

Towards new development paradigms: the United Nations Declaration on the Rights of Indigenous Peoples as a tool to support self-determined developmentⁱ

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Abstract: Since the adoption of the UN Declaration on the Rights of Indigenous Peoples, indigenous peoples' agency and ideas of development have become more central to wider development processes. This change finds its roots in the concept of 'self-determined development' (SDD), which has been fortified by the adoption of UNDRIP. SDD is built around key norms of UNDRIP, such as the rights of self-determination, free, prior and informed consent, the links between cultural rights and development and rights pertaining to land and natural resources. The normative shift towards SDD is surveyed in this article by looking at three topics: the jurisprudence of regional human rights courts on case law concerning development on indigenous peoples' land; the advocacy of indigenous peoples around the indicators of the Sustainable Development Goals; and the adoption of community bio-cultural protocols by indigenous peoples to regulate development of their land, natural resources and cultural heritage. In each example, UNDRIP has influenced positive changes in law and policy concerning indigenous peoples' views on development.

Keywords: Indigenous Peoples, Development, Sustainable Development Goals, Biocultural community protocols, Self-determined development

Introduction: moving beyond mainstream development 'aggression'

Mainstream development modalities have had a weak understanding of how to address structural causes of inequality. This is particularly true for groups whose cultural

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identity is seen as a barrier to mainstream development policy, whose cultural identity is completely invisible and ignored in development policy planning and implementation or whose exclusion serves the interests of economic exploitation. Development, as typically understood by the dominant actors of the state, is enacted for the public good and measured by a narrow indicator of economic growth. Factors like poverty reduction, health, education and even the environment matter more in this narrative than in the past, but the central push remains growth oriented and rests on the outdated assumption that increased productivity and technological progress will yield better social outcomes for all.ⁱⁱ In such contexts, development is imposed by state authorities on the local populations who do not get much say in the decision-making process leading to these so-called development projects. This approach to development, which is based on a very state-centric vision, reposes on what Nader referred to as the ‘theory of lack’ under which less ‘developed’ segments of the society are seen as ‘lacking proper development’, which then needs to be imposed on them.ⁱⁱⁱ

These kinds of approaches have not served indigenous peoples well. From the very beginning of colonial expansion on indigenous territories, the rights of indigenous peoples in development have mattered little to the ‘developers’. The concept of ‘development aggression’^{iv} has been used to describe and challenge top down economic development policies having a negative impact on indigenous communities. This is especially accurate when it comes to large-scale developmental projects taking place on indigenous peoples’ territories. In many countries, large-scale natural resource development projects constitute a central element of national development policies, especially in countries rich in natural resources that have centred their developmental policies around natural resources exploitation.^v In practice, for many local and indigenous communities living in the vicinity of the concerned natural resources, these type of projects often become synonymous with forced displacement, land

dispossession and environmental degradation. Even peripheral attempts at recognising the rights of indigenous peoples, for example through land titling, have been viewed more as facilitative of neoliberal economic interests, such as legal land acquisition, than as commitments to indigenous peoples' self-determination.^{vi}

The turn towards human development in the early 1990s helped to shift the focus more towards social well-being but the approach was largely one-size-fits-all, lacking due regard for how structures of discrimination, colonialism and cultural difference might result in differential inclusion in development policy benefits. A reluctance in many states to measure impact of development with ethnically disaggregated data has long obscured the nature of inequality and the harms – or ineffectiveness - of mainstream development policies. Even the Millennium Development Goals, agreed in 2000 and hailed as new era for development, aimed for only a portion of the population to benefit (e.g. reduce hunger by half, reduce maternal mortality by three-quarters), and did not account for how groups like indigenous peoples might be left behind.^{vii} Few states fully accounted for indigenous peoples in their periodic MDGs reports and indigenous peoples were rarely, if ever, engaged in full participation of the elaboration of MDGs planning despite experiencing inequalities on key MDGs targets such as extreme poverty, maternal and child mortality, access to education and clean water and sanitation.^{viii} Indigenous peoples' leadership in securing Goal 7 on 'ensuring environmental sustainability', was largely ignored. The MDGs paid no attention to restitution for historical injustices that are often the root cause of contemporary development failures and 'aggression'.

Since the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, there have been some important changes in the landscape of development policy and

practice. Significantly, indigenous peoples' agency and ideas of development have become more central to these processes. This change finds its roots in the concept of 'self-determined development' (SDD), which we believe has been fortified by the adoption of UNDRIP. To analyse the impact that the UNDRIP has had in supporting the emergence of a right to SDD, we will first outline the meaning of SDD and then review how it has been manifested at different levels, from international legal jurisprudence, to global development indicators, and in local initiatives. To analyse how the right to SDD has been integrated into international legal jurisprudence, the article shows how regional human rights courts have engaged with the right to SDD, and the role of UNDRIP in supporting this. Next, the article examines how the UNDRIP is supporting the implementation of the Sustainable Development Goals (SDG). We argue that the norms of SDD are evident in new approaches to data collection under the SDGs. Finally, at the community and local level, we will provide some examples of community protocols on development, which demonstrate how principles of UNDRIP are being realised through these tools for the management of biological diversity and natural resources. We hope this survey of practice at both international and local levels will highlight the utility of UNDRIP in shaping new approaches to development and, crucially, giving substance to the emerging norm of self-determined development for indigenous peoples.

Development in UNDRIP: From Development and Identity to Self-determined

Development

Self-determined development has emerged as a potential way to support indigenous peoples' own vision and approaches to development. Historically, there have been many calls by indigenous peoples for the adoption of an approach to development which is more

supportive of their own visions and cultures. For example, in 1981 a Declaration on Ethnodevelopment was adopted under the auspices of UNESCO. The Declaration proclaimed that ‘ethno-development is an alienable right of Indian groups’ and affirming their ‘inalienable right’ to consolidate their cultural identity and to ‘exercise...self-determination’.^{ix} However, it was not until the adoption of the UNDRIP that the concepts of the right to self-determination, participation and cultural development were formally adopted in a universal instrument recognising indigenous peoples’ own approaches to development.

The central place accorded to indigenous peoples’ right to development is evident from the preamble of the declaration, which includes seven references to it. The preamble notes that ‘control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs’. The declaration puts a lot of emphasis on self-determination, identity and culture, recognising that identity and culture embody indigenous peoples’ relationship with their lands and resources, the maintenance and development of distinctive institutions, their continuation and revival of their customs, practices, judicial systems and traditional knowledge. These rights are elaborated in the context of participation and ownership rights. The declaration also addresses other important aspects of identity and culture in the context of development. These include the right to develop manifestations of indigenous cultures (Art. 11), the right to develop and teach spiritual and religious traditions (Art. 12), the right to develop oral traditions, philosophies and languages (Art. 13), and the right to control and develop their cultural heritage, traditional knowledge and traditional cultural expressions (Art. 31). The right of indigenous peoples to determine and formulate their developmental priorities and strategies regarding their lands or territories and other resources is articulated in Article 32(1) of the

UNDRIP. Article 32(2) then links this to the obligation of states to ‘consult and cooperate’ with indigenous peoples in order to obtain free, prior and informed consent (FPIC) in the context of development projects affecting these lands or resources. Whilst the concept of self-determined development is not in itself proclaimed in the UNDRIP, more than half of out of the 46 operational articles concern the expression of indigenous peoples’ right to self-determined development.

