live free from all forms of racism, and the guarantee of the right of Indigenous women to live a life free from all forms of discrimination and violence."⁶⁵ It also underscored that Indigenous women must be able to actively participate in formulating, implementing and evaluating all programs and policies that may affect them.⁶⁶

The UN Special Rapporteur on the Rights of Indigenous Peoples has noted the importance of balancing the protection of Indigenous women and the respect for the right to self-determination and autonomy of Indigenous Peoples.⁶⁷ While this recognition is sometimes framed as presenting a dichotomy between "external" values that privilege individual over communal rights,⁶⁸ Indigenous and Afro-descendant women have been actively advocating for their right to self-determination, as well as for their right to live free from violence, among other gender-based rights in tandem with their collective rights as Peoples.⁶⁹ Afro-descendant women's economic development collectives in the Pacific region of Colombia, for example, have, since at least the 1990s taken collective actions to transform unequal gender relations within their own communities, while also asserting Afro-descendant rights and culture in development.⁷⁰

Indigenous and Afro-descendant women still face obstacles to meaningful participation, however, due to the discrimination and economic disadvantage they face as a result of legacies of racism, colonialism, and patriarchy, as well as from sexism within their own communities. By way of illustration, Afro-descendant women in Latin America are severely under-represented in

⁶⁴ *Ibid.*, para. 54(e).

⁶⁵ IACHR, Indigenous Women and Their Human Rights in the Americas, OEA/Ser.L/V/II., Doc. 44/17, para. 42 (April 17, 2017), <https://www.iwgia.org/images/documents/popular-publications/indigenous-women-americas.pdf>.

⁶⁶ *Ibid.*, para. 44.

⁶⁷ United Nations General Assembly, Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, A/HRC/30/41, para. 75 (August 6, 2015), <https://undocs.org/A/HRC/30/41>.

⁶⁸ Lucy Guamá, Avelina Pancho Aquite and Elena Rey, Antigua era más duro: hablan las mujeres indígenas de Antioquia, In: Colección Autónoma Indígena No. 3, pg. 19-20 (May 2009), https://www.academia.edu/11571872/Antigua_era_m%C3%A1s_duro.

⁶⁹ *Ibid.*; Proceso de Comunidades Negras, Tercer informe sobre la situación de mujeres afrodescendientes en Colombia: COMBATIENDO A LAS MUJERES NEGRAS COMO SI FUERAN UN ENEMIGO BÉLICO, pg. 8 (March 2019), <https://renacientes.net/blog/2019/03/10/tercer-informe-sobre-sobre-la-situacion-de-mujeres-afrodescendientes-en-colombia-combatiendo-a-las-mujeres-negras-como-si-fueran-un-enemigo-belico/>.

⁷⁰ Kiran Asher, Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands, pg. 134-135, 151-152 (August 2009).

decision-making bodies in comparison to other women,⁷¹ and make up less than 1% of total legislators in Latin America,⁷² meaning their role in high-level decision-making that can have bearing on their rights in development contexts is severely diminished. The Expert Mechanism on the rights of Indigenous Peoples recognized the deficient progress in Indigenous women's participation, and stressed their right to equally participate in both internal and external decision-making processes.⁷³ Specifically, Afro-descendant and Indigenous women's right to participation is fundamental to upholding the right to free, prior and informed consent. The IACHR has noted that during consultation processes States typically interact with Indigenous Peoples' boards of directors, which are typically men and do not always have an express mandate to represent their communities in decisions of special importance.⁷⁴ It added that "[s]tates must guarantee the participation of women in the internal decision-making processes" by coordinating with Indigenous peoples to develop systems that respect their customary laws and guarantee women's participation.⁷⁵

III. Self-determined Development in practice: Buen Vivir and Ubuntu

Since the late 1980s, alternative approaches have emerged that question prevailing development regimes.⁷⁶ In South America, these have taken shape through a world view and set of practices that have come to be called "Buen Vivir."⁷⁷ Indigenous communities in the Andean region drew on similar precursor concepts to articulate a concept of Buen Vivir in the 1990s.⁷⁸ Afro-descendent communities in Colombia trace the notion to writings by Proceso de Comunidades Negras (PCN) in the 1990s, promoted by the thinker and activist Libia Grueso.⁷⁹ The concept has evolved and been incorporated in human rights discourse, including in the declaration of the "People's Summit at Rio+20 for Social and Environmental Justice in defense of the commons,

⁷¹ IACHR, The Road to Substantive Democracy: Women's Political Participation in the Americas, OAS/Ser.L/V/II., Doc. 79, para. 90 (April 18, 2011), <https://www.cidh.oas.org/pdf%20files/POLITICAL%20PARTICIPATION.pdf>.

