

‘TERRITORY IS EVERYTHING’: AFRO-COLOMBIAN COMMUNITIES, HUMAN RIGHTS AND ILLEGAL LAND GRABS

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ABSTRACT

In Colombia, the struggle over land rights often pits the cultural and economic interests of indigenous and marginalized peoples against the governments that are supposed to protect their rights under law. Rural Afro-Colombian women seeking to vindicate their land rights find themselves at the mercy of multiple vectors of discrimination: they are black; they are women; and they are rural farmers. Their land rights are under threat—from land occupations from below and State Development plans from above. An unholy mix of gender and racial discrimination compounds their struggle. Nevertheless, Afro-Colombian women are at the vanguard of land rights advocacy in Colombia. This article documents their struggle for vindication. Part I begins by situating Colombia in the broader, global movement for land rights, and then describes Colombia’s Afro-descendant population, their landholdings and the main threats to their land rights. Part II outlines the primary legal and political sources of land

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dispossession in Colombia, and concludes by proposing a path forward for Colombia to protect, promote and realize the rights of Afro-Colombian women to their territory.

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INTRODUCTION

*“If our territory is polluted it’s a threat for us. A connection we have. Everything in areas that are contaminated dies. When that happens part of our life dies.”*¹

In Colombia, as elsewhere, the struggle over land rights too often pits the cultural and economic interests of indigenous and marginalized peoples against the governments that are supposed to protect their rights under law. Rural Afro-Colombian women seeking to vindicate their land rights find themselves at the mercy of multiple vectors of discrimination: they are black; they are women; and they are rural farmers.² Their land rights are under threat—from land occupations from below and State Development plans from above. An unholy mix of gender and racial discrimination compounds their struggle.

Afro-Colombian problems related to land tenure are well-documented. Indeed, the 2018 Human Rights Council’s Periodic Review of Colombia highlighted many of the issues facing Afro-Colombians, especially Afro-Colombian women, who seek to vindicate their land rights. Countries including the United States,³ Australia,⁴ Bolivia,⁵ Togo,⁶ and Honduras⁷ raised concerns about attacks on human rights defenders, particularly Afro-Colombian and indigenous leaders. These countries welcomed Colombia’s legal gestures toward land restitution and gender equality, but raised concerns that

1. Personal Communication at the Joint Workshop of PCN and CUNY’s Human Rights and Gender Justice Clinic, February 2019 [hereinafter PCN Personal Communication]. For a first-hand account of the situation of Afro-Colombian territory claims, consult the work of Afro-Colombian activist Clemencia Carabali. See Clemencia Carabali, *El Territorio Es La Vida Y La Vida No Se Vende . . . Se Ama Y Se Defiende* (on file with the *Columbia Human Rights Law Review*).

2. The way that ethnic and racial inequalities are intertwined with gender inequalities to disadvantage women, indigenous and Afro-descendant people is well documented. See Economic Commission for Latin America and the Caribbean, *The Social Inequality Matrix in Latin America* 21-37, U.N. Doc. LC/G.2690(MDS.1/2) (November 2016) [hereinafter *The Social Inequality Matrix*].

3. Human Rights Council, *Report of the Working Group on the Universal Periodic Review for Colombia*, ¶ 15, U.N. Doc. A/HCR/39/6 (September 2018) [hereinafter *Periodic Review*].

4. *Id.* ¶ 22.

5. *Id.* ¶ 27.

6. *Id.* ¶ 113.

7. *Id.* ¶ 41.

implementation was lagging.⁸ The official conclusions of the Periodic Review included the recommendations that: Colombia should do more to protect rural, Afro-Colombian and indigenous human rights defenders,⁹ focus on the needs of indigenous and Afro-Colombian communities in the implementation of the 2016 Colombian peace agreement,¹⁰ protect their land rights,¹¹ and redouble efforts to eliminate discrimination against these communities.¹² This includes ensuring that “the design and implementation of development plans are consistent with popular and prior consultations and are in line with international standards.”¹³ Many of the recommendations noted the unique vulnerabilities of Afro-Colombian and indigenous women and the multiple, intersectional vectors of discrimination they face.¹⁴

Nevertheless, Afro-Colombian women are at the vanguard of human rights advocacy in Colombia. This article documents their struggle to vindicate land rights.¹⁵ Part I begins by situating Colombia in the broader, global movement for land rights, and then describes Colombia’s Afro-descendant population, their landholdings and the main threats to their land rights. Part II outlines the primary legal and political sources of land dispossession in Colombia, and concludes by proposing a path forward for Colombia to protect, promote and realize the rights of Afro-Colombian women to their territory.

8. *Id.* ¶¶ 15, 27, 120.36, 120.53.

9. *Id.* ¶¶ 120.55-120.65, 120.81. In March 2018, the Inter-American Commission on Human Rights urged Colombia to adopt urgent measures to protect human rights defenders from violence, particularly indigenous and Afro-Colombian human rights defenders. Press Release, Inter-American Commission on Human Rights, IACHR Urges Colombia to Adopt Urgent Measures to Protect Human Rights Defenders and Social Leaders (Mar. 27, 2018), https://www.oas.org/en/iachr/media_center/PReleases/2018/065.asp [<https://perma.cc/Q29X-EM2S>].

10. *Periodic Review*, *supra* note 3, ¶ 120.14.

11. *Id.* ¶¶ 120.170-120.174

12. *Id.* ¶¶ 120.21, 120.22, 120.166-120.169.

13. *Id.* ¶¶ 120.26, 120.174.

14. *Id.* ¶¶ 120.106, 120.10. Colombia endorsed all of these recommendations. *Id.* ¶ 120.

15. For example, Afro-Colombian leader Francia Marquez was awarded the 2018 Goldman Environmental Prize in recognition for her work against illegal gold mining on Afro-descendant lands. Goldman Environmental Prize, Francia Marquez, <https://www.goldmanprize.org/recipient/francia-marquez/> [<https://perma.cc/8EKP-HKDU>] [hereinafter Goldman Prize].

I. OVERVIEW OF LAND GRABBING

*“If we don’t have territory we will disappear as community. Forced systematic displacement. For them it is a strategy.”*¹⁶

Around the world, claims about traditional land rights sit at the intersection of law and power. For more than a decade, public and private investors have been targeting what they characterize as “unexploited and underexploited” lands in developing countries for large-scale land acquisitions.¹⁷ Taking advantage of the legal grey areas between traditional land rights and formal property systems, these investors have obtained rights to large swaths of land and to associated resources like water, minerals or forests.¹⁸ The rights to manage and use land and associated resources are becoming increasingly consolidated in the hands of a few, often foreign, actors.

The term “land grabbing”¹⁹ entered the popular vernacular through the advocacy efforts of *La Via Campesina*,²⁰ an international

16. PCN Personal Communication, *supra* note 1.

17. For an analysis of this phenomenon in Colombia, see Alicia Puyana & Agostina Constantino, *Chinese Land Grabbing in Argentina and Colombia*, 42 *LATIN AM. PERSP.* 105 (2015).

18. See generally Joachim von Braun & Ruth Meinzen-Dick, “*Land Grabbing*” by Foreign Investors in Developing Countries: Risks and Opportunities, International Food Policy Research Institute Policy Brief (2009) (emphasizing the unequal power of investors and local communities). Some of this land grabbing was done legally, some was structured to evade laws restricting acquisition of family agricultural units. See Puyana & Constantino, *supra* note 17, at 110-111.

19. There is no universally accepted definition of land grabbing. Katelyn Baker-Smith & Szocs Boruss Miklos Attila, *What is Land Grabbing? A Critical Review of Existing Definitions*, *ECORURALIS* (2016). However, the World Bank and the Food and Agriculture Organization of the United Nations (“FAO”) use the term to apply to transactions involving more than 1000 hectares that involve the participation of either the government or a foreign buyer, and the subsequent use of the land for production of biofuels, cattle ranching, megaprojects or industrial-scale monoculture. See, e.g., KLAUS DEININGER & DEREK BYERLEE ET AL., *WORLD BANK, RISING GLOBAL INTERESTS IN FARMLAND: CAN IT YIELD SUSTAINABLE AND EQUITABLE BENEFITS?* (2010); LORENZO COTULA ET AL., *FAO, LAND GRAB OR DEVELOPMENT OPPORTUNITY?: AGRICULTURAL INVESTMENT AND INTERNATIONAL LAND DEALS IN AFRICA* (2009).

20. *La Via Campesina* represents more than 200 million peasants in over 81 countries. *The International Peasants Voice*, LA VIA CAMPESINA, <https://via.campesina.org/en/international-peasants-voice/> [https://perma.cc/2S8W-5HMC]. PCN is a member organization of *La Via Campesina*. *Member Organizations of La Via Campesina*, LA VIA CAMPESINA (Mar. 29, 2018), <https://viacampesina.org/en/member-organisations-of-la-via-campesina-updated-2018/> [https://perma.cc/U5DD-FZW7].

peasant organization. *La Via Campesina* successfully persuaded the UN Human Rights Council to commission an investigation of the needs of peasants as part of the 2010 Resolution on the Right to Food.²¹ The resulting Advisory Committee study emphasized the centrality of rural land rights to the broader realization of human rights.²² Indeed, the Advisory Committee identified “expropriation of land, forced evictions and displacement” as “the main cause of discrimination against peasants and other people working in rural areas.”²³ The Advisory Committee found that gender discrimination against women farmers further compounded this situation,²⁴ leaving women in rural areas among the world’s most food insecure.²⁵ These findings culminated in the recently adopted Declaration on the Rights of Peasants,²⁶ which sought to make these powerful discriminatory forces behind land grabbing “legible.”²⁷

In 2011, the Food and Agriculture Organization of the United Nations (“FAO”) identified Colombia as a country with high levels of land grabbing.²⁸ Colombia’s national development plan identified export agriculture, a primary driver of land grabbing, as “one of the engines of development.”²⁹ *La Via Campesina* echoed these concerns, asserting that the Colombian government is not adequately taking the

21. Human Rights Council, *The Right to Food* ¶ 44, U.N. Doc. A/HRC/13/L.17 (Mar. 19, 2010).

22. Human Rights Council, Final Study of the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas ¶¶ 43-62, U.N. Doc. A/HRC/AC/8/6 (Jan. 23, 2012) [hereinafter Final Study].

23. *Id.* ¶ 23.