The term self-determined development has emerged as part of an advocacy effort led by indigenous peoples to support the vision inscribed within the UNDRIP.^x Also referred to as development with culture and identity,^{xi} the term is used to advocate for the respect of indigenous peoples’ own perspectives and approaches to development and to assert a new meaning of the right to development. As stated by indigenous leader Victoria Tauli-Corpuz:

Self-determined development for indigenous peoples is not a grand paradigmatic, generic alternative to mainstream development. It is simply part of our assertion of our right of self-determination and to remain as diverse and distinct cultures and communities. It captures the essence of our struggles since colonization to define our own development within the framework of our inherent rights and in consonance with the relationship we have with nature.^{xii}

There have been some debates amongst indigenous peoples’ representatives over whether the term ‘development’ itself should be avoided; however, the agreement is that SDD represents a useful advocacy tool to support indigenous peoples’ own vision of sustainable and locally based process of development.^{xiii} The concept reflects and tries to integrate localised visions of what development means, including, for example, concepts such as *sumak kawsay* among the Quichua, *suma qamaña* by the Aymara, *laman laka* for the Miskitu, *gawis ay biag* for the Kankana-ey Igorot, and *vivir bien/buen vivir* in Spanish. The concept of SDD represents

an important vision of the meaning of the right to development, which has often been approached from a top-down perspective, with indigenous peoples as passive recipients (and often victims of harms caused by development interventions). The very concept of development is relational and creates hierarchies and to that extent possible domination notably *vis à vis* indigenous peoples who are seen as passive targets to receive ‘development’. Self-determined development challenges such passivity by putting indigenous peoples at the heart of the process of development in respecting their own visions and understandings of development. As analysed by Carling and Lasimbang, for many indigenous communities across the globe development is understood as “the growth and progress of an indigenous community in their originality or within the context of their ethnic identity in a holistic way.”^{xiv}

Legally, the concept is located within the rights to self-determination, development and participation. As stated by Tauli-Corpuz:

The UNDRIP established the basic concepts and principles of self-determined development. It established that we have the right of self-determination, which is a foundational right. It not only recognizes our right to our lands, territories and resources but also our cultural rights and right to development.^{xv}

She analysed in detail how important the concept of self-determined development is as it allows the junction between the right to culture and the right to development, highlighting the inherent indivisibility of culture and development, something that was lacking in previous instruments. The concept of self-determined development is also visible in other norms proclaimed in indigenous peoples’ specific instruments such as the ILO Convention 169 Concerning Indigenous and Tribal Peoples, which in its article 7.1 states:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, and 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.

Likewise, in the American Declaration on the Rights of Indigenous Peoples (2016), article XXIV states: ‘Indigenous peoples have the right to be actively involved in developing and determining development programmes affecting them and, as far as possible, to administer such programmes through their own institutions...’ (para. 3).

Indigenous peoples have used their presence in global governance institutions to push for some recognition of the norm of SDD in international policy on development. Many international development agencies, financial institutions and key donors have adopted some recognition of the rights of indigenous peoples in the development process. The World Bank was one of the first to do so, drafting an internal safeguarding policy.^{xvi} Some good use has been made of the World Bank Inspection Panel to assert claims to SDD when such internal policies have failed.^{xvii} The United Nations Development Programme (UNDP) was also an early adopter of specific policies on indigenous peoples: its Social and Environmental Standards (SES) aim at ensuring that ‘UNDP Projects that may impact indigenous peoples are designed in a spirit of partnership with them, with their full and effective participation, with the objective of securing their free, prior, and informed consent (FPIC) where their rights, lands, resources, territories, traditional livelihoods may be affected’^{xviii}. The International Finance Corporation has adopted a particular Performance Standard (No. 7) on indigenous peoples, which requires clients to obtain the FPIC of affected indigenous communities in the context of projects that: have impacts on their lands and natural resources; imply relocation; or have implications for critical cultural heritage.^{xix} Two major

regional development banks, the Inter-American Development Bank and the Asian Development Bank, also have policies on indigenous peoples.^{xx}

These policies mark an important emerging recognition of SDD but as institutions governed and funded by states, there has been a limit to what international development agencies, donors and financial institutions can do when faced with state resistance to indigenous peoples' rights. Although the World Bank, for example, has replaced its early policy with a new suite of environmental and social standards, including protection for indigenous peoples' rights, advocates argue that this has not evolved to fully recognise SDD.^{xxi} SDD is a norm pushing against dominant paradigms of state sovereignty and often, losing. One ally in this fight has been regional human rights courts, which have issued some key judgements that use existing international human rights law and UNDRIP to reach decisions that have shaped SDD norms for national contexts.

Self-determined Development and Litigation:

Although there is little adjudication and jurisprudence on the right to development, several cases concerning indigenous peoples' rights in the context of developmental projects taking place on their territories have supported the emergence of jurisprudence linking human rights law and SDD. The case concerning the Endorois community in Kenya that was examined by the African Commission on Human and Peoples' Rights put into perspective the connections between participation, development and human rights law.^{xxii} The case concerned a pastoralist community who saw its access to their ancestral land and natural resources greatly limited following the establishment of a nature reserve, mining, and tourism on their ancestral

territory. This combination of mining, tourism and nature conservation led to the loss of access to important natural resources and land with great cultural and spiritual significance for the community. After years of frustrations for not getting any remedies and recognition of their fundamental rights at the national level, the Endorois sought remedies with the African Commission, which highlighted the need to recognise the fundamental rights to land and natural resources of the community. In its examination of the case, the African Commission specifically looked at the issue of development as the government had put forward the argument that the forced displacement of the community was justified to support the economic development of the country. Arguing that the loss of land and natural resources for the community was an inevitable price to pay for development, the government stated ‘the task of communities within a participatory democracy is to contribute to the well-being of society at large and not only to care selfishly for one’s own community at the risk of others.’^{xxiii} On the other hand, the Endorois and their supportive advocates had put forward the fact that such imposed development had resulted in their loss of access to essential natural resources and a negative impact on their cultural rights, which significantly violated their rights as enshrined in the African Charter on Human and Peoples’ Rights. Linking self-determination and development, they highlighted that they had ‘suffered a loss of well-being through the limitations on their choice and capacities, including effective and meaningful participation in projects that will affect them.’^{xxiv}

Hence, the African Commission had to examine two competing claims over development, the governmental perspective that displacement and loss of access to natural resources for the community was part of the inevitable process of development, and the claim from the community that their forced displacement and loss of land and natural resources were inherently violating their fundamental rights. It is worth noting that the argumentation put

forward by the government of Kenya is not unusual or isolated. When it comes to development and exploitation of natural resources governments often put forward the argument that they cannot stop such large-scale developments that will bring significant wealth to the whole country to protect just a few ‘marginalised’ local indigenous communities.^{xxv} To address these claims concerning the meaning of development, the Commission concentrated on two principal issues: (1) to what extent was the community consulted prior to the establishment of the wildlife reserve on their lands and (2) whether this development provided benefits to the concerned community. The Commission highlighted that in the context of a developmental project taking place on indigenous territories, governments have to put in place three safeguards to ensure the rights of indigenous peoples. First, the government has to ensure the effective participation of the members of the community in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan that will take place on their lands. Second, there should be a guarantee that the concerned community will receive a reasonable benefit from any such plan within their territory. Third, the government should ensure that no concession will be issued unless and until independent and technically capable entities perform a prior environmental and social impact assessment.^{xxvi}