⁷² *Ibid.*, para. 91.

⁷³ UN General Assembly, Final report on the study on Indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, para. 36 (August 17, 2011), <https://www.undocs.org/a/hrc/18/42>.

⁷⁴ IACHR, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, OEA/Ser.L/V/II., Doc. 47/15, para. 212 (December 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>.

⁷⁵ *Ibid.*, para. 211.

⁷⁶ Wendy Harcourt, The future of capitalism: a consideration of alternatives, *Cambridge Journal of Economics*, Vol. 38, Issue 6, pg. 1307–1328 (November 2014).

⁷⁷ Wendy Harcourt, The future of capitalism: a consideration of alternatives, *Cambridge Journal of Economics*, Vol. 38, Issue 6, pg. 1322 (November 2014).

⁷⁸ Eduardo Gudynas, Buen Vivir, In: Degrowth. A vocabulary for a new era, p. 201 (2015).

⁷⁹ Charo Mina Rojas et al., Luchas del buen vivir por las mujeres negras del Alto Cauca, *NÓMADAS (COL)*, pg. 173(2015).

against the commodification of life”⁸⁰ and in the 2010 report on Indigenous Peoples by the International Expert Group to the Permanent Forum on Indigenous Peoples.⁸¹

Buen Vivir is usually translated in English as "living well" or "collective well-being".⁸² Although the concept is continually evolving and differs between cultures and traditions,⁸³ central elements of Buen Vivir are identity, equity and sustainability, which can be understood as a way of living in harmony with oneself, society and nature.⁸⁴ It emphasizes quality of life without reducing it to consumption or property, and questions the presumed inherent benefits of “economic growth,” given current models’ reliance on non-sustainable exploitation of limited natural resources in an environment that cannot continue to sustain damage.⁸⁵ Indigenous and Afro-descendant notions of Buen Vivir are often distinct from their interpretation in state policies. Governments that have deployed extractivist development have at times coopted the term to serve interests that are in opposition to Afro-descendant and Indigenous interpretations.⁸⁶ As Afro-descendant and Indigenous communities conceive it, Buen Vivir must be implemented through a ground-up approach, meaning local participation is fundamental to allowing for self-identified community needs to drive planning objectives that lead to truly living well.⁸⁷

In Colombia, Afro-descendant concepts of Buen Vivir emerged as a response to the harmful consequences of hegemonic development models. Factors that triggered the struggle for Buen Vivir include increased state mining licenses and approvals for mega-development projects granted in Afro-Colombian territories without FPIC processes or environmental impact analyses, militarization of Afro-Colombian territories, threats and killings of leaders and activists, and

⁸⁰ The Declaration expressly mentions Buen Vivir as a model in opposition to that of unchecked consumption and promotes the revitalization of ancestral knowledge and the recognition of the rights of mother earth. *Cupula dos povos, Documento final de la Cumbre de los Pueblos en Rio +20 por Justicia Social y Ambiental. En defensa de los bienes comunes, contra la mercantilización de la vida*, pg. 3-4(2012).

⁸¹ Economic and Social Council, Report of the International Expert Group Meeting: Indigenous Peoples: Development with Culture and Identity, para. 31, E/C.19/2010/14 (5 February 2010), available at <https://undocs.org/E/C.19/2010/14>

⁸² Arturo Escobar, Thinking-feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South, *AIBR. Revista de Antropología Iberoamericana*, Vol. 11, No. 1, pg. 25 (2016); Wendy Harcourt, The future of capitalism: a consideration of alternatives, *Cambridge Journal of Economics*, Vol. 38, Issue 6, pg. 1322 (November 2014).