24. *Id.*

25. Food and Agriculture Organization of the United Nations, *Gender Food Security*, Synthesis Report of Regional Documents (2004), <http://www.fao.org/3/x0198e/x0198e00.htm> [<https://perma.cc/3J4B-3YSA>].

26. Human Rights Council, *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, U.N. Doc. A/HRC/RES/39/12 (Sept. 28, 2019) [hereinafter Peasant Declaration]. The Declaration was adopted by an overwhelming majority of the UN General Assembly’s 193 members—121 voted in favor, 8 voted against, and 54, including Colombia, abstained.

27. For a description of how variables become simplified and abstracted, and therefore “legible” to the state, see JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* 25-39 (1998).

28. SATURNINO M. BORRAS JR ET AL., FAO, *LAND GRABBING IN LATIN AMERICA AND THE CARIBBEAN VIEWED FROM BROADER INTERNATIONAL PERSPECTIVES* 15-17 (2011).

29. Press Release, Departamento Nacional de Planeación, Plan Nacional De Desarrollo 2010-2014 at 13 (2010), <https://colaboracion.dnp.gov.co/CDT/PND/Resumen%20Ejecutivo%20Ultima%20Version.pdf> [<https://perma.cc/36AJ-D38T>].

needs of Afro-Colombian communities, as well as indigenous and peasant groups, into account in making development decisions.³⁰

Activists have repeatedly sounded warning bells that land grabbing is associated with violence, and that it disproportionately impacts Afro-Colombian and indigenous groups.³¹ The Colombian Constitutional Court agreed, recognizing the link between forced displacements and other forms of violence against Afro-Colombian and indigenous groups, and emphasized that a wide array of economic actors have used strategies of violence to displace Afro-Colombian communities.³² The Inter-American Commission on Human Rights issued protective measures for Afro-Colombian communities and their leaders because of threats and harassments associated with land grabbing.³³

Afro-Colombian communities have suffered land grabbing due to illegal mining, illicit drug cultivation,³⁴ and government-approved

30. *III International Mission of La Via Campesina with Colombia-Final Declaration*, LA VIA CAMPESINA (Apr. 3, 2019) <https://viacampesina.org/es/iii-mision-internacional-de-la-via-campesina-con-colombia-declaracion-final/> [<https://perma.cc/5DV5-Z66B>].

31. *Under Santos Government: Paramilitaries Threaten Afro-Colombian Communities and Organizations*, WOLA (Mar. 3, 2011), <https://www.wola.org/2011/03/under-santos-government-paramilitaries-threaten-afro-colombian-communities-and-organizations/> [<https://perma.cc/EY3T-4NRX>].

32. Constitutional Court [C.C.] [Constitutional Court], Auto 004/09, Jan. 26, 2009, at 1, 2.3, <https://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm> [<https://perma.cc/JN2M-PNWN>] (characterizing the violence and displacement as “una emergencia tan grave como invisible” (“an emergency as serious as it is invisible”). Unfortunately, this assessment of land grabbing did not include a gender lens. Given the outsize role that women play in agriculture, as well as the pervasiveness of gendered inequalities, such an approach is highly problematic.

33. Precautionary Measure No. 140/14, Afro-descendant Communities and Leaders in Jiguamiandó, Curvaradó, Pedeguita and Mancilla, Colombia (Extension), Inter-Am. Comm’n. H.R. (Feb. 7, 2018) (finding that the rights to life and personal integrity of inhabitants of the communities of Curvaradó, Jiguamiandó, and Pedeguita and Mancilla, as well as their identified leaders were at serious risk.). Precautionary measures are issued under Article 25 of the IACHR Rules of Procedure which provide that in serious or urgent situations the Commission may request that a State adopt precautionary measures to prevent “irreparable harm to persons or to the subject matter of a proceeding related to a pending petition or case.” Precautionary measures may be of a collective nature, protecting persons or groups of persons.

34. Parker Asmann, *Colombia Cocaine Production Breaks New Record Levels: UNODC Report*, INSIGHT CRIME (Sept. 19, 2018).

mega-projects, including agri-business³⁵ and infrastructure.³⁶ All of these drivers of displacement have exacerbated the already difficult situation created by Colombia's civil war,³⁷ which disproportionately displaced Afro-Colombian landholders.³⁸ Indeed, Afro-Colombians account for 17 percent of the total number of displaced persons, roughly one and a half times their population share.³⁹ Afro-descendant women have been particularly impacted, with sexual and gender-based violence used as a tool of displacement,⁴⁰ and displacement, in turn, compounding their vulnerability to further sexual and gender-based violence.⁴¹

35. See, e.g., Mark James Maughan, *Land Grab and Oil Palm in Colombia* at 7, paper presented at International Conference on Global Land Grabbing, April 6-8, 2011 (quoting a PCN activist alleging that palm oil associations are undermining Afro-Colombian land sovereignty).

36. Alex Diamond, *Will Megaprojects Destroy Colombia's Peace Process*, NACLA (Aug. 5, 2019); Kelly Nichols and Gimena Sánchez-Garzoli, *Buenaventura, Colombia: Where Free Trade Meets Mass Graves*, NACLA (Sept. 16, 2011) (describing the dispossession of Afro-Colombian holders for port expansion).

37. For the latter half of the twentieth century, Colombia was immersed in a civil war between the government, the Revolutionary Armed Forces of Colombia (FARC), and various right-wing paramilitary groups. Tens of thousands died, and many more were displaced. Afro-descendant and indigenous groups bore the brunt of the conflict, which was fought largely in their territories. In 2016, the parties signed a peace agreement and began the long process of demilitarization.

38. See Ombudsman Alerts about Humanitarian Crisis in Bajo Atrato and Baudó, Ombudsman Office of Colombia (March 2017), <http://www.defensoria.gov.co/es/nube/noticias/6177/Defensor%20del-Pueblo-alerta-sobre-crisis-humanitaria-en-Bajo-Atrato-y-Baud%20Alto-Baud%20Choc-Defensor%20del-Pueblo-desplazamiento-forzados-Desplazados.htm> [<https://perma.cc/N9EA-FB5T>]; *Colombia: A New Tragedy is Ongoing in Bojayá and Lower Atrato*, AMNESTY INT'L (Jan. 29, 2018), <https://www.amnesty.org/es/latest/news/2018/01/colombia-una-nueva-tragedia-se-gesta-en-bojaya-y-el-bajo-atrato/> [<https://perma.cc/VGT7-79NU>].

39. Economic and Social Council, Report by Mr. Doudou Diène, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. E/CN.4/2004/18/Add.3 24 ¶¶ 46-48 (Feb. 2004).

40. For a first-hand account of the relationship between gender violence and displacement in Colombia, see JULIA EVA COGOLLO, *LA VIOLENCIA SEXUAL EN MUJERES NEGRAS, MAS ALLA QUE UN CRIMEN DE GUERRA* (2019) (on file with the *Columbia Human Rights Law Review*).

41. For an exploration of the connection between displacement and gender-based violence around the world, see Elizabeth Daley and Sabine Pallas, *Women and Land Deals in Africa and Asia: Weighing the Implications and Changing the Game*, 20 FEMINIST ECON. 178, 179-201 (2014).

A. Colombia's Afro-descendant Population

*"Everything we do must have a well-placed language based on our identity as a black community."*⁴²

Colombia has the one of the largest Afro-descendant populations in Latin America. The official government estimates are that Afro-Colombians make up 10.6 percent of Colombia's total population, with 3.4% of the population identifying as indigenous, and the overwhelming majority, 85%, selecting "no relevant ethnicity" (meaning either white or mestizo).⁴³ These official state figures are much lower than the UN's estimate that roughly 25% of the population is Afro-descendant,⁴⁴ and contradict earlier Colombia National Department of Planning estimates that between 19% and 26% of the population were Afro-descendants.⁴⁵

Colombia's Afro-Colombian population is highly concentrated and geographically segregated. For example, even though official government statistics count Afro-Colombians as one-tenth of the overall population,⁴⁶ parts of the Pacific coast have Afro-Colombian populations as high as 90%, and 60% on the Atlantic coast. The department of Chocó is the most Afro-descendant area (85%), followed by Magdalena (72%), Bolivar (66%) and Sucre (65%).⁴⁷ Similarly, southern Valle, northern Cauca, and Uraba have 65% Afro-Colombian populations.⁴⁸

In terms of national policymaking, the Inter-American Commission on Human Rights characterized Afro-Colombians as

42. PCN Personal Communication, *supra* note 1.

43. COLOMBIA DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA [DANE], DIRECCIÓN DE CENSOS Y DEMOGRAFÍA 37 (May 2007), (analysis of the 2005 national census), https://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf [<https://perma.cc/P5G5-ZKPE>] [hereinafter 2005 National Census]. See, e.g., Testimony of Luis Gilberto Murillo-Urrutia Former Governor, State of Choco, Colombia, Senior Fellow on International Policy, Phelps Stokes Fund Before the House Committee on Foreign Affairs, Subcommittee on Western Hemisphere—Hearing on "U.S.-Colombia Relations." (Apr. 24, 2007) (citing earlier figures).

44. Human Rights Council, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. U.N. Doc. A/HCR/16/45/Add.1 ¶ 4 (Jan. 25, 2011).

45. See Testimony of Luis Gilberto Murillo-Urrutia, *supra* note 43.

46. This figure is disputed by Afro-Colombian groups who claim the figure is much closer to 25 percent.

47. 2005 National Census, *supra* note 43.

48. *Id.*

invisibilized.⁴⁹ National statistics are often not disaggregated by race.⁵⁰ The lack of disaggregated data obscures the inequality that Afro-Colombian communities face, and hides the structural discrimination they experience.⁵¹ Indeed, the World Bank identifies disaggregating data along racial and ethnic lines as key to appreciating how structural discrimination has impacted Afro-descendant communities.⁵² The Colombian Government itself acknowledged the serious gaps in its data collection with regard to Afro-Colombian populations.⁵³ Colombia began to bridge this gap by including a question in the 2005 census asking “Because of your culture, your people or your physical features, . . . you are or you consider yourself

49. IACHR, TRUTH, JUSTICE AND REPARATION—REPORT ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA, OEA/Ser.L/V/II. Doc.49/13 ¶ 615 (2013) [hereinafter TRUTH, JUSTICE AND REPARATION]. Indeed, the Commission dedicated an entire section to the importance of disaggregated statistical data in order to allow the State to “see” discrimination and inequality vis-à-vis Colombia’s Afro-descendant population. *Id.* ¶¶ 631-635. Without a way of isolating Afro-descendant populations in national data about economics, education and especially displacement, it is very difficult to reveal the inequalities that Afro-Colombians face. *Id.* ¶ 633.