In this case, the Commission highlighted that the government ‘did not obtain the prior, informed consent of all the Endorois before designating their land as a Game Reserve and commencing their eviction.’^{xxvii} The Commission concluded that there was a clear violation of the right to development since ‘no effective participation was allowed for the Endorois, nor has there been any reasonable benefit enjoyed by the community.’^{xxviii} Crucially, the Commission stated that the ‘result of development should be empowerment of the Endorois community. It is not sufficient for the Kenyan Authorities merely to give food aid to the Endorois. The capabilities and choices of the Endorois must improve in order for the right to development to

be realised.^{'xxix} Whilst there is no direct mention of SDD, the Commission noted that the peoples concerned 'have not been accommodated by dominating development paradigms and in many cases they are being victimised by mainstream development policies and thinking and their basic human rights violated.'^{xxx}

This approach was echoed in the 2017 African Court ruling concerning the Ogiek community, which examined similar dynamics concerning the meaning of development. In this case the African Court highlighted that Article 22 of the Charter (on the right to development) should be read in light of Article 23 of the UNDRIP.^{xxx} The court found that the authorities had violated the right to development of the concerned communities as 'the evictions have adversely impacted on their economic, social and cultural development. They have also not been actively involved in developing and determining health, housing and other economic and social programmes affecting them.'^{xxxii}

There are very strong echoes to this approach linking development and direct participation and benefit for indigenous peoples in the extensive jurisprudence of the Inter-American Court of Human Rights. In the case of *Saramaka*, the Court established several connections between the right to property and indigenous peoples' rights to self-determined development. Pertinently, the court highlighted that the right to property is inseparable from other fundamental human rights, including common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (the right to self-determination), Articles 4 and 5 of the American Convention on Human Rights (the right to life and the right to physical, moral and mental integrity), Articles 6 and 15 of the ILO Convention 169 (right to prior consultation) and Article 32 of UNDRIP (right to give or withhold consent). The court highlighted that the government has a duty to

actively consult with the community according to their customs and traditions and such consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.^{xxxiii} This progressive interpretation of Article 21 of the American Convention (right to property) is notably based on its connection to indigenous peoples' rights to freely determine their own social, cultural and economic development as expressed in article 32 of UNDRIP.^{xxxiv} The court made similar comments in the case of the Sarayaku, referring to the UNDRIP and to several soft-law instruments related to cultural identity and development when interpreting the provisions of the American Convention.^{xxxv} The court also made a direct connection between the right to self-determination and development in the case of the Kaliña and Lokono peoples.^{xxxvi} The court stated that this approach supports 'an interpretation of Article 21 of the American Convention that requires recognition of the right of the members of indigenous and tribal peoples to freely determine and enjoy their own social, cultural and economic development, which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied.'^{xxxvii} Overall, through their support in the jurisprudence to indigenous peoples' right to SDD, even though SDD is not specifically expressed, the court has made direct connection between development and self-determination, land rights, cultural rights and participation.

It is against this backdrop of developing case law that the Sustainable Development Goals have emerged as a key opportunity for indigenous peoples to push beyond the limitations of current global policy and national failings to forge a better framework for SDD. The next section will critically examine the role of the indigenous movement in seeking to shape the new SDGs through the SDD lens.

The Sustainable Development Goals: A Framework for Self-determined Development?

The Sustainable Development Goals (SDGs) were agreed by UN Member States in 2015 and are embedded in *Transforming our world: the 2030 Agenda for Sustainable Development* (Agenda 2030).^{xxxviii} They include many themes that directly affect indigenous peoples, and indigenous peoples are named in a small number of the Goals, including six specific references to indigenous peoples in committing to double the agricultural output of indigenous small-scale farmers (target 2.3 and indicators 2.3, 2.3.2) and to ensure equal access to education for indigenous children (target 4.5 and indicators 4.5, 4.5.1). The Agenda 2030 political declaration also calls for the empowerment of, *inter alia*, indigenous peoples (para 23) and for the follow-up and review process to include, *inter alia*, indigenous peoples' participation (para 79).

This represents an improvement on the MDGs, agreed in 2000, prior to the adoption of UNDRIP, which did not expressly name indigenous peoples among its eight goals or 21 targets. This shift is largely attributable to the indigenous movement, which was highly engaged in the global consultation process for drafting the new SDGs, benefiting also from the operational input and mobilisation capacities of the UN Permanent Forum on Indigenous Issues (PFII). The fact that the SDGs bring together both social and environmental rights has created an even greater imperative for indigenous self-determined development in realising the Goals. Importantly, unlike the MDGs, the SDGs apply also to the Global North states, providing a platform for dialogue and action on achieving SDD for indigenous peoples across the globe.

Agenda 2030 does not currently conform to indigenous peoples' understanding of SDD. At a global level, the indigenous movement has repeatedly emphasised that many core norms of indigenous peoples' rights are missing from Agenda 2030, including the right to self-determination and collective rights. The fact that indigenous peoples are singled out in several paragraphs of the Agenda 2030 is no substitute for a bottom-up reconceptualization of international and national development aims in line with core norms of UNDRIP. From this perspective, advocacy by indigenous peoples in the drafting of the SDGs has fallen short of their aims. With the Agenda 2030 now agreed, indigenous peoples have moved on to focus on key aspects of the SDGs that intersect with core UNDRIP provisions. Among the priority areas of focus are: SDGs impacting on land rights, traditional knowledge and biocultural rights, and rights in education; the need for appropriately disaggregated data; and calls for participation of indigenous peoples at all levels of SDG implementation and follow-up.

We will give attention here to the topic of disaggregated data because there is good evidence that a SDD approach is being advanced in this area. The SDGs have foreseen a 'data revolution' that is required to furnish Agenda 2030 with global and reliable statistics that would measure progress, including through disaggregated data.^{xxxix} This is one entry point where SDD can be transformative, both in terms of what new statistics measure as 'development' but also in terms of participation in the process of data collection and governance over decisions pertaining to the data.

Well before the SDGs took their final shape, the UN Permanent Forum on Indigenous Issues (PFII) was engaged in reviewing UN capacity on data collection concerning indigenous peoples, starting from its first session. In 2004, an expert meeting was convened under the auspices of the PFII to develop modalities for 'Data Collection and Disaggregation

for Indigenous Peoples'.^{xi} A number of core principles were established through that dialogue, including many that constitute self-determined development, such as: all data collection should follow the principles of FPIC; the principle of self-identification should be paramount in determining the subjects/categories of data collection; participation of indigenous peoples in the collection process is essential; and moreover, 'data collection must respond to the priorities and aims of the indigenous communities themselves'.^{xi} The workshop acknowledged that data collection was not without its challenges, both in terms of capacity and method, but it was agreed that the paucity of data available on indigenous peoples needed to be addressed. Importantly, the workshop made a distinction between quantitative and qualitative data, the former conventionally focused on comparing the impact of mainstream development on different populations, and the latter used more to assess different experiences of development and to understand why certain outcomes are unequal. For self-determined development, these qualitative measurements are important for asserting counter-narratives of development 'progress', and to measure, 'to what extent indigenous peoples perceive that their rights are being implemented—for example, whether their views have been reflected in a development plan'.^{xlii} In contrast, conventional data collection has had a 'strong focus on indigenous disadvantage, including comparisons with the non-Indigenous population, and a focus on governments' information needs'.^{xliii}

In line with this challenge, and further to the aim of SDD, a second workshop was convened in 2006 under the PFII on the topic of 'Indigenous Peoples and Indicators of Well-Being',^{xliiv} which further emphasised the particular world views of development for indigenous peoples. Among the conference aims was to find 'a space between statistical reporting requirements of governments and representation of indigenous peoples' perceptions and understanding of well-being'.^{xliv} The recommendations included a call that 'The United