⁸³ José María Tortosa, Vivir bien, buen vivir: caminar con los dos pies, *OBETS, Revista de Ciencias Sociales*, Vol. 6, pg. 16 (2011).

⁸⁴ Ana Patricia Cubillo-Guevara et al., El Buen Vivir como alternativa al desarrollo para América Latina, *Iberoamerican Journal of Development Studies*, Vol. 5, pg.53-54 (2016).

⁸⁵ Eduardo Gudynas, Buen vivir: Germinando alternativos al desarrollo, *América Latina en Movimiento*, pg. 2-3 (February 2011).

⁸⁶ Natasha Chassagne, Sustaining the ‘Good Life’: Buen Vivir as an alternative to sustainable development, *Community Development Journal*, pg. 5 (January 2018); Eduardo Gudynas, Buen vivir: Sobre Secuestros, Domesticaciones, Rescates y Alternativas, In: *Bifurcación del Buen Vivir y el Sumak Kawsay*, pg. 33-34 (2014).

⁸⁷ Natasha Chassagne, Sustaining the ‘Good Life’: Buen Vivir as an alternative to sustainable development, *Community Development Journal*, pg. 6 (January 2018).

state complicity in environmental degradation and non-state actors' abuses.⁸⁸ Afro-Colombian communities describe these activities as a form of ecocide and ethnocide.⁸⁹

Buen Vivir is described as a form of decolonization,⁹⁰ an alternative approach to capitalism which vindicates ancestral knowledge and challenges prevailing logic that reduces rivers, minerals and land to resources for exploitation.⁹¹ Its proponents view prevailing state based approaches to development as pressuring communities to be "productive" and "efficient" in the way they manage "resources."⁹² The concept of Buen Vivir discards the notion that territories are simply a "resource,"⁹³ and identifies them instead as a source of life, the place where ancestors' memories were built, and a place that ensures food autonomy and preserves community bonds.⁹⁴

Afro-Colombian communities refer to Buen Vivir as an ancestral "thinking-feeling", and a concrete struggle rather than a philosophy.⁹⁵ This formulation has also been influenced by the concept of Ubuntu, which has South African roots and refers to the interconnectedness of all humankind and the prioritization of life over financial wealth.⁹⁶ Elements that undergird Afro-Colombian's practice of Buen Vivir include recuperation of the value of simplicity, humanity based on a union with others and nature, spiritual recognition of cosmic integration of all that exists,⁹⁷ promotion of technologies that do not threaten the ecosystem, and reinforcement of community organization and autonomy.⁹⁸

In practice, this concept of Buen Vivir has manifested in communities' resistance to harmful development models, as well as promotion of collective economic activities that sustain lives and the environment. For example, in 2014, a group of Afro-Colombian women marched from La Toma to Bogota protesting the illegal presence of backhoe machines used for mining in their territories, and the attendant harmful consequences to the environment and to their social and

⁸⁸ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 17 (December 2018).

⁸⁹ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 18, 54 (December 2018).

⁹⁰ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 27 (December 2018).

⁹¹ Charo Mina Rojas et al., *Luchas del buen vivir por las mujeres negras del Alto Cauca, NÓMADAS (COL)*, pg.173(2015); CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 9 (December 2018).

⁹² Charo Mina Rojas et al., *Luchas del buen vivir por las mujeres negras del Alto Cauca, NÓMADAS (COL)*, pg. 178(2015).

⁹³ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 33 (December 2018).

⁹⁴ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 33 (December 2018).

⁹⁵ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 23 (December 2018).

⁹⁶ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 26-27 (December 2018).

⁹⁷ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 28 (December 2018).