50. The Montevideo Consensus Document highlighted the need for states to prepare public statistics in a fashion that generates information on subgroups like Afro-descendant populations sufficient to formulate inclusive public policy and to monitor whether those policies are achieving their objectives. Economic Commission for Latin America and the Caribbean, *Montevideo Consensus on Population and Development*, U.N. Doc. LC/L.3697 (Aug. 2013).

51. TRUTH, JUSTICE AND REPARATION, *supra* note 49, ¶ 633.

52. WORLD BANK, AFRO-DESCENDANTS IN LATIN AMERICA: TOWARD A FRAMEWORK OF INCLUSION 24 (2018).

53. For example, under former President Juan Manuel Santos, the Colombian Ministry of the Interior recognized the special needs of Afro-Colombian communities with regard to reparation and restitution of land and decried the poor quality of data about race available to policy makers. See REPÚBLICA DE COLOMBIA MINISTERIO DEL INTERIOR, EL ENFOQUE DIFERENCIAL PARA COMUNIDADES NEGRAS, AFROCOLOMBIANAS, RAIZALES Y PALENQUERAS VÍCTIMAS DEL CONFLICTO ARMADO 4, 12 (undated), https://gapv.mininterior.gov.co/sites/default/files/enfoque_diferencial_comunidades_negras.pdf [https://perma.cc/63VT-5CN8] [hereinafter EL ENFOQUE DIFERENCIAL]. Nevertheless, the information from the 2018 Census available to date does not break out data about Colombia’s population by ethnic group. See DANE, *Comunicado de Prensa: Censo Nacional de Población y Vivienda* (2018), <https://www.dane.gov.co/files/censo2018/informacion-tecnica/cnpv-2018-comunicado-3ra-entrega.pdf> [https://perma.cc/5A4P-TKUM], nor does much of the comprehensive 2015 Encuesta Nacional de Demografía y Salud, available at <https://dhsprogram.com/publications/publication-FR334-DHS-Final-Reports.cfm> [https://perma.cc/MN6Y-G986].

as . . . ” with options including indigenous or Afro-Colombian.⁵⁴ There was no option to select white or mestizo, and, as a result, the majority of the population is classified by default as “not belonging to the pertinent ethnic groups.”⁵⁵

This lack of visibility matters⁵⁶ because Colombia has a history of persistent, entrenched racial discrimination.⁵⁷ Slavery was abolished in Colombia in 1851, but the Colombian government continued to pursue an official strategy of *blanqueamiento*, or whitening of society, well into the twentieth century.⁵⁸ As a result, the IACHR has repeatedly described an ongoing “pattern of racial discrimination and systematic historical exclusion” of Afro-Colombians.⁵⁹ Negative and offensive stereotypes in television and media are all too common.⁶⁰ Indeed, the Economic Commission for

54. 2005 National Census, *supra* note 43, at 35. *The Social Inequality Matrix*, *supra* note 2, at 26. According to the Economic Commission for Latin America, it has limited data on indigenous and Afro-descendant groups because only nine states routinely ask for information about indigenous self-identification and only four about Afro-descendant self-identification. Press Release, Economic Commission for Latin America and the Caribbean, ECLAC Calls on Latin American and Caribbean Countries to Make Progress in Protecting the Rights of Indigenous Women (Oct. 17, 2013), <https://www.cepal.org/en/pressreleases/eclac-calls-latin-american-and-caribbean-countries-make-progress-protecting-rights> [https://perma.cc/YN5K-PHFG].

55. 2005 National Census, *supra* note 43, at 37. The significance of the mestizo identity for Colombian nation-building is explained by Maria Viveros Vigoya, *Social Mobility, Whiteness, and Whitening in Colombia*, 20 J. LATIN AM. & CARIBBEAN ANTHROPOLOGY 495 (2015) (explaining how an ideology of racial hierarchy was disguised as an inclusive social order.).

56. PCN has been active in combating this invisibilization. See, e.g., PCN, *Defeating Invisibility: A Challenge for Afro-descendant Women in Colombia* (2013), <http://www.afrocolombians.org/pdfs/Defeating%20Invisibility.pdf> [https://perma.cc/83CG-SD87] (describing efforts).

57. PETER WADE, *BLACKNESS AND RACE MIXTURES: THE DYNAMICS OF RACIAL IDENTITY IN COLOMBIA* (1995).

58. Margerita Chavez & Marta Zambrano, *From Blanqueamiento to Reindigenizacion: Paradoxes of Mestizaje and Multiculturalism in Contemporary Colombia*, 80 EUR. REV. OF LATIN AM. AND CARIBBEAN STUDIES 5, 6-8 (2006); Viveros Vigoya, *supra* note 55, at 498-99.

59. TRUTH, JUSTICE AND REPARATION, *supra* note 49, ¶ 621 (2013); IACHR, Report on the Situation of People of African Descendant in the Americas, OEA/Ser.L/V/II., Doc. 62, December 5, 2011, ¶ 11.

60. In 2015, for example, Colombian TV show *Sabados Felices* had a blackface character. *Colombian TV Network Puts an End to Blackface Soldier Character*, LATINOREBELS.COM (Oct. 30, 2015), <https://www.latinorebels.com/2015/10/30/colombian-tv-network-puts-an-end-to-blackface-soldier-character/> [https://perma.cc/2P9W-RM47]. Afro-Colombian women complain that they are routinely

Latin America and the Caribbean (ECLAC) has repeatedly cautioned against the profound inequalities affecting indigenous peoples and Afro-descendants in the region and has adopted equality as a strategic development goal.⁶¹

Inequality at both the household level and the regional level is extremely high in Colombia.⁶² Like its neighbors across Latin America, Colombia's Afro-descendant and indigenous people are generally subsisting at the lowest economic levels—and are much more likely to be poor or extremely poor.⁶³ Forty-one percent of Afro-descendant families in Colombia live in poverty, in contrast to 27 percent of non-Afro-descendant families.⁶⁴ For perspective, the overall national poverty rate in Colombia is under 30 percent.⁶⁵ Chocó, which is overwhelmingly Afro-descendant,⁶⁶ is the poorest department in

viewed through a hypersexualized lens. PCN Personal Communication, *supra* note 1.

61. Economic Commission for Latin America and the Caribbean, *Mujeres Afrodescendientes en América Latina y el Caribe: Deudas de Igualdad*, U.N. Doc. LC/TS.2018/33 (July 18, 2018). The United Nations as a whole declared 2015-2024 to be the International Decade for People of African Descent. Additionally, the United Nations Population Fund (UNFPA) has embraced this goal in its work in Latin America and the Caribbean. See Natalia Kanem, Executive Director, UNFPA, Statement at the High-Level Meeting on Accelerating Global Action for the Fulfillment of Rights for Afro-descendant people in Latin America and the Caribbean, (Oct. 17, 2019), <https://www.unfpa.org/press/accelerating-global-action-fulfill-rights-afro-descendants-latin-america-and-caribbean> [https://perma.cc/MDN6-8JJN].

62. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), ECONOMIC SURVEY: COLOMBIA 21 (May 2017) <https://www.oecd.org/eco/surveys/Colombia-2017-OECD-economic-survey-overview.pdf> [https://perma.cc/QUM7-QQKG].

63. *The Social Inequality Matrix*, *supra* note 2, at 27-29. Although the specific data included in this analysis does not include Colombia, the results are remarkably consistent across all the countries considered and are likely to hold true for Colombia as well. The 2015 Colombia Demographics and Health Survey found that 80% of indigenous people and 55% of Afro-Colombians are in the bottom two wealth quintiles. Resumen Ejecutivo Encuesta Nacional de Demografía y Salud 13 (2015), <https://dhsprogram.com/pubs/pdf/SR239/SR239.pdf> [https://perma.cc/X3MF-C4L9] (in Spanish). WORLD BANK, *supra* note 52, at 16 (noting in Brazil, Colombia, Ecuador, Panama, Peru and Uruguay combined, Afro-descendants represent 38% of the population, but half of those living in extreme poverty.).

64. WORLD BANK, *supra* note 52, at 21-22 (using a definition of US\$5.5 a day).

65. OECD, ECONOMIC SURVEY: COLUMBIA, *supra* note 62, at 5.

66. 2005 National Census, *supra* note 43, at 39. Indeed, in the late 1980s, United States writers suggested that throughout much of Colombia, the word *Chocoano*, meaning resident of Chocó, was virtually synonymous with the word

Colombia.⁶⁷ The prosperity gap between Chocó and the Capitol District of Bogotá (Colombia's wealthiest area) is actually a prosperity chasm—the two regions are separated by nearly a five-fold difference in per capita GDP.⁶⁸ Indeed in Bogota, roughly 10 percent of the population is impoverished, while in Chocó, that figure is well over 70 percent.⁶⁹ Unlike Chocó, Bogota is predominantly white/mestizo, with only a small Afro-Colombian population.⁷⁰ Of the five wealthiest departments (Bogotá, Cundinamarca, Meta, Valle del Cauca and Santander),⁷¹ all are overwhelmingly white/mestizo.⁷²

II. FORCES OF DISPOSSESSION

For decades, the human rights situation in Colombia around land tenure was “difficult and serious,”⁷³ notable for the “massive and continuous violations of the most fundamental of human rights.”⁷⁴ The internal armed conflict and the illegal drug-trafficking industry, as well as socio-economic violence rooted in social injustice and land disputes caused massive displacements in rural areas.⁷⁵ Afro-Colombians, along with indigenous people, were disproportionately impacted.⁷⁶ The Colombian Constitutional Court ruled in 2004 that forced displacements were unconstitutional,⁷⁷ and that such

black. See COLOMBIA: A COUNTRY STUDY, Race and Ethnicity (Dennis M. Hanratty and Sandra W. Meditz, eds., 1988).

67. *The Social Inequality Matrix*, supra note 2, at 60, Box IV.1.

68. *Id.* at 60, Box IV.1.

69. *Id.* at 64, Fig. IV.1.

70. World Population Review, Bogota 2019 Population, available at <http://worldpopulationreview.com/world-cities/bogota-population/> [https://perma.cc/K86Y-M7HL].

71. *The Social Inequality Matrix*, supra note 2, at 63.