Nations should identify and adopt appropriate indicators of indigenous identity, lands, ways of living, and indigenous rights to, and perspectives on, development and well-being.^{xlvi}

This work continued with several subsequent workshops on data collection during the MDG period and culminated with a recommendation in the outcome document of the World Conference on Indigenous Peoples, in which UN Member States committed ‘to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples’ well-being to address the situation and needs of indigenous peoples’.^{xlvii}

With the onset of the SDGs, the PFII saw an opportunity to take these aims further by establishing within the new development modalities an approach to development that would recognise the self-determination of indigenous peoples. Data was a key strand of this work. The Indigenous Peoples Major Group^{xlviii} submitted a Position Paper on Proposed SDG Indicators in 2015.^{xlix} The report argued that the MDGs had done little to improve data collection on indigenous peoples and that the proposed indicators for the SDGs continued to make indigenous peoples and their rights invisible. The report asserted that ‘An adequate monitoring framework must reflect the two fundamental principles of indigenous peoples’ rights: the right to self-determination and equality.’^l The rights elaborated in UNDRIP were argued to be central to the targets and indicators, alongside wider human rights standards. On UNDRIP, the report notes that for some targets, UNDRIP is ‘the sole human rights instrument that provides specific guidance on conservation and sustainable use of the environment, terrestrial and water-related ecosystems, and biodiversity, including disposal of hazardous materials (Goals 6 and 15), traditional knowledge and intellectual property, (Goals 2 and 15), and traditional occupations, such as pastoralism (Goals 2 and 8).’^{li} In this

way, UNDRIP was being offered as a tool not just for indigenous peoples but as a general standard for wider human rights protection under Agenda 2030.

There are presently several avenues being pursued at the international and national levels to secure self-determined development in and through data collection. The first is a recommendation under the PFII to establish a global ‘indigenous sustainability and well-being’ index, which is still at a nascent stage.^{liii} The second is the Indigenous Navigator, a tool adapted for the SDGs’ existing indicators. A third is focused on influencing SDG indicators where data collection methods are still being negotiated – the indicator 1.4.2 on land will be discussed here briefly. The fourth is at the national level, where ad hoc work continues to improve reporting in the Voluntary National Reviews, which will be surveyed below.

Indigenous Navigator:

The Indigenous Navigator is ‘a framework and set of tools for and by indigenous peoples to systematically monitor the level of recognition and implementation of their rights’.^{liiii} It was designed to enable full participation of indigenous peoples in data collection, having a strong emphasis on enabling community-based monitoring. It is a tool also to encourage national statistical offices and other stakeholders to collect data on indigenous peoples in a manner consistent with UNDRIP and SDD principles. It provides various resources, such as questionnaires, indicators and a country ranking, that indigenous peoples can use to monitor compliance with UNDRIP, the SDGs and the outcome document of the World Conference on Indigenous Peoples. One of the resource books helps indigenous

peoples to align Indigenous Navigator indicators with those in the SDGs, with a view to conducting their own SDG progress assessments.^{liv}

The tool manifests as SDD in several ways. First, it advances a set of indicators that were designed by indigenous peoples. This means that indigenous peoples have established their own benchmarks for measuring the implementation of UNDRIP and the SDGs and in accordance with their own ideas of development. Second, the data collection is led and conducted by indigenous peoples themselves, giving them autonomy over the process. Third, indigenous peoples have sovereignty over the data they have collected. This gives them the power to decide how it is used, including in holding states to account on their failure to fulfil the provisions of UNDRIP. Although the Indigenous Navigator is still emerging from its pilot phase, it marks a genuine attempt to make data collection *by and for* indigenous peoples rather than merely *about* indigenous peoples and thus represents a vital step towards ‘indigenous data sovereignty’.^{lv}

Land rights indicator 1.4.2:

There is one particular SDG indicator where indigenous peoples are facing genuine challenges to their sovereignty. This is indicator 1.4.2 on land rights, namely ‘Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure’. The concern is that land tenure will be measured on the basis of individual title rather than collective or communal title. Prioritising or imposing individual title would not be consistent with UNDRIP and could undermine indigenous peoples’ land rights claims. It is striking that this indicator never explicitly mentioned indigenous peoples, despite four other indicators

doing so. The indicator 1.4.2 was originally classified as ‘Tier III’, meaning that it lacked conceptual clarity on the methodology and there was no universal practice of collecting this kind of data. In order to be part of the routine data collection under the SDGs (i.e. to become a Tier I indicator), both of these points needed to be addressed.^{lvi} Indigenous peoples have tried to influence this process, with the PFII calling for legally recognised customary collective land rights as part of the SDGs indicators on land.^{lvii} Indigenous peoples secured a key victory when the latest round of negotiations on the indicator adopted an ‘approved methodology [that] gives equal value for legally documented tenure rights and perception of tenure security’.^{lviii} This provides stronger grounds for indigenous peoples’ customary law claims to territory being recognised. To move the indicator to Tier I status by 2019 will require further capacity-building of national statistics offices and local communities to gather data on land tenure. Tools like the Indigenous Navigator can help ensure indigenous peoples land rights are fully documented by indigenous communities themselves. It is an important step towards indigenous SDD on land rights, which the SDGs could potentially enable.

Voluntary National Reviews:

The Agenda 2030 sets out some guiding principles for the Voluntary National Review (VNR) reports on SDG progress. This includes an overarching emphasis on ‘national ownership’.^{lix} Although the idea of national ownership is not problematised and assumes sovereignty only of the state, there are calls for the reviews to ‘draw on contributions from indigenous peoples, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities’.^{lx} Moreover, the call for disaggregated data is repeated, including the provision of data disaggregated by, inter alia, ethnicity, geographic location and ‘other characteristics relevant in national contexts’.^{lxi} The reports are also

supposed to give attention to respect for human rights and have a particular focus on the poorest and most marginalised. Finally, the reports should be open to ‘the development of new methodologies’.^{lxii}

All of these principles set the stage for the VNR being a useful vehicle for documenting and advancing SDD in the achievement of the SDGs. A review of existing VNRs shows this potential has not been met by states in their reporting process to date. There are 162 state reports in the VNR database submitted over the years 2016-2018. A keyword search in the database of the term ‘indigenous’ or ‘tribal’ yielded 16 VNRs with relevant mentions.^{lxiii} This is surprising given that indigenous peoples feature among the named groups in the targets and indicators. There is very little disaggregated data on indigenous peoples in the reports, with only Nepal and Malaysia providing any quantitative data;^{lxiv} recall that the SDGs include targets for ethnically disaggregated data and indigenous peoples have repeatedly called for an ‘indigenous identifier’ in official statistics.^{lxv} Perhaps the strongest example of SDD in the VNRs comes from the note in Denmark’s report, that ‘the Action Plan does not include Greenland and the Faroe Islands as most of the elements fall within the jurisdiction of Greenland and the Faroe Islands’, a reflection of self-government for the peoples of those territories.^{lxvi} Five other VNRs make note of official consultation processes with indigenous peoples: for example, Chile indicates that the National Indigenous Council was consulted and Norway cites the role of the Sami Parliament.^{lxvii} In terms of SDD norms, only the report of Canada mentions UNDRIP, self-determination and free, prior and informed consent explicitly.^{lxviii} Malaysia gives priority to ‘empowering indigenous and local communities to have the right to give or withhold consent to proposed projects that may affect their lands’.^{lxix} Notably, two of the VNRs^{lxx} discuss indigenous peoples in relation to private corporations in mining. In the example from

Botswana, a diamond mining company pledges that its guiding principles for sustainable development include: responding to the needs of indigenous people; free and informed consultation; respecting cultural integrity; stakeholder dialogue; partnership with stakeholders; and non-infringement of community rights.^{lxxi} Private corporations bear no direct responsibility for implementing the SDGs in Agenda 2030, an omission that was heavily criticised by civil society groups.