⁹⁸ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 11 (December 2018).

economic wellbeing.⁹⁹ This built on Afro-descendant communities' efforts to further develop and promote alternatives to large-scale extractivism.¹⁰⁰ During planning meetings, communities had discussed economic alternatives, stressing the principle of not taking "more than what the earth allows us."¹⁰¹ Ancestral mining, practiced in Afro-descendant communities, was identified as an example of an alternative form of organizing economic activity, based in solidarity, sisterhood, celebration and collective work.¹⁰² Other examples include cooperative work, sustainable farming, and bartering.¹⁰³ These practices of resistance to extractivism and of economic solidarity challenge individualistic approaches in favor of collective rights, territorial rights, and the conservation of biodiversity.¹⁰⁴ These concepts and methods should not be understood as opposing efforts to end poverty. They instead unveil the ways in which top-down development models contribute to dispossession, impoverishment and erosion of local rights and power, at a time when an abundance of alternatives exist that could facilitate far better outcomes.

IV. Recommendations

- a. In the process of drafting a legally binding instrument on the Right to Development, the Inter-Governmental Working Group on the Right to Development should ensure the meaningful participation of Indigenous and Afro-descendant women, in accordance with international human rights norms.¹⁰⁵ This would entail the Working Group expanding its process of civil society consultation in order to create the conditions necessary to fully consider these perspectives.
- b. A legally binding instrument on the Right to Development must reflect current international human rights legal protections for Indigenous and Afro-descendant Peoples and account for their rights to self-determination, and to free, prior, and informed consent, including the right to say "no" to development plans and projects.¹⁰⁶ It should call for states to develop, in consultation with Afro-descendant and Indigenous Peoples, binding laws, regulations, policies, and other mechanisms to protect the right to Buen Vivir, (*living well/ collective well-being.*)

⁹⁹ Arturo Escobar, Thinking-feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South, *AIBR. Revista de Antropología Iberoamericana*, Vol. 11, No. 1, pg. 29 (2016).

¹⁰⁰ Charo Mina Rojas et al., Luchas del buen vivir por las mujeres negras del Alto Cauca, *NÓMADAS (COL)*, pg. 173(2015).

¹⁰¹ Charo Mina Rojas et al., Luchas del buen vivir por las mujeres negras del Alto Cauca, *NÓMADAS (COL)*, pg. 173(2015).

¹⁰² Charo Mina Rojas et al., Luchas del buen vivir por las mujeres negras del Alto Cauca, *NÓMADAS (COL)*, pg. 177(2015).

¹⁰³ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 48 (December 2018).

¹⁰⁴ CLACSO, *Hacia el Buen Vivir: Desde lo cotidiano-extraordinario de la vida comunitaria*, pg. 48 (December 2018).

¹⁰⁵ (CEDAW Art. 14(2); Declaration on the right to Development, Art. 2(3) and 8(1) Art. XXIII (sections 1 and 2) and XXXII of the American Declaration on the Rights of Indigenous Peoples; Art. 5 and 23 of the UNDRIP; and Art. 7 of ILO 169)

¹⁰⁶ ILO 169 Art. 7(1); UNDRIP Art. 3), free, prior and informed consent (UNDRIP Arts. 10, 11(2), 19, 28(1), 29(2), 30(1), 32(2); ILO 169 Art. 6), and minorities' right to their own culture (ICCPR Art. 27)

- c. The Inter-Governmental Working Group on the Right to Development should incorporate an intersectional gender analysis in any draft of a binding instrument on the Right to Development. Among the urgent issues that should be addressed are connections between prevailing development models and discrimination women face in access to resources and power, particularly land and territory; adequate water, sanitation, healthcare, education, and other infrastructure; and independent decision making over their bodies. It should specifically account for Afro-descendant and Indigenous women's right to participate in internal and external decision-making processes.
- d. Taking into account that prevailing approaches equate development with large-scale extraction of natural resources and industrialization, which often exacerbate the poverty and inequality Indigenous and Afro-descendant women and their communities face, the Inter-Governmental Working Group on the Right to Development should be receptive to the specificities that emerge from different ways of relating with nature and the environment, such as Indigenous and Afro-descendant practices of Buen Vivir. Any binding instrument on the Right to Development should recognize the Right to Buen Vivir.
- e. In the process of drafting a legally binding instrument on the Right to Development, the Inter-Governmental Working Group should account for the need for governments to develop mechanisms that ensure the right to collective property and collective access to land, as critical resource to ensure ways and means for the full exercise of the right to Buen Vivir or "good living."