72. Information available from Colombia Reports, <https://colombiareports.com/statistics/provinces/> [https://perma.cc/XB44-JJLR].

73. Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/11.102 at 9 (1999) [hereinafter IACHR Third Report].

74. *Id.*

75. Jonathan Glennie, *Land Grabs Have Dominated Colombia's History*, GUARDIAN (Jan. 31, 2011).

76. Hisham Aidi, *Afro-Colombians Face a Surge in Racial Violence*, AL JAZEERA (July 18, 2015) (reporting that 2 million Afro-Colombians were displaced by the civil war. For perspective, that is roughly half of the entire Afro-Colombian population of 4.4 million.).

77. Corte Constitucional [C.C.] [Constitutional Court], Third Chamber, Jan. 22, 2004, T-025 of 2004, (Colom.) at 17–20, https://www.brookings.edu/wp-content/uploads/2016/07/Colombia_T-025_2004.pdf [https://perma.cc/38XX-5YKA].

displacements disproportionately impacted Afro-Colombian communities.⁷⁸ The Colombian Ministry of the Interior recognized that Afro-Colombian land rights have been negatively impacted by armed conflict, growth of illicit markets such as drug trafficking, mining, and the expansion of megaprojects.⁷⁹

Colombia's decades long civil war was fought predominantly in indigenous and Afro-Colombian territories.⁸⁰ The violence itself caused gross human rights violations—thousands of Afro-Colombian women, men and children lost their lives, even more lost their land, their health, their families, and their way of life. Indeed, the IACHR flagged the Pacific Coast, Chocó and Uraba regions as areas where “political violence coincide[d] with violence associated with land ownership.”⁸¹

The voluminous 2016 Peace Accord⁸² was expected to lead to a reduction in the violence; however, the number of murders of human rights defenders has actually increased since the agreement was signed.⁸³ Rather than reaping the benefits of peace, Afro-Colombian communities are instead being re-victimized by ongoing state and private conduct that violates their human rights to their traditional lands and culture. Colombia is the second-most deadly place on the planet for land and environmental defenders.⁸⁴

Moreover, displacements still fall more disproportionately on Afro-Colombian and indigenous people,⁸⁵ with women making up more

78. *Id.*

79. EL ENFOQUE DIFERENCIAL, *supra* note 53, at 15–17.

80. See IACHR Third Report, *supra* note 73, at 158. Indeed, Afro-Colombian leader and peace activist Marino Cordobal described it as “[t]he war is taking place in our territory and against our people.” Aidi, *supra* note 76.

81. IACHR Third Report, *supra* note 73, at 87.

82. The Peace Accords included an Ethnic Chapter and a Women's Chapter. However, the government has failed to implement multiple provisions of the Ethnic Chapter.

83. Front Line Defenders, *Annual Report of Human Rights Defenders At Risk in 2017* at 12–13 (2017), https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf [<https://perma.cc/6NW6-DWXT>]. Most of the defenders killed were local leaders engaged in social or communal work in their territories and died at the hands of paramilitary or “unidentified” armed actors. In this, Colombia was part of a larger trend. Indeed, across the globe 2017 was the deadliest year on record for women environmental human right defenders, with 200 killed.

84. Global Witness, *Enemies of the State?* at 8 (July 2019).

85. Norwegian Refugee Council, *New Wave of Violence Threatens Colombia's Peace Prospects* (Aug. 8, 2017) <https://www.nrc.no/news/2017/august/new-wave-of-violence-threatens-colombias-peace-prospects/> [<https://perma.cc/>

than half of the displaced.⁸⁶ The displacement that Afro-Colombian communities experience is flatly illegal under Colombian law. Interpreting Article 7 of the Colombian Constitution, Law 70 recognizes the Afro-Colombian population as an ethnic group.⁸⁷ Article 13 guarantees equality before the law and specifies that all are entitled to equal protection and treatment by the authorities.⁸⁸ Article 330 recognizes the prior consultation in the use of natural resources in Indigenous territories. Under the International Labor Organization (ILO) Convention 169, which Colombia ratified in 1991, Afro-Colombians are also entitled to this right.⁸⁹ Indeed, the Colombian government acknowledges that “ethnic communities had been granted the right of prior consultation.”⁹⁰

Transitional Article 55 guarantees Afro-Colombians the right to collective ownership of their traditional territories. Act No. 70 of 1993 titled *In Recognition of the Right of Black Colombians to Collectively Own and Occupy their Ancestral Lands*⁹¹ fleshes out the

GG6C-4TEU] (reporting that over 90% of those displaced in 2017 were Afro-Colombian or indigenous).

86. Sibylla Brodzinsky, *Colombia's City of Women: A Haven from Violence*, GUARDIAN, (Apr. 20, 2016), <https://www.theguardian.com/global-development/2016/apr/20/colombia-city-of-women-safe-haven-from-violence-conflict> [https://perma.cc/7DLG-WJUJ].

87. Law 70 of Colombia, *In Recognition of the Right of Black Colombians to Collectively Own and Occupy their Ancestral Lands* (1993), <https://www.wola.org/sites/default/files/downloadable/Andes/Colombia/past/law%2070.pdf> [https://perma.cc/D3KW-3VG5].

88. This provision prohibits, inter alia, discrimination based on race, national or family origin, language or religion. It also expressly stipulates that the State “shall promote the conditions necessary in order that equality may be real and effective and shall adopt measures in favor of groups which are discriminated against or marginalized.”

89. Under ILO Convention 169, Afro-Colombians have the status of ‘tribal peoples.’ International Labor Organization, *Indigenous and Tribal Peoples Convention No. 169, Article I* (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 [https://perma.cc/9WKZ-Q9CW]. The Colombian Constitutional Court has found that Afro-Colombians are entitled to the protections described in this convention. Corte Constitucional [C.C.] [Constitutional Court], Jan. 23, 2008, Judgment C-030/08, <https://www.corteconstitucional.gov.co/relatoria/2008/C-030-08.htm> [https://perma.cc/BSA3-LD7Y].

90. *Periodic Review*, *supra* note 3, ¶ 84. To that end, Colombia claims that its national policies are “in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, Remedy’ framework.” *Id.* ¶ 90.

91. An English translation of Act 70 is available online. It is the work of Norma and Peter Jackson of Benedict College, Columbia, South Carolina,

details of what the constitutional guarantees mean. It recognizes and guarantees the rights of Afro-Colombian communities to collective ownership of the land,⁹² to preserve their cultural identity, and to participate fully in decisions about development within their territory.⁹³ Specifically, Article 47 guarantees Afro-Colombian communities “the right to develop economically and socially, according to their autonomous and cultural elements.”⁹⁴ Article 49 provides that development plans and programs should be carried out with the participation of community representatives⁹⁵ and “should reflect the aspirations of the Black Communities in areas of development.”⁹⁶ Article 57 committed the Colombian government to create a commission to formulate a development plan for the Black Communities and guaranteed that national development plans would promote sustainable development of those communities in accordance with their own vision.⁹⁷

Unfortunately, twenty-five years later, the promises contained in Act 70 remain elusive.⁹⁸ Even when Afro-Colombian communities have obtained collective land titles, their land tenure is threatened by forced displacements, targeted killings, and mass violence.⁹⁹ Afro-

<https://www.wola.org/sites/default/files/downloadable/Andes/Colombia/past/law%2070.pdf> [<https://perma.cc/M6LA-SDF6>].

92. *Id.* Art. 4. Other key provisions of this law mandated incorporation of Afro-Colombian history in the educational curriculum and created two special seats in the national legislature.

93. Articles 26 and 27 of Act 70 give Afro-Colombian communities clear participation rights and presumptive rights in mineral exploitation. *Id.*

94. *Id.* Art. 47.

95. *Id.* Art. 49

96. *Id.*

97. Jacobo Grajales, *State Involvement, Land Grabbing and Counter-Insurgency in Colombia*, 44 DEV. AND CHANGE 211, 223 (2013) (describing the intent of these provisions as preventing land grabbing.).

98. A lack of political will has been evident since Act 70 was enacted. Indeed, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance reported that opposition from powerful economic and financial interests had, from the beginning, hindered collective titling of land to Afro-descendant groups. Commission on Human Rights, Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. E/CN.4/1997/71/Add.1 ¶ 58 (Jan. 16, 1997). More than two decades later, little has changed.

99. More than 560 human rights defenders have been murdered in Colombia since 2016, and a disproportionate number have been Afro-descendant or indigenous. See 566 *Líderes Sociales y Defensores de Derechos Humanos Han Sido Asesinados desde el 1 de Enero de 2019—al 10 de Enero de 2019*, INDEPAZ

Colombian land rights defenders face harassment, arrest, and assassination.¹⁰⁰ These ever-present threats of violence undercut their rights.

Three main drivers of dispossession are: illegal drug cultivation, illegal mining, and mega-projects sited in traditional Afro-Colombian territories without their consent and often without legally-mandated consultation. The sub-sections that follow will give a brief overview of how these phenomena bring violence and pollution to Afro-Colombian territories and, in the process, institutionalize inequality.

A. Displacement Due to Drug Cultivation

*“In Tumaco, we have problems with laboratories that make cocaine. They cut the forest for cultivation. Plants and animals are eliminated. And, the chemicals for production of cocaine contaminate. This is the reason for more armed conflict in the area. It is a by-product of cocaine.”*¹⁰¹

Colombia is the world’s largest cocaine producer, and right now production is at a record high.¹⁰² Illegal coca cultivation disproportionately impacts Afro-descendant and indigenous lands.¹⁰³ Land grabbing is both a consequence of, and a motivation for drug-related violence.¹⁰⁴ As the IACHR noted, “[b]ecause the norms and

(Jan. 11, 2019), <http://www.indepaz.org.co/566-lideres-sociales-y-defensores-de-derechos-humanos-han-sido-asesinados-desde-el-1-de-enero-de-2016-al-10-de-enero-de-2019/> [<https://perma.cc/2887-JQNL>] (indicating that a disproportionate number of the assassinations took place in Cauca, Chocó and Nariño—heavily Afro-descendant and indigenous areas).

100. Indeed, as one community leader stated, death threats “threaten the entire territory.” J.M. Kirby, *Facing Wrongful Detention and Threats, Afro-Colombian Women Call for Justice*, TRUTHOUT (Mar. 17, 2019) (quoting Afro-Colombian leader Estupiñan Valencia); Gimena Sánchez-Garzoli, *November Update: Six Massacred in Cauca as Killings Continue in Colombia*, WOLA (Nov. 28, 2018), <https://www.wola.org/2018/11/november-update-six-massacred-cauca-killings-continue/> [<https://perma.cc/3NRZ-95UV>].