The Indigenous Navigator holds out the possibility that alternative VNRs prepared by indigenous peoples could provide more accountability in the SDGs process. However, it remains the case that indigenous peoples do not determine most SDGs policies at the national level, despite their influence in global processes. The governance of development remains in the control of central government and is still rarely devolved in any meaningful way. Bio-cultural community protocols offer one possible way forward to design management of a key aspect of the SDGs: natural resources. The origins and potential of these agreements for self-determined development will be considered below.

Self-determined Development and Community Bio-Protocols:

Over the last decade, several indigenous communities across the globe have adopted their own ‘biocultural community protocols’, or community protocols.^{lxxii} These community protocols are tools created to support indigenous peoples and community rights, in particular with regard to natural resources, biodiversity and traditional knowledge.^{lxxiii} Community protocols are relatively new instruments that have emerged under biodiversity law. Legally these protocols are rooted within the Convention on Biological Diversity (CBD) which

recognises the traditional knowledge, innovations and practices of local and indigenous peoples and communities over natural resources. Article 8(j) of the CBD invites states to enact national legislation to preserve, protect, maintain, and promote the wider application of indigenous peoples' traditional knowledge relevant to the conservation and sustainable use of biodiversity, provided that such use takes place with the approval and involvement of the holders of such knowledge. Article 8(j) also encourages equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices. The operationalisation of these principles was put into action with the adoption of the 2010 Nagoya Protocol on Access to Genetic Resources and Benefit Sharing, which notably supports the establishment of community bio-cultural protocols. Its article 12(1) stipulates that states ‘...shall in accordance with domestic law take into consideration indigenous and local communities’ customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.’ Article 13(3)(a) determines that public authorities should support the development of ‘community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilisation of such knowledge.’

It is worth noting that the UNDRIP has played an important role to support the emergence of these protocols. The concept has emerged during the negotiations of the Nagoya Protocol and the several meetings of the Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing (ABS) that took place during the years 2007-2009.^{lxxiv} In this context, UNDRIP was an important tool for indigenous peoples’ representatives, NGOs and advocates of indigenous rights to push for the recognition of the direct participation of indigenous peoples in the ABS process.^{lxxv} The reference to UNDRIP, and especially its article 31, supported the advocacy effort to recognise the right of indigenous peoples to grant access to their traditional knowledge

and genetic resources subject to their free, prior and informed consent.^{lxxvi} More specifically, the preamble of the Nagoya protocol specifically refers to UNDRIP as a source of interpretation for the Nagoya protocol. The adoption of the Nagoya Protocol has resulted in a significant increase of adoption of community bio-cultural protocols by indigenous peoples and local communities across the globe. Nonetheless, many community protocols have been adopted outside the strict remit of the Nagoya Protocol, and also are not limited to genetic resources and issues of benefit-sharing. These protocols usually determine the conditions of access to and use of natural resources and associated traditional knowledge and use of natural resources contained on indigenous territories.

Although many of these protocols have emerged under the banner of biodiversity and traditional knowledge, in practice they have taken on a much larger life as they are not usually limited to genetic resources but are often used by the concerned communities as a way to record and affirm their relation to natural resources.^{lxxvii} For many communities, these protocols have become important tools to affirm their fundamental rights over their land and natural resources. They have become a vehicle to determine and express their traditions, management practices and overall customary practices in relation to their land and natural resources. More generally, the development of these protocols has acted as a catalyst for many communities to propose new approaches to the way development should be undertaken in reflecting on the community's development priorities and aspirations.^{lxxviii} These protocols also play an important part in supporting a much more direct and participatory role for indigenous peoples in development plans regarding the use of natural resources located on their territories. Importantly, these protocols are based on a process of self-determination, with communities undertaking an internal process of consultation and decision-making in which the community

itself decides on the use of their land and natural resources including options for self-determined development.

The self-determined aspect of these protocols is quintessential as they are developed and adopted by indigenous peoples themselves, and as such they contain rules for entering into mutually agreed terms regarding the use of the natural resources located on their territories. Hence, they become a basis for negotiations with public authorities but also private entities with regard to social, economic and development aspects that may affect their territories.^{lxxix} Crucially most of the existing community protocols refer to the right to free, prior and informed consent (FPIC) as the key condition for accessing not only genetic resources but also more generally land and natural resources. In a global context where many governments and private companies investing in land are meant to engage in FPIC processes but often claim that there is no guidance on how to conduct FPIC, these protocols offer a significant framework to support these negotiations. From this perspective, these protocols integrate and embrace the fundamental human rights of indigenous peoples over their land and natural resources. Whilst there might not be any specific direct formal connection between human rights law and bio-cultural protocols in treaty law, the fact that these protocols are a direct expression of indigenous peoples' right to self-determination over the use of their natural resources and their right to development make them a very important avenue to support the implementation of the UNDRIP.

The situation of the Ogiek community in Kenya provides a good illustration of these dynamics. The Ogiek, a traditionally hunter-gatherer community, have adopted a bio-cultural community protocol in 2015.^{lxxx} As noted earlier, the Ogiek have also been at the heart of legal battle that has lasted for more than 20 years regarding their right to land and natural resources.

That battle culminated with the 2017 ruling of the African Court of Human and Peoples' Rights which recognised their fundamental rights to land and natural resources. In parallel to their engagement in litigation, the Ogiek have developed their own bio-cultural protocol. The protocol is defined as 'a tool to safeguard our community's rights as well as traditional knowledge and resources by providing clear terms and conditions to regulate access to our assets as well as sharing benefits that accrue from any development of these assets.'^{lxxxix} The protocol was elaborated through a participatory process that involved community consultations. It establishes a very detailed and long-term proposal for the management, development and administration of their land and natural resources. The protocol also explains the system of governance and decision making of the community, as well as mechanisms for dispute resolution and land allocation. Every proposal in the Ogiek protocol is based on national and international legal norms to support their argumentation. This makes the protocol a very solid foundation to support a rights-based approach to development, as well as a proper self-determined process of development. The Ogiek have highlighted that their plans for development are not only valuable to them, but also for the whole country and the global environment. As they say: 'We are holders of this valuable knowledge which can make an important contribution to sustainable social and economic development.'^{lxxxix} Importantly, the Ogiek have made a link between their self-determined plan for development and the overall governmental and international policies for development highlighting how their plans could support larger developmental strategies without harming their community.

The Ogiek protocol is only an illustration of the rich and deep engagement of indigenous communities with bio-cultural protocols as many other communities have adopted similar protocols across the globe. These protocols offer some solid foundation to support the implementation of the UNDRIP, and notably the self-determined development aspect of the

declaration. They represent a very valuable avenue to support and enhance indigenous peoples' self-determined development. The issue which arises relates to their implementation and respect by external actors operating on indigenous territories, including public authorities but also private corporations and investors. The formalistic legal nature of these protocols is complex due to the voluntary nature of the protocols. From a positivist and formal legal perspective, bio-cultural protocols are 'only' voluntary and self-defined agreements. Nonetheless, this argumentation could be challenged as legally speaking these protocols are part of international biodiversity law for being the operationalisation of the Nagoya Protocol. Moreover, by entrenching these protocols within the UNDRIP and other international human rights laws, these protocols acquire a more formal legal nature by integrating universal, adopted norms. As such they are entrenched in positivist legal norms and therefore become an instrument for their implementation. There is still a long way to go until the formal recognition of the legal value of these protocols by public authorities and legal institutions at the national level is secured. As noted by Ruiz: 'The question of whether they would stand up in court is very difficult to determine, but it could be strongly argued that inasmuch as they are already legally recognised at the international level, they could be considered by courts or in administrative procedures (...).'^{lxxxiii} In many ways, this is the next battle: indigenous peoples and supportive organisations have started to gather up strategies to ensure that these protocols become an essential element to support indigenous peoples' rights. This includes using them in all their external engagements with external actors, using them for their advocacy strategies, and using them as evidence in legal processes and for policy planning.^{lxxxiv} The use of the community protocol by the Ogiek as a tool to support the implementation of the ruling the African Court might offer some new development on the legal role that could be played by these bio-cultural protocols. It also makes a direct connection between human rights law and the bio-cultural protocol. At the time of writing, there is still no progress on the implementation

of the judgment, but the protocol could prove to be a key tool to support future implementation.^{lxxxv}

It is also worth highlighting that the emergence of the bio-cultural protocols is part of the larger development of a global jurisprudence on biocultural rights. Biocultural rights emerge from the junction between the fields of environmental, cultural and human rights law.^{lxxxvi} As noted by Bavikatte:

The term 'biocultural rights' denotes a community's long established right, in accordance with its customary laws, to steward its lands, waters and resources. Such rights are being increasingly recognized in international environmental law. Biocultural rights are not simply claims to property, in the typical market sense of property being a universally commensurable, commodifiable and alienable resource; rather, as will be apparent from the discussion offered here, biocultural rights are collective rights of communities to carry out traditional stewardship roles vis-à-vis Nature, as conceived of by indigenous ontologies.

Bio-cultural protocols are the clear operationalisation of such rights which are based on concerns for the environmental, development and human rights law. As such they represent a unique platform to challenge the legal fragmentation that has been taking place under international law where norms concerning cultural heritage, environmental protection, development and human rights have been divided between specific legal frameworks. For indigenous peoples the approach based on bio-cultural principles is a way to re-establish a more cohesive means to manage and protect their cultural heritage, traditions and natural resources. In terms of human rights law, this approach grounded on a bio-cultural framework offers a very positive and self-determined way to support the implementation of the norms on self-determination, development, cultural rights and land and natural resources management,

including in the UNDRIP. Importantly, bio-cultural protocols are also a clear operationalisation of the right to FPIC and SDD.

Conclusion:

This survey of data collection in the SDGs, regional jurisprudence and community protocols demonstrates several ways in which self-determined development is evolving as a norm within international and national development policy and through case law. This takes place against an ongoing struggle in national and local contexts to challenge prevailing development norms of the state and private sector that undermine indigenous peoples' right to self-determination. The adoption of UNDRIP did not radically transform existing structures of inequality, colonialism or capitalism, but its negotiation and adoption has certainly influenced the way development can be conceptualised at all levels. Indigenous peoples have used their hard-won space in global governance to shape new development modalities agreed since 2007, principal among these being the SDGs. They have framed their claims within the norms of UNDRIP and sought to translate these norms into tangible policy commitments. UNDRIP has been a tool, alongside international human rights law, to assert claims regarding development aggression and its effects before the courts. The opportunity to articulate a community protocol to protect biocultural diversity, traditional knowledge and natural resources has provided a means to safeguard not only an indigenous

view of self-determined development but also to protect environmental and cultural diversity for the benefit of all.

It has sometimes been a case of two steps forward, one step back in norm emergence on SDD. Cases have been won but implementation has been poor. Community protocols are increasingly being developed but are still often not seen as binding on outside development actors. The SDGs have firm commitments to indigenous peoples, but state National Voluntary Reviews shows a lack of concrete and meaningful leadership of indigenous peoples in local SDGs activities. Nevertheless, UNDRIP remains a firm basis for advancing claims for SDD in these areas and as UNDRIP becomes more mainstreamed into development process, the potential for indigenous peoples' views of development to prevail are improved.

ⁱ The authors would like to thank Marcus Erridge (University of Coimbra) and Fumiya Nagai (University of British Columbia) for their research assistance.

ⁱⁱ See Wolfgang Sachs, *The Development Dictionary: A Guide to Knowledge as Power* (Witwatersrand University Press, Johannesburg, 1993).

ⁱⁱⁱ Nadia Nader, 'Promise or Plunder? A Past and Future Look at Law and Development', 7 (2) *Global Jurist* (2007). See also Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003).

^{iv} Cathal Doyle and Jérémie Gilbert, 'Indigenous Peoples and Globalization: From "Development Aggression" to "Self-Determined Development"', *European Yearbook on Minority Issues* Vol. 8 (January 2011).

^v See Michael T. Klare, *The Race for What's Left: The Global Scramble for the World's Last Resources* (Picador, 2012); Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (OUP, 2016).

^{vi} Charles Hale, 'Neoliberal Multiculturalism: the Remaking of Cultural Rights and Racial Dominance in Central America', 28 (1) *Political and Legal Anthropology Review* (2009): 10-28.

^{vii} Corinne Lennox, 'Minority and Indigenous Women and the Millennium Development Goals', in *State of the World's Minorities and Indigenous Peoples 2011*, (London: Minority Rights Group International, 2011): 21-31; Permanent Forum on Indigenous Issues, *Report on the fifth session (15-26 May 2006); Special Theme, The Millennium Development Goals and indigenous peoples: Re-defining the Millennium Development Goals*, UN Doc. E/C.19/2006/11.

^{viii} See, for example, Kelley Laird, *MDGs Reports and Indigenous Peoples: A Desk Review*, Secretariat of the UN Permanent Forum on Indigenous Issues, 2006; Christopher Foley, *MDGs Reports, CCAs and UNDAFs and Indigenous Peoples: A Desk Review 2010*, Secretariat of the UN Permanent Forum on Indigenous Issues, 2010.

^{ix} See also the Rio+20 Indigenous Peoples International Declaration on Self-Determination and Sustainable Development, adopted 19 June 2012, Rio de Janeiro; available at <https://www.iitc.org/wp-content/uploads/2013/07/Rio-20-Indigenous-Peoples'-International-Declaration-on-Sustainable-Development-and-Self-Determination-9-June-2012-Rio-de-Janeiro.pdf>.

^x Permanent Forum on Indigenous Issues, 'Consultation Workshop and Dialogue on Indigenous Peoples' Self-Determined Development or Development with Identity', 14-17 March 2008, Tivoli, 11-18 April 2008, UN Doc. E/C.19/2008/CRP.11.

^{xi} International Expert Meeting on the UN Permanent Forum's theme for 2010, the theme was 'Indigenous Peoples' Development with Culture and Identity: Articles 3 and 32 of the UN Declaration on the Rights of Indigenous Peoples.'

^{xii} Victoria Tauli-Corpuz, 'Indigenous Peoples' Self-Determined Development: Challenges and Trajectories', in Victoria Tauli-Corpuz, Leah Enkiwe-Abayao and Raymond de Chavez (eds.), *Towards an Alternative Development Paradigm Indigenous People's Self-Determined Development* (Tebtebba Foundation, 2010), p. 4.