101. PCN Personal Communication, *supra* note 1.

102. *Cocaine Production in Colombia is at Historic Highs*, ECONOMIST (Jul. 6, 2019); United Nations Office on Drugs and Crime (UNODC), Report on the Monitoring of Territories Affected by Illicit Crops in Colombia (2018) https://www.unodc.org/documents/colombia/2019/Agosto/Informe_de_Monitoreo_de_Territorios_Afectador_por_Cultivos_Illicitos_en_Colombia_2018_.pdf [<https://perma.cc/7HSH-3J7F>] (reporting that although acres under cultivation decreased slightly, yield per acre had increased).

103. UNODC, Monitoring Report, *supra* note 102, at 22-23 (noting that 47 % coca cultivation occurs in Afro-descendant, indigenous and national park lands).

104. Grajales, *supra* note 97, at 211 & n.1.

mechanisms of law do not apply to these activities, the disputes which inevitably arise are also resolved illegally, usually with violence.”¹⁰⁵ Similarly, the United Nations Office on Drugs and Crime (UNODC) emphasized the direct connection between coca production and social violence.¹⁰⁶ There is a well-documented relationship between drug trafficking, violence, forced displacement, and land grabbing.¹⁰⁷

The experience of PCN member Sara Quiñonez illustrates the very real dangers that Afro-Colombian women face in advocating for their land rights in areas with drug trafficking.¹⁰⁸ Quiñonez was on the government board of her Afro-descendant community in Tumaco. Her advocacy for the land rights of her community in the face of illegal coca cultivation put her in jeopardy. She faced threats, harassment, and intimidation based on her defense of her territory, and her support for voluntary substitution of illicit crops under the Peace Agreement. Following the killing of two community leaders, she was forced to leave her communities. In March 2018, the Inter-American Commission on Human Rights adopted precautionary measures to protect Quiñonez and the other members of her Community Council.¹⁰⁹ Rather than protect her, the Colombian government instead criminalized her, jailing her for over a year on the false charge that she was connected with a guerilla group.¹¹⁰ Unfortunately, Quiñonez’s situation is not an isolated example of the government using this kind of accusation to delegitimize Afro-Colombian community struggles for cultural autonomy and land rights. Criminalizing, smearing, and threatening social leaders has long been a response to social protest in Colombia.¹¹¹

Drug trafficking not only brings violence to Afro-Colombian territory, it also brings environmental devastation. PCN members

105. IACHR Third Report, *supra* note 73, at 16.

106. UNODC, *supra* note 102, at 93, Map 9.

107. IACHR Third Report, *supra* note 73, at 9.

108. The details about Quiñonez’s situation in this paragraph come from PCN Personal Communication, *supra* note 1, as well as from Kirby, *supra* note 100.

109. Precautionary Measure No. 400/15, Members of the Governing Board of the Alto Mira y Frontera Community Council, Colombia, Inter-Am. Comm’n. H.R. (Mar. 11, 2018).

110. To get out of jail and be reunited with her young child, Quiñonez eventually pled guilty to one charge. Personal Communication from J.M. Kirby. Her case offers a chilling message to other community leaders—the drug traffickers will target you, and the government will make it worse.

111. See *Colombian Organizations Condemn Arbitrary Arrest of Peasant Leaders*, PEOPLE’S DISPATCH (July 17, 2019); Lilany Obando, *Criminalization of Social Movements and the Political Opposition in Colombia*, COUNTERPUNCH (Apr. 15, 2014).

emphasized the connection between the violence, the drug trade, and environmental degradation. Their lived experience puts a human face on similar observations by the UN Office of Drugs and Crime.¹¹²

One of the biggest complaints that Afro-Colombian communities have about the government's response to drug trafficking has to do with the use of aerial spraying as a drug interdiction tactic. In the late 1990s, the Colombian government adopted aerial glyphosate spraying as a primary tactic to combat drug trafficking.¹¹³ The United States heavily supported this choice by the Colombian government.¹¹⁴ Almost as soon as spraying began, Afro-Colombian and indigenous communities raised legal challenges based on the serious and indiscriminate harms associated with the tactic. Aerial spraying not only destroyed illicit drug crops, but also killed all the legal crops these communities grew, dramatically harming these largely subsistence-based communities. Moreover, exposure to the glyphosate used in the aerial spraying causes dermatological, respiratory and other health problems among those who live in sprayed areas.

For this reason, the Colombian Constitutional Court ordered that fumigation not occur without prior consultation with affected communities.¹¹⁵ Despite issuing a clear and unambiguous order, the Colombian Constitutional Court has acknowledged that the illegal fumigations did not stop.¹¹⁶ In 2017, the Constitutional Court again issued an order about aerial spraying, this time declaring that Afro-Colombian communities in Chocó had the right to prior consultation before crop spraying programs could be carried out in their territories, and ordering the government to cease spraying unless it produced objective and clear evidence that glyphosate, the main ingredient, does not harm health.¹¹⁷

112. UNDP, *Perspectives on the Development Dimensions of Drug Control Policy* (March 2015) https://www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf.

113. Adam Isacson, *Restarting Aerial Fumigation of Drug Crops in Colombia is a Mistake*, WOLA (Mar. 7, 2019).

114. *Id.*

115. Corte Constitucional [C.C.] [Constitutional Court], SU-383, May 13, 2003, <https://www.corteconstitucional.gov.co/relatoria/2003/su383-03.htm> [<https://perma.cc/KS8Z-HDJG>] (case brought by indigenous groups).

116. Corte Constitucional, 2009, *supra* note 32, at 2.3.3. (case brought by indigenous groups, but court also addressed the plight of Afro-descendant people.).

117. Judgment T-236/17 (citing ILO Convention 169 and the precautionary principle as the basis for this right of prior consultation.) Former President Juan Manuel Santos had already suspended aerial spraying because of concerns that the primary agent, glyphosate, was a human carcinogen.

Chapter 4 of the 2016 Peace Agreement was an agreement titled *Solución al Problema de las Drogas Ilícitas* (Solution to the Illicit Drugs Problem).¹¹⁸ This chapter created the *Programa Nacional Integral de Sustitución de Cultivos de Uso Ilícito* (the National Comprehensive Programme for the Substitution of Crops Used for Illicit Purposes).¹¹⁹ This plan called for an equity-based approach to eliminating coca cultivation as part of a comprehensive rural reform program that emphasized voluntary crop substitution and poverty alleviation.¹²⁰ This plan highlighted the need to pay special attention to the needs of Afro-descendant communities, and particularly to the needs of women in these communities.¹²¹

However, under intense pressure from the United States to reduce coca cultivation, Colombia announced that it would resume spraying.¹²² Colombia's current President, Iván Duque ran on a platform that included a pledge to resume spraying.¹²³ His administration recently shifted Colombia's official drug interdiction policy from an emphasis on crop-substitution programs to forced eradication, including the resumption of aerial spraying.¹²⁴ Arguing that the increase in cocaine production was tied directly to the lack of aerial spraying, Duque spoke before the Constitutional Court in early 2019, as part of a petition to "modulate the court's decision restricting aerial spraying."¹²⁵ The Constitutional court unanimously upheld the restrictions, but created a loophole to allow resumed spraying if the government demonstrated that there would be no health hazard, and

118. Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 104 (Oct. 24, 2016).

119. *Id.*

120. *Id.* at 109-110.

121. *Id.* at 109.

122. *Colombia to Resume Aerial Spraying to Destroy Cocoa Crop*, FRANCE24 (June 26, 2018), <https://www.france24.com/en/20180626-colombia-resume-aerial-spraying-destroy-coca-crop> [<https://perma.cc/7JF4-AGQN>].

123. Jim Wyss, *Ivan Duque Beats Former Guerilla to Win Colombia's Presidential Election*, MIAMI HERALD (June 17, 2018).

124. Andrés Bermúdez Liévano, *Colombia Will Spray Chinese Glyphosate to Control Coca*, DIÁLOGO CHINO (Aug. 1, 2019); Latin America Working Group, *Peace Accord Implementation in Colombia: Urgent Need to Adhere to the Spirit of the Accords* (Mar. 12, 2019).

125. Statement by President Iván Duque before the Constitutional Court, in a Public Hearing following up on judgment T-236 of Apr. 21, 2017 (Mar. 7, 2019) <https://id.presidencia.gov.co/Paginas/prensa/2019/190307-Intervencion-del-Presidente-Ivan-Duque-ante-la-Corte-Constitucional-en-Audiencia-P%C3%BAblica-de-seguimiento-a-la.aspx> [<https://perma.cc/48TJ-KDUW>].

obtained the support of affected rural communities.¹²⁶ The Colombian Government quickly announced its intention to resume aerial spraying, specifically targeting the Afro-Colombian areas of Nariño and Tumaco,¹²⁷ However, unless and until the government meets the conditions imposed by the Constitutional Court, any resumption would be illegal.¹²⁸

Regardless of the legal wrangling, multiple PCN members report that aerial sprayings continue in their territories without warning. As a result of these sprayings, Afro-Colombian communities suffer serious negative consequences like skin diseases, breathing difficulties, destroyed crops, and contaminated water.¹²⁹ Well over a decade after the Constitutional Court first weighed in on the question of aerial spraying, PCN members were still complaining that the government was not living up to its consultation obligations, and that, without notice, they were subject to aerial sprayings.¹³⁰

B. Displacement Due to Illegal Mining

*“Any mining done without prior consultation and approval from the community is illegal mining.”*¹³¹

Afro-Colombian men and women have practiced artisanal mining in Cauca for generations, digging by hand with pickaxes in small-scale mines and panning for gold.¹³² This cultural practice is

126. Juan Esteban Lewin, *La Corte Sustituye el Glifosato*, SILLA VACIA (July 18, 2019); Adriaan Alsema, *Court Upholds Restrictions on Aerial Spraying of Colombia’s Coca, But Creates Loophole*, COLOMBIA REPORTS (July 18, 2019).

127. Sophie Foggin, *Colombia to Resume Aerial Spraying of Coca Crops*, LATIN AM. REPORTS (June 21, 2019).

128. Adriaan Alsema, *Colombia to Resume Aerial Fumigation of Cocoa, Says Duque. With Glyphosate, Defense Minister Adds*, COLOMBIA REPORTS (June 18, 2019).