^{xiii} See Victoria Tauli-Corpuz, Leah Enkiwe-Abayao and Raymond de Chavez (eds.), *Towards an Alternative Development Paradigm Indigenous People's Self-Determined Development* (Tebtebba Foundation, 2010).

^{xiv} See Processes Towards the Development of an Indigenous Peoples' Self-Determined Development Paradigm, in Victoria Tauli-Corpuz, Leah Enkiwe-Abayao and Raymond de Chavez (eds.), *Towards an Alternative Development Paradigm Indigenous People's Self-Determined Development* (2010, Tebtebba Foundation, 2010).

^{xv} Victoria Tauli-Corpuz, 'Indigenous Peoples' Self-Determined Development: Challenges and Trajectories', in Victoria Tauli-Corpuz, Leah Enkiwe-Abayao and Raymond de Chavez (eds.), *Towards an Alternative Development Paradigm Indigenous People's Self-Determined Development* (Tebtebba Foundation, 2010), p.3.

^{xvi} World Bank, OP 4.10 - Indigenous Peoples, July 2005.

^{xvii} World Bank. *Inspection Panel: Indigenous peoples*. Emerging Lessons; no. 2. Washington, D.C. : World Bank Group, 2016, available at <http://documents.worldbank.org/curated/en/447361478156710826/Inspection-Panel-Indigenous-peoples>.

^{xviii} See Standard 6: Indigenous Peoples. UNDP, *UNDP Social and Environmental Standards*, UNDP 2014, available at <http://www.undp.org/content/dam/undp/library/corporate/Social-and-Environmental-Policies-and-Procedures/UNDPs-Social-and-Environmental-Standards-ENGLISH.pdf>. See also the preceding *United Nations Development Group Guidelines on Indigenous Peoples* adopted in 2008, available at <https://www.ohchr.org/Documents/Issues/IPeoples/UNDGGuidelines.pdf>.

^{xix} International Finance Corporation, Performance Standard 7: Indigenous Peoples, 1 January 2012.

^{xx} Inter-American Development Bank, *Operational Policy on Indigenous Peoples and Strategy for Indigenous Development*, Washington, D.C.: IADB, 2008; Asian Development Bank, *The Bank's Policy on Indigenous Peoples*, April 1998; Asian Development Bank, *Safeguard Policy Statement*, June 2009. The African Development Group Bank includes some recognition of indigenous peoples in its safeguard policies but does not have a dedicated policy on indigenous peoples. See African Development Group Bank, *African Development Bank Group's Integrated Safeguards System — Policy statement and operational safeguards*, AFDB, 2013.

^{xxi} These were adopted by the World Bank in 2016 and come into force in 2018. See Corinne Lewis and Carl Soderbergh, 'The World Bank's new Environmental and Social Framework: Some Progress but Many Gaps regarding the Rights of Indigenous Peoples', *International Journal of Human Rights*, this volume.

^{xxii} African Commission on Human and Peoples' Rights. *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication 276/2003 (2010).

^{xxiii} *Id.*, para. 270

^{xxiv} *Id.*, para. 129

^{xxv} See Mario Blaser, Harvey A. Feit, and Glenn McRae (eds.), *In The Way of Development: Indigenous Peoples, Life Projects and Globalization* (Zed Books and the International Development Research Centre, 2004).

^{xxvi} Endorois Case, para. 227

^{xxvii} *Id.*, para. 290

^{xxviii} *Id.*, para. 228

^{xxix} *Id.* para. 238

^{xxx} *Id.* para. 148

^{xxxi} Ogiek, para. 209. Article 23 states: 'Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.'

^{xxxii} Ogiek, para. 210

^{xxxiii} Inter-American Court of Human Rights, *Case of the Saramaka People v Suriname* Inter-Am. Ct. H.R., (Ser. C) No. 172 (2007).

^{xxxiv} Ibid, See para. 131 where the court refers to Art. 32 United Nations Declaration on the Rights of Indigenous Peoples

^{xxxv} *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (27 June 2012), see para. 214-216

^{xxxvi} Ibid, para. 121

^{xxxvii} Ibid, para. 124

^{xxxviii} UN General Assembly, *Resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (21 October 2015).

^{xxxix} See target 17.18 and para 74 (g) of Agenda 2030.

^{xl} Permanent Forum on Indigenous Issues, *Report of the Workshop on Data Collection and Disaggregation for Indigenous Peoples*, UN Doc. E/C.19/2004/2 (10 February 2004).

^{xli} Ibid, para 33 (4).

^{xlii} Meghan Davis, 'Data and the United Nations Declaration on the Rights of Indigenous Peoples', in Tahu Kukutai and John Taylor (eds.), *Indigenous Data Sovereignty: Toward an Agenda*, (ANU Press, 2015): p. 36.

^{xliii} Richard Maddena, Per Axelsson, Tahu Kukutai, Kalinda Griffiths, Christina Storm Mienna, Ngaire Brown, Clare Coleman and Ian Ring, 'Statistics on indigenous peoples: International effort needed', *Statistical Journal of the IAOS*, 32 (2016): p. 39.

^{xliv} Permanent Forum on Indigenous Issues, *Report of the Meeting on Indigenous Peoples and Indicators of Well-Being*, UN Doc. E/C.19/2006/CRP.3 (20 April 2006).

^{xlv} Ibid, para 10.

^{xlvi} Ibid, para 33.

^{xlvii} UN General Assembly, *Resolution 69/2, Outcome Document of the High Level Plenary Meeting of the General Assembly known as the World Conference on Indigenous Peoples*, UN Doc. A/RES/69/2 (25 September 2014): para 10.

^{xlviii} The Indigenous Peoples Major Group is one of the nine recognized Major Groups that can officially participate in the SDG processes at the global level. It is coordinated by the Tebtebba Foundation and the International Indian Treaty Council. See Indigenous Peoples Major Group at <https://www.indigenouspeoples-sdg.org/index.php/english/>.

^{xlix} Indigenous Peoples Major Group, *Indigenous Peoples Major Group Position Paper on Proposed SDG Indicators*, 2015, available at <https://www.iwgia.org/en/resources/publications/306-briefings/3203-indigenous-peoples-major-group-position-paper-on-proposed-sdg-indicators>.

^l Ibid, pg. 3.

^{li} Ibid, p. 8.

^{lii} This idea emerged initially in the series of PFII workshops on data collection (see *supra* note 42). The 2016 PFII Expert Group Meeting on Indigenous Peoples and the 2030 Agenda recommended that the plan be taken forward. PFII, *Meeting Report of the Expert Group Meeting on Indigenous Peoples and the 2030 Agenda*, UN Doc. E/C.19/2016/2 (16 February 2016): paras 34 and 39 (i).

^{liii} See Indigenous Navigator, <http://nav.indigenoustravel.com/index.php/en/>

^{liv} Indigenous Navigator, *Leaving no one behind!: Integration of global SDG Indicators in the Indigenous Navigator monitoring framework*, N.D, available at

http://nav.indigenoustravel.com/images/Documents/Tools/Navigator_IntegrationSDGIndicators.pdf

^{lv} Tahu Kukutai and John Taylor (eds.), *Indigenous Data Sovereignty: Toward an Agenda*, ANU Press, 2016.

^{lvi} This became a Tier II indicator in November 2017 and there is a commitment to move it to Tier I by the end of 2019. See Everlyne Nairesiae, *IAEG-SDGs Upgrade Indicator 1.4.2 to Tier II Status*, Land Links, 2017, available at <https://land-links.org/2017/11/iaeg-sdgs-upgrade-indicator-1-4-2-tier-ii-status/>.

^{lvii} See, for example, a report of the 2018 session of the PFII: ECOSOC, *Update on indigenous peoples and the 2030 Agenda for Sustainable Development; Note by the Secretariat*, UN Doc. E/C.19/2018/2 (1 February 2018): para 24 (d); also see paras 9 and 21 for discussion on land indicators.

^{lviii} Nairesiae, *supra* note 55.

^{lix} Agenda 2030, para 74 (a). See also, Department of Economic and Social Affairs, United Nations. *Handbook for the Preparation of Voluntary National Reviews: The 2018 Edition*, Department of Economic and Social Affairs, n.d..

^{lx} Agenda 2030, para 79.

^{lxi} Agenda 2030, para 74 (g).

^{lxii} Agenda 2030, para 74 (f).

^{lxiii} Search made on 20 September 2018. The following VNRs include at least one mention of indigenous peoples: Botswana, Canada, Chile, Denmark, Estonia, Finland, Germany, Indonesia, Japan, Malaysia, Nepal, Norway, the Philippines, Sweden and Uganda. The Bangladesh VNR mentions tribal communities. See Sustainable Development Knowledge Platform, *Voluntary National Reviews Database*, available at <https://sustainabledevelopment.un.org/vnrs/>.

- ^{lxiv} Government of Malaysia, *Malaysia Sustainable Development Goals Voluntary National Review 2017; High Level Political Forum*, (Economic Planning Unit, 20017), available at https://sustainabledevelopment.un.org/content/documents/16397BOTSWANA_VNR.pdf; Government of Nepal National Planning Commission, *National Review of Sustainable Development Goals*, 2017, available at <https://sustainabledevelopment.un.org/content/documents/16513Nepal.pdf>.
- ^{lxv} Permanent Forum on Indigenous Issues, *Substantive Inputs to the High-Level Political Forum; Thematic review of the 2030 Agenda for Sustainable Development*, Secretariat of the Permanent Forum on Indigenous Issues, (2016): p. 3, available at [https://sustainabledevelopment.un.org/content/documents/10314Permanent%20Forum%20on%20Indigenous%20Issues%20\(PFII\).pdf](https://sustainabledevelopment.un.org/content/documents/10314Permanent%20Forum%20on%20Indigenous%20Issues%20(PFII).pdf).
- ^{lxvi} Danish Government, *Report for the Voluntary National Review; Denmark's implementation of the 2030 Agenda for Sustainable Development*, (Ministry of Finance, 2017): p. 17.
- ^{lxvii} Government of Chile, *Chile Agenda 2030 Objetivos de Desarrollo Sostenible; Informe Nacional Voluntario*, 2017: p. 2, available at <https://sustainabledevelopment.un.org/content/documents/15776Chile.pdf>; Norway, *Initial Steps Towards the Implementation of the 2030 Agenda: Voluntary National Review Presented at the High-Level Political Forum on Sustainable Development*, (2016): p. 2, available at <https://sustainabledevelopment.un.org/content/documents/10692NORWAY%20HLPF%20REPORT%20-%20full%20version.pdf>. See also the reports of: Government of the People's Republic of Bangladesh, *Eradicating poverty and promoting prosperity in a changing world; Voluntary National Review 2017*, (2017): p.6, available at <https://sustainabledevelopment.un.org/content/documents/15826Bangladesh.pdf>; Government of Canada, *Canada's Implementation of the 2030 Agenda for Sustainable Development; Voluntary National Review*, (Global Affairs Canada, 2018): p. 3, available at https://sustainabledevelopment.un.org/content/documents/20312Canada_ENGLISH_18122_Canadas_Voluntary_National_ReviewENV7.pdf; Finland Prime Minister's Office, *National report on the implementation of the 2030 Agenda for Sustainable Development Finland*, (2016): pp. 13 and 35, available at https://sustainabledevelopment.un.org/content/documents/10611Finland_VNR.pdf.
- ^{lxviii} Government of Canada, *Canada's Implementation of the 2030 Agenda for Sustainable Development; Voluntary National Review*, (Global Affairs Canada, 2018): pp. 11-13, available at https://sustainabledevelopment.un.org/content/documents/20312Canada_ENGLISH_18122_Canadas_Voluntary_National_ReviewENV7.pdf.
- ^{lxix} Government of Malaysia, *Malaysia Sustainable Development Goals Voluntary National Review 2017; High Level Political Forum*, (Economic Planning Unit, 20017): p. 36, available at https://sustainabledevelopment.un.org/content/documents/16397BOTSWANA_VNR.pdf.
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- ^{lxxi} Republic of Botswana, *Botswana Voluntary National Review on Sustainable Development Goals 2017*, Figure Four: Sustainability Guiding Principles, available at https://sustainabledevelopment.un.org/content/documents/16397BOTSWANA_VNR.pdf.
- ^{lxxii} See <http://www.community-protocols.org>. For analysis, see Holly Shrumm and Harry Jonas (eds.), *Biocultural Community Protocols: A Toolkit for Community Facilitators* (Natural Justice: Cape Town, 2012).
- ^{lxxiii} See Kabir Bavikatte and Harry Jonas (eds), *Bio-Cultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy* (Nairobi: United Nations Environment Program, 2009).
- ^{lxxiv} See Maria Yolanda Teran, 'The Nagoya Protocol and Indigenous Peoples', 7(2) *The International Indigenous Policy Journal* (2016).
- ^{lxxv} However, see Kimberly R. Marion Suiseeya, 'Negotiating the Nagoya Protocol: Indigenous Demands for Justice', 14 (3) *Global Environmental Politics* (2014), pp. 102-124
- ^{lxxvi} For analysis, see Kabir Bavikatte and Daniel F. Robinson, 'Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing', 7/1 *Law, Environment and Development Journal* (2011).
- ^{lxxvii} See Kabir Bavikatte, Sanjay, Daniel Robinson, and Maria Julia Oliva, 'Biocultural Community Protocols: Dialogues on the Space Within', *IK: Other Ways of Knowing* 1.2 (2015): 1-31.
- ^{lxxviii} See Louisa Parks, "Challenging power from the bottom up? Community protocols, benefit-sharing, and the challenge of dominant discourses", 88 *Geoforum* (2018): pp. 87-95.
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- ^{lxxx} Ogiek Bio-Cultural Community Protocol (BCP), Ogiek Peoples' Development Program, 2015, available at <https://www.ogiekpeoples.org/images/downloads/Ogiek-Bio-Cultural-Protocol.pdf>
- ^{lxxxi} *Ibid.*
- ^{lxxxii} *Ibid.*

^{lxxxiii} Manuel Ruiz, *Possibilities and Limitations for a Biocultural Protocol(s) in Countries in the Andes and Amazon Basin* (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2012), p. 22

^{lxxxiv} See *Community Protocols Toolbox, Developing and Using Community Protocols: Booklet 3* (Natural Justice & e Heinrich Böll Stiftung, 2016), available at: <https://za.boell.org/sites/default/files/booklet-3.pdf>

^{lxxxv} For updates on implementation and follow up to the judgment, see <https://www.ogiekpeoples.org>

^{lxxxvi} See Kabir Sanjay Bavikatte, *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights* (Oxford University Press, Delhi 2014); Giulia Sajeve, 'Rights with limits: biocultural rights—between self-determination and conservation of the environment', 6.1 *Journal of Human Rights and the Environment* (2015): pp. 30-54.