129. PCN Personal Communication, *supra* note 1. Moreover, the aerial spraying does not succeed in reducing coca cultivation. Laura Alejandra Alonso & Parker Asmann, *Glyphosate Alone Won’t Fix Colombia’s Complex Coca Woes*, INSIGHT CRIME (Mar. 2019) (describing how coca cultivation resurges after spraying).

130. PCN Personal Communication, *supra* note 1. Complaints that “we learn of it only when we see them spraying” were common, as were reports of skin rashes and asthma attacks. One participant noted “all these chemicals go into the river and contaminate the water.”

131. PCN Personal Communication, *supra* note 1.

132. In Suarez, the epicenter of gold mining in Cauca, the population is 75 percent Afro-Colombian, 10 percent indigenous, and 15 percent mestizo. Video: *Suárez Gold: Afro-Colombian Miners Defending Their Heritage* at 2:23,

threatened by illegal mining. Afro-Colombian advocates are clear that there are two kinds of illegal mining going on in their territory: wholly-unpermitted mining (that is commonly referred to as “illegal mining”), and licensed mining based on government permits that were issued in violation of Afro-Colombian rights.¹³³ This latter kind of mining is often misnamed ‘legal mining’. However, these permits are typically issued without prior informed consent from the relevant Afro-Colombian communities, and often without adequate consultation. As such, this licensed mining should also be flatly illegal under both Colombian and international law.

Both kinds of illegal mining are closely tied to violent displacement of Afro-Colombians from their traditional lands. Even though Afro-Colombian communities hold only three percent of the land,¹³⁴ UNODC documented that 42 percent of illegal mining occurs on Afro-Colombia lands.¹³⁵ The departments of Antioquia and Chocó are particularly affected.¹³⁶ Access to gold is a motivation for violence and displacement in these areas. In a single two-week period in 2019, for example, two massacres in the Antioquia department were attributed to a gold mining environment in which “informal miners, illegal armed groups, and multinational miner Gran Colombia Gold are all trying to make money.”¹³⁷ Displacement, in turn, fuels access. Following massive Afro-Colombian community displacements in 2008 and 2010, for instance, applications for mining permits in Cauca soared.¹³⁸ Marquez Elliana Antonio Rosero, a Legal Advisor to the Observatory on Racial Discrimination, explicitly connected illegal mining to the discrimination that Afro-Colombians have faced since the slavery era, describing the struggles to vindicate Afro-Colombian

<http://stories.minorityrights.org/afro-descendants/chapter/film-suarez-gold-afro-colombian-miners-defending-their-heritage/> [https://perma.cc/DK7U-HKKW].

133. Christine Echavarria, *What is Legal? Formalizing Artisanal and Small Scale Mining in Colombia*, 20-22 IIED (2014) (quoting Gladys Jimeno); see Gladys Jimeno, *Documento Síntesis De La Consulta al Consentimiento* 3-8, NORTH SOUTH INST. (July 2012).

134. United States Agency for International Development (USAID), *Colombia: Property Rights and Governance Profile* 9 (2016).

135. UNODC, *Alluvial Gold Exploitation: Evidence from Remote Sensing* 9, 11 (May 2016).

136. *Id.*

137. Adriann Alsema, *Northern Colombia Mining Region Shocked by 2nd Massacre This Month*, COLOMBIA REPORTS (Aug. 25, 2019).

138. *Suárez Gold*, *supra* note 132, at 5:44.

rights as “a process of resistance for freedom, for culture, for life, for territory.”¹³⁹

The connection between illegal mining, violence and human rights violations in Colombia has been well-documented. For more than two decades, outside observers have decried the Colombian government’s failure to consult with Afro-Colombian populations before making development decisions in their territory.¹⁴⁰ The UN Special Rapporteur on the Situation for Human Rights Defenders encouraged Colombia to ensure that Afro-Colombian communities have the right of free prior informed consent.¹⁴¹ The UN High Commissioner explicitly noted the connection between violence, corruption, and illegal mining in Afro-Caribbean areas. Similarly, the UN Working Group of Experts of People of African Descent expressed alarm over the violence that Afro-Colombians face in opposing mining in their territory¹⁴², and the UN Committee on the Elimination of Racial Discrimination emphasized the need for consultation before allowing mining in Afro-Colombian and indigenous territories.¹⁴³

Aside from the violence it brings, illegal mining also devastates the environment. Among the most significant effects are deforestation and contamination of water sources. Indeed, locals report that mercury and cyanide from illegal gold mines are “contaminating everything, and our children have symptoms of mercury poisoning.”¹⁴⁴ Moreover, illegal mining practices are destabilizing the soil, increasing erosion along the river.¹⁴⁵

139. *Id.* at 1:16.

140. *See, e.g.*, Mission to Colombia: Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. E/CN.4/1997/71/Add.1 ¶ 52 (Jan. 13, 1997) (decrying the practice of issuing mining licenses without consulting Afro-Colombian communities as an appropriation of community resources that jeopardizes environmental sustainability.).

141. Statement of Michael Forst, UN Special Rapporteur on the Situation of Human Rights Defenders at 6 (Dec. 3, 2018), https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf [https://perma.cc/8MQS-WUT7].

142. UN Human Rights, Office of the High Commissioner, UN Expert Group Alarmed by Increasing Violence Toward People of African Descent in Colombia (June 13, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20089&LangID=E> [https://perma.cc/3DP5-Z3EL].

143. *Id.*

144. PCN Personal Communication, *supra* note 1.

145. *Id.*

By contrast, traditional Afro-Colombian mining practices are relatively environmentally benign, rely on human effort rather than toxic chemicals, and are small-scale to avoid wide-spread ecological destruction. The gold from these artisanal operations supplemented family income, which is particularly important for subsistence farmers for whom the mined gold might be their only source of currency. More importantly, artisanal mining is a cultural practice as much as an economic one—it brings Afro-Colombian people together on a regular basis, knitting together the strands of community life.¹⁴⁶

Goldman Prize winner Francia Márquez, along with the Community Council of La Toma, led a successful campaign against illegal mining—both totally unpermitted illegal mining, and government-sanctioned illegal mining—in their part of Cauca. Márquez and her community brought a *tutela*,¹⁴⁷ arguing that the government had illegally permitted mining in Afro-Colombian territory without their free, prior informed consent. The Constitutional Court ruled in their favor, recognizing the government had failed to protect Afro-Colombian land rights, and finding that prior consultations were a mandatory and indispensable requirement prior to issuing mining permits in Afro-Colombian territories.¹⁴⁸ The Constitutional Court identified mining development as a cause of forced displacement disproportionately impacting Afro-Colombian communities.¹⁴⁹ When mining continued illegally, Márquez led 80

146. *Id.* See also *Suárez Gold*, *supra* note 132 (quoting La Toma Community Council members Alcides Márquez Lisifrey Ararat and Francia Márquez describing the cultural importance of mining).

147. Under Article 86 of the Colombian constitution, anyone can file a *tutela*, a writ demanding protection of a fundamental right jeopardized by the action or inaction of a government official. Patrick Delaney, *Legislating for Equality in Colombia: Constitutional Jurisprudence, Tutelas, and Social Reform*, 1 EQUAL RIGHTS REV. 50 (2008). For a fascinating glimpse of the *tutela* process in action, see Margaret Hagan, *A Journey Through Colombia's Constitutional Court's Tutela Design Challenge*, MEDIUM (May 7, 2019), <https://medium.com/legal-design-and-innovation/a-journey-through-colombias-constitutional-court-s-tutela-design-challenge-c3f4d20d73bd> [<https://perma.cc/Z84Z-9WS2>].

148. Corte Constitucional [C.C.] [Constitutional Court], Judgment T-104A/10 at 6.3.1, 6.7, (2010), <https://perma.cc/6768-K7NU> [<https://perma.cc/6768-K7NU>] (citing C.C. Auto 005 at 4) (2009); See also, C.C., Judgment T-769, Oct. 29, 2009, [corteconstitucional.gov.co/relatoria/2009/t-769-09.htm](https://www.corteconstitucional.gov.co/relatoria/2009/t-769-09.htm) [<https://perma.cc/2R4A-82DX>] (finding that the state has a duty to obtain free, prior informed consent before approving large-scale development or investment plans with impact in Afro-Colombian or indigenous territories.).

149. Corte Constitucional [C.C.] [Constitutional Court], Auto 005 at 32–35, Jan. 26, 2009, <https://www.corteconstitucional.gov.co/relatoria/autos/2009/a005-09.htm> [<https://perma.cc/P575-VWN6>].

women on a 10-day march from Cauca to Bogota to raise awareness about unpermitted illegal mining in Cauca.¹⁵⁰ After 24 days of protest, the Colombian government agreed to take action to end illegal mining.¹⁵¹ Throughout her advocacy campaign, Márquez and her fellow leaders faced threats of violence, and the murder of fellow activists.¹⁵²

In 2016, the Constitutional Court recognized an obligation to consult citizens with regard to mining projects, and allowed sub-national entities to use Article 105 popular consultations to weigh in on development planning.¹⁵³ Popular consultations rapidly became an activist tool, and were successfully used to suspend mining operations in nine cases.¹⁵⁴ Participants were clear that their vote against mining was “a vote for life . . . We want to preserve this territory for future

150. Goldman Prize, *supra* note 15.

151. *Id.*

152. Márquez has been a target of threats. In 2014, she was forced to leave her hometown because of such threats. In 2018, armed men shot at her. *Francia Márquez, Renowned Afro-Colombian Activist: What Environmental Racism Means to Me*, EARTHJUSTICE (Aug. 19, 2019), <https://earthjustice.org/blog/2019-august/francia-m-rquez-renowned-afro-colombian-activist-what-environmental-racism-means-to-me> [<https://perma.cc/Y4YD-X2MB>].

153. Corte Constitucional [C.C.] [Constitutional Court], Judgements C-035/2016, C-389/2016, T-704/16, and SU-133/17, Feb. 8, 2016, <https://www.corteconstitucional.gov.co/relatoria/2016/c-035-16.htm> [<https://perma.cc/D5P7-9YGC>].

154. For example, after 98 percent of Tolima residents voted against its mining operation in a popular consultation, South Africa’s AngloGold Ashanti was forced to abandon an open pit gold mine project. Ellen More, *98% Vote Against Colombia’s La Colosa Mine*, EARTHWORKS (Nov. 1, 2017). The leaders of this movement faced smear campaigns and threats of violence. *See Accion Urgente Frente a las Amenazas a Integrantes de Movimientos Ambientales Tolimenses por Parte de las Aguilas Negras*, <https://censat.org/es/campanas/accion-urgente-frente-a-las-amenazas-a-integrantes-de-movimientos-ambientales-tolimenses-por-parte-de-las-aguilas-negras> [<https://perma.cc/59GJ-RKM4>]; *AngloGold Suspend Colombia Project After Anti-Mining Vote*, REUTERS (Apr. 27, 2017). Anna Gilmour, *Colombia: Social Opposition to Mining Remains Biggest Hurdle*, MAPLECROFT (Mar. 13, 2019). Recently, the popular consultation leaders received threat letters saying it was “time to cleanse the country of these fucking rats that pose as environmentalists and human rights defenders” and threatening to eliminate them “one by one.” ESCR-Net, Letter to Ivan Duque (May 19, 2019) https://www.escr-net.org/sites/default/files/2019.05.30_carta_colectiva_colombia_eng_.pdf [<https://perma.cc/A8MX-D7J4>].

generations.”¹⁵⁵ This phrasing echoes the oft-repeated Afro-Colombian principle that “territory and life are the same thing.”¹⁵⁶

Multinational mining companies touting themselves as “Colombia’s economic growth engine” pressured the Colombian government for what they called “clarity” on popular consultations.¹⁵⁷ What clarity meant to them was limits.¹⁵⁸ The Colombian Minister of Mines responded by threatening sanctions against municipalities that used popular consultations to prohibit mining. In fall of 2018, the Constitutional Court reversed its 2016 ruling on popular consultations, ruling that popular consultations could not be used to block mining projects.¹⁵⁹ The Colombian government plans to propose legislation intended to limit the situations in which prior consultation with indigenous and Afro-Colombian communities is required, and to prevent those communities from rejecting projects outright.¹⁶⁰ This maneuver is directly contrary to the Universal Periodic Review advice, which recommended that Colombia “[c]ontinue strengthening the mechanisms for prior consultations with indigenous and Afrodescendent peoples, as well as popular consultations, in the light of the peace agreement.”¹⁶¹

C. Dispossession Due to Mega-Projects and Industrial Agriculture

“This is not the peace we were looking for. This is not peace for us. This is the peace so they can keep being aggressive with us. Taking

155. Manuel Rueda, *Exploration Projects in Colombia Face Increasing Uncertainty as Another Town Votes Against Mining*, FINANCE COLOMBIA (Oct. 22, 2017).

156. *Suárez Gold*, *supra* note 132, at 1:27.

157. Luis Jaime Acosta and Helen Murphy, *Colombia’s Mining Sector Could Receive \$1.5 Billion Annually Over Five Years*, REUTERS (May 16, 2017) (identifying AngloGold and EcoOro as the biggest multi-nationals in Colombia’s gold sector).

158. The CEO of a foreign-owned mining company recently caused a furor when he was caught on tape saying that local opposition to the company’s mine was unimportant because the only perceptions that matter were those of the regulators in Bogota. Cecilia Jasamie, *‘Communities Not Important’ Says Former Colombia Mining Head in Leaked Video*, MINING.COM (Apr. 24, 2019).

159. Adriaan Alsema, *Colombia Constitutional Court Overrules Municipal Right to Ban Mining*, Colombia Reports (Oct. 12, 2018). However the court also found that the national government cannot impose mining projects on municipalities and must find consensus before granting oil and mining titles.

160. Carlos Vargas, *Colombia’s Duque Must Get Reforms Through Congress to Safeguard Economic Recovery*, REUTERS (Aug. 7, 2019).

161. *Periodic Review*, *supra* note 3, ¶ 120.174 (recommendation of Peru).

our territory our land in a different way. These megaprojects coming to our land. They do not have us in their consideration."¹⁶²

With the peace process has come a slew of mega-projects slated for Afro-Colombian territory. These mega-projects, which are typically partnerships between the Colombian government and international financing institutions or private international capital, nominally support the peace process by creating pathways to re-employ and re-integrate ex-combatants into civilian life. The government touts its development plans for the Pacific Coast, claiming that the area is "backward"¹⁶³ and that collective land ownership has been "holding the region back."¹⁶⁴ This framing pits government policy directly against the aspirations of the Afro-Colombian community. Moreover, as the Constitutional Court recognized, these mega-projects are a direct cause of Afro-Colombian forced displacement, and have interfered with the collective titling of traditional lands.¹⁶⁵ Opposition to development projects has put many Afro-Colombian leaders in jeopardy, and led to threats, harassment, and murder.¹⁶⁶ The Constitutional Court recognized that "the goal of violence is to get people out of their land and therefore create space for megaprojects."¹⁶⁷

For example, in 2001, the Colombian government identified palm oil as a priority economic sector, providing price supports, subsidies, tax exemptions and other incentives to the industry.¹⁶⁸ These policies led to extreme concentration in land ownership.¹⁶⁹ Indeed, Colombia has the most unequal distribution of land ownership in Latin America.¹⁷⁰ One percent of farms control 81 percent of the

162. PCN Personal Communication, *supra* note 1.

163. See *The Untapped Infra Potential of Colombia's Pacific Coast*, BNAAMERICAS (June 3, 2019), <https://www.bnamericas.com/en/features/the-untapped-infra-potential-of-colombias-pacific-coast> [<https://perma.cc/5SMT-LS3L>].

164. See *Why Colombia's Pacific Coast Is So Poor*, ECONOMIST (Aug. 19, 2019).

165. Auto 005, *supra* note 149, ¶ 91, 116. The court found the government's response to the situation to be inadequate because it focused on addressing the consequences of displacement, rather than on recognizing and addressing the structural forces driving displacement. *Id.* ¶ 138.

166. *Suárez Gold*, *supra* note 132, at 20:21.

167. Auto 005, *supra* note 149, ¶ 77.

168. Carmenza Castiblanco, *Impact of Policies and Subsidies in Agribusiness: The Case of Palm Oil and Biofuels in Colombia*, 49 ENERGY ECON. 6765 (2015).

169. ARANTXA GUEREÑA, OXFAM INT'L, *RADIOGRAFÍA DE LA DESIGUALDAD LO QUE NOS DICE EL ÚLTIMO CENSO AGROPECUARIO SOBRE LA DISTRIBUCIÓN DE LA TIERRA EN COLOMBIA* 13 (2017).

170. *Id.* at 14.

country's productive land.¹⁷¹ The growth of these large-scale plantations occurred through land grabbing¹⁷²—social displacement, violence¹⁷³ and illegal land appropriation¹⁷⁴—across the Afro-Colombian regions of Chocó¹⁷⁵ and the Caribbean Coast.¹⁷⁶ Forced displacement allowed land consolidation. The number of farms larger than 5000 hectares increased exponentially,¹⁷⁷ which in turn facilitated the growth of Colombia's palm oil and sugar cane industry,¹⁷⁸ which expanded at a remarkable rate.¹⁷⁹ The UN Committee to Eliminate Racial Discrimination expressed concern about “fraudulent

171. *Id.*

172. Large agribusiness palm growers, like the industrial-scale miners discussed above, deploy large amounts of capital to obtain a comparative advantage through intensive exploitation of natural resources. They usurp traditional communal lands, overexploit water, and consolidate ownership or control of land in the hands of a few, well-funded actors. Often in the name of rural development they receive direct and indirect subsidies that further displace small holders or traditional production methods. An entire global economic and technical infrastructure facilitates these activities.

173. See Ulrich Oslender, *Violence in Development: The Logic of Forced Displacement on Colombia's Pacific Coast*, 17 DEV. IN PRACTICE 752, 757-760 (2007) (documenting how the palm oil industry colluded to expropriate Afro-Colombian lands).

174. See David Maher, *Rooted in Violence: Civil War, International Trade and the Expansion of Palm Oil in Colombia*, 20 NEW POL. ECON. 299 (2015) (documenting how institutionalized violence enabled Colombia's palm oil sector to enter and compete in the globalized economy.).

175. Industrial scale sugar cane production (a biofuel) in Chocó and the Cauca River Valley has resulted in displacement of Afro-Colombian small holders. See Inter-American Court of Human Rights, *Medidas Provisionales respecto de la República de Colombia. Asunto Comunidades del Jiguamiandó y del Curvaradó* (Feb. 5, 2008). As we rode through Cauca, multiple PCN members described the dislocation in favor of large-scale production, generally for export, and identified sugar cane plantations that had formerly been small-holder Afro-Colombian farms. See also, Paula Alvarez Roa, *Los Agrocombustibles en Boga: El Caso del Etanol en Colombia*, SEMILLAS (2008) <http://www.semillas.org.co/es/los-agrocombustibles-en-boga-el-caso-del-etanol-en-colombia> [<https://perma.cc/BM4U-E4J5>].

176. VICTORIA MARIN-BURGOS, ACCESS, POWER, AND JUSTICE IN COMMODITY FRONTIERS. THE POLITICAL ECOLOGY OF ACCESS TO LAND AND PALM OIL EXPANSION IN COLOMBIA 180-81 (2014).

177. *Id.*

178. For example, in 2005, then-President Uribe instead called on the Agriculture Minister “to quarantine the businessmen of Tumaco and their Afro-descendant compatriots and not let them leave the office” until they agreed to yield their lands for industrial palm oil production. See President Uribe speaking at the XXXIV Fedepalma Congress, quoted in Maughan, *supra* note 35.

179. *Id.*

acquisition” and “occupation” of Afro-Colombian lands for palm plantations.¹⁸⁰

The port-related mega-projects in Buenaventura pose similar threats to the Afro-Colombian population.¹⁸¹ Buenaventura, the largest port in Colombia’s Pacific region, is overwhelmingly Afro-Colombian.¹⁸² The official government narrative about Buenaventura is one of progress and development—with economic growth spurred by port infrastructure expansion bringing prosperity by weaving Colombia more fully into the global economy. Unfortunately, a parallel narrative accompanies this official one—a narrative of inequality, displacement, forced disappearances, murder and sexual violence.¹⁸³ Even as the port brings in billions each year, the neighborhoods around it lack basic sanitation and running water. The recent history of Buenaventura has been a humanitarian tragedy, with systemic human rights abuses perpetrated against the Afro-Colombian population.¹⁸⁴

In 2009, the Constitutional Court found a pattern and practice of forced displacement and land grabbing in all the Afro-Colombian portions of Colombia related to palm oil cultivation and mega-projects.¹⁸⁵ Referencing Articles 2 and 7 of the Universal Declaration of Human Rights,¹⁸⁶ Article 26 of the International Covenant of Social, Cultural, and Economic Rights,¹⁸⁷ Article 24 of the American Convention on Human Rights, and Colombia’s obligations under ILO Convention 169,¹⁸⁸ the Court found that the disproportionate

180. Committee for the Elimination of Racial Discrimination (CERD), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Colombia*, U.N. Doc. CERD/C/COL/CO/14 ¶ 19. (Aug. 28. 2009).

181. See Victor Ospina, *Audencia Pública Víctimas del Desarrollo Estado de Cosas Inconstitucionales en Buenaventura*, NOMADESC (June 29, 2016), <http://nomadesc.com/audiencia-publica-victimas-del-desarrollo-y-estado-de-cosas-inconstitucionales-en-buenaventura/> [https://perma.cc/PV6Z-KAJP] (documenting the link between forced displacements, violence, and port infrastructure expansion mega-projects.).

182. 2005 National Census, *supra* note 43.

183. Comisión Intereclesial de Justicia y Paz, *Buenaventura: el Despojo para la Competitividad* 8-14 (May 2015).

184. Arturo Wallace, *Buenaventura, the New Horror Capital in Colombia*, BBC (Mar. 24, 2014) (describing brutal cruelty and lawlessness, including the practice of chopping up live victims and dropping their body parts into the water).

185. Auto 005, *supra* note 149, ¶¶ 71-80, 91.

186. *Id.* ¶ 23.

187. *Id.*

188. *Id.* ¶ 27.

displacement that Afro-Colombians were experiencing violated Colombia's obligations under domestic and international law.¹⁸⁹

The court cited Buenaventura as an emblematic case of the massive and continuous violations of fundamental rights that Afro-Colombians were experiencing.¹⁹⁰ As a remedy, the Court ordered the Colombian government to develop specific plans to ensure that Afro-Colombian communities were able to participate fully in decision-making about their territories.¹⁹¹ The Court also declared all land transfers associated with these mega-projects to be presumptively unlawful.

In response, Colombia enacted the Law on Victims and Land Restitution.¹⁹² This law was supposed to ensure that millions of unlawfully expropriated hectares were returned to peasants and Afro-Colombian and indigenous groups. However, the law was never fully implemented, and violence prevented Afro-Colombian communities from exercising their land rights.¹⁹³ Many families were forced to flee and abandon their lands.¹⁹⁴ The Colombian government failed to address the systemic forces of Afro-Colombian displacement identified in Auto 005.

The post-conflict era ushered in a new round of land grabbing.¹⁹⁵ The political and economic incentives for development centered on global markets rather than on the needs of displaced communities.¹⁹⁶ For example, in 2016, Colombia enacted Law 1776, which created rural social and economic development zones

189. *Id.* at 34-36.

190. *Id.*

191. Auto 005, *supra* note 149, ¶ 168. Echoing this ruling, the UN Committee on the Elimination of Racial Discrimination expressed concern about "fraudulent acquisition" and "occupation" of Afro-Colombian lands for palm plantations. found "the right to prior consultations and consent is frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or mono-cultivation." *Concluding Observations of the Committee, supra* note 180.

192. Law 1448 of 2011.

193. *A Land Title is Not Enough: Ensuring Sustainable Land Restitution in Colombia*, AMNESTY INT'L 29-35 (2014).

194. *Id.* ¶ 25.

195. Mathilde Allain, *Land Grabbing and Peace Negotiations in Colombia*, NORIA (July 2015), <https://www.noria-research.com/land-grabbing-and-peace-negotiations-in-colombia/> [<https://perma.cc/GQV3-WUFT>].

196. Grajales, *supra* note 97, at 223; Maughan, *supra* note 35.

(ZIDRES).¹⁹⁷ With the goal of internationalizing the economy, this law legalized the accumulation of land in the hands of large-scale agricultural products, undercutting pending land restitution claims filed by Afro-Colombian groups, peasants, and indigenous groups.¹⁹⁸ This program, which favors large agro-industrial development projects, touts the availability of land and subsidies for large-scale agricultural projects to foreign investors.¹⁹⁹ Critics claim that this program undermines the rights of rural communities, including Afro-Colombian communities.²⁰⁰

And, violence against Afro-Colombian leaders opposed to mega-projects continues. In 2018, the Inter-American Commission found it necessary to renew precautionary measures that had been issued in favor of Afro-Colombian communities in Carmen del Darién and Riosucio, which had faced threats and violence designed to strip them of their territories for agro-industrial projects, extensive livestock farming or extraction of natural resources.²⁰¹

CONCLUSION

Currently, existing domestic and international law obligations require that the Colombian government take steps to end land grabbing in Afro-Colombian territories. To do this successfully, Colombia needs to reassess how it considers Afro-Colombian land rights in its development planning. Afro-Colombian communities are rights holders who need to be at the table when development plans are made. The UN Peasant Declaration can help Colombia make this a reality. By aligning state policy with the principles set out in the Peasant Declaration, Colombia can breathe life into the land rights

197. L. 1776/2016, enero 29, 2016, DIARIO OFICIAL [D.O.], <http://extwpr.legsl.fao.org/docs/pdf/col157660.pdf> [<https://perma.cc/X4C2-5HSZ>].

198. *Id.* Art. 12.

199. See *ZIDRES Manual* (2016), PROCOLOMBIA, <https://www.investincolombia.com.co/publication/zidres-2016.html> [<https://perma.cc/WM9A-GTKU>].

200. AMNESTY INT'L, AMNESTY INT'L REPORT 2016/17- COLOMBIA, LAND RIGHTS, 4-5, (Feb. 22, 2017); SEMILLAS, LAS ZONAS DE INTERÉS DE DESARROLLO RURAL, ECONOMICO Y SOCIAL (ZIDRES), EN CONTRA DEL CAMPO COLOMBIANO, 28-29 (Apr. 2016).

201. Resolution 6/18, PM 140/14-Afro-descendant communities and leaders in Juguamiandó, Curvaradó, Pedueguita and Mancilla, Colombia EXTENSION, available from IAHR, *Annual Report: Chapter II- System of Individual Petitions and Cases* 93 (2018) <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.2-en.pdf>.

guarantees that already exist under Colombian law and can develop new legal tools to combat land grabbing.

For example, the Peasant Declaration recognizes that peasants and other people living in rural areas have individual and collective rights to land.²⁰² It directs states to provide legal recognition for land tenure rights, “including customary land tenure rights not currently protected by law,” to protect legitimate tenure and to ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed.²⁰³ Colombia could achieve this by implementing the Ombudsman Office’s recommendation that Colombia develop a comprehensive formal policy to fight against drug cultivation and illegal mining in collaboration with territorial entities.²⁰⁴

The UN Peasant Declaration also recognizes that peasants and other people working in rural areas have the right to use the natural resources present in their communities, and the right to participate in the management of those resources.²⁰⁵ To that end, the declaration directs states to ensure that any exploitation of traditional lands is based on a social and environmental impact assessment, and good faith consultations with the affected communities.²⁰⁶ These peasant rights and state obligations encompass the fair and equitable sharing of benefits, “that have been established on mutually agreed terms between those exploiting the natural resources and the peasants or other people working in rural areas.”²⁰⁷ Colombia could achieve this by introducing legislation to revitalize the popular consultation process—restoring the power of communities to block unwanted or unwise development. By clarifying that Colombian law requires a stringent, binding consultation process, Colombia could build on the prescriptions of the Peasant Declaration, and the advice in the most recent Universal Periodic Review to guarantee Afro-Colombian communities their right to free, prior and informed consent. Such a

202. Peasant Declaration, *supra* note 26, Art. 17(1).

203. *Id.* Art 17(3).

204. DEFENSORÍA DEL PUEBLO, INFORME ESPECIAL: ECONOMÍAS ILEGALES, ACTORES ARMADOS, Y NUEVOS ESCENARIOS DE RIESGO EN EL POSACUERDO, 225-228 (Sept. 2018), <http://defensoria.gov.co/public/pdf/economiasilegales.pdf> [<https://perma.cc/66BA-P7U3>].

205. Peasant Declaration, *supra* note 26, Art. 5(1). Colombia abstained in the UN vote on the Peasant Declaration.

206. *Id.* Art. 5(2)(a) and (b).

207. *Id.* Art. 5(2)(c).

choice would be consistent with the Colombian constitution, with past constitutional jurisprudence, and with international law.

Colombia could also join the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).²⁰⁸ Even without formal ratification, Colombia could announce that the transparency, citizen participation, and environmental defender protection principles recognized in the Articles 7-9 of the Escazú Agreement coincide with existing Colombian law. Doing so would also respond to the guidance Colombia received in its most recent Universal Periodic Review about promoting participation by communities and ethnic minorities in decisions relating to development.

Finally, to permanently prevent land grabbing, Colombia should finally take steps to fully implement Act 70, and guarantee Afro-Colombian communities their collective territorial rights. Similarly, Colombia should develop a plan to dedicate adequate funding to implementing the Victims and Land Restitution Act. Doing so would give Colombia the opportunity to transform its development policies to recognize all parts of society, including Afro-Colombian communities as rights-holders and as legitimate participants in the management processes that affect their land.

In the 2030 Agenda for Sustainable Development, Colombia joined the rest of the world in pledging that “no one will be left behind” on the path to development²⁰⁹ and of “reaching those furthest behind first.” In Colombia, that has to mean prioritizing the land rights of indigenous and Afro-Colombian people. As one PCN participant stated “*At some point our territories will be violence free and will not be impacted by mining and mono- plantations and things like that. Women will then become caretakers of life. I think that is where we can start.*”²¹⁰ Colombia can get there, but only if it takes concrete steps to bring this resilient vision of the possible future into being.

208. Economic Commission for Latin America and the Caribbean (CEPAL), Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, 2018, https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf [<https://perma.cc/2XUX-QYBU>].

209. Transforming Our World: the 2030 Agenda for Sustainable Development, ¶ 4, A/RES/70/1 (Oct. 21, 2015).

210. PCN Personal Communication, *supra* note 1.