Louisa Ashley
Leeds Law School
Leeds Beckett University
Louisa.Ashley@leedsbeckett.ac.uk

Chapter title: Global governance of human rights to address land rights and local ills: evaluating the Third Space potential of Universal Periodic Review

> *How do we recover the respect for the "office" when the office bearer demeans the office and, in the process, causes injury to the integrity of the institutions of governance?* (Appiah and Bhabha, 2018, p175)

Introduction

This chapter is based on a study of recommendations and stakeholder submissions made to the government of Colombia during the country's third cycle Universal Periodic Review (UPR) in May 2018. UPR is a United Nations international human rights monitoring mechanism whereby reviewing states address the progress of the state under review against its human rights obligations, making recommendations accordingly. This chapter critically explores two propositions. The first is that UPR is a global governance mechanism for human rights located within an international human rights 'regime complex'. A regime complex comprises different entities relevant to a particular field with an overlapping function (Keohane and Victor, 2011, p15-16). The complex accommodates 'an array of partially overlapping and non-hierarchical institutions governing a particular issue-area', where 'the rules in these elemental regimes functionally overlap' (Raustiala and Victor, 2004, p279).

The second proposition is that UPR is uniquely composed and positioned to accommodate a textual and political 'third space'., as conceived by Homi Bhabha. In a third space, marginalized identities and muted voices that are central to pioneering and championing social innovation and mobilisation to support social and natural capital, have the potential to be present and heard on a global stage. This is due to two fundamental characteristics of UPR. Firstly, UPR takes within its scope recommendations from other mechanisms in the international human rights regime complex that include those made by non-state and civil society actors. Secondly, UPR is a state-to-state peer review mechanism during which state delegations support and thereby commit to human rights promotion, protection and remedy on a global stage. However, premised as it is upon 'peer' review, the process is (unsurprisingly) subject to regionalism and politicization (Terman and Voeten, 2018, pp1-23), with some states using it as a vehicle for 'ideological warfare' (Tomuschat, 2011, p619). Furthermore, UPR provides all states with a platform to instruct on human rights matters, regardless of the position of rights in their own 'back yard' (Human Rights Voices, 2014).

This study specifically considers those recommendations that refer to the right to land, the rights of indigenous peoples and human rights defenders. Action to protect land rights and community interest can create sites of protest within which indigenous peoples, minority communities and human rights defenders come into potentially violent conflict with state and non-state actors. Resistance is often against development projects such as dam building, agri-business and mining, that cause the outright loss or degradation of social and natural capital. Repeatedly, it is indigenous peoples and minority communities that are directly affected by the related land dispossession and/or change in land use. Yet the rights holders of these peoples and communities have been historically, and continue to be, subjugated by dominant political and legal state structures. Via UPR the subject of rights and rights holders that are not addressed in a specific United Nations human rights treaty are given attention.

The realization of these rights are foundational in contributing to the political, cultural, social and institutional conditions necessary to support social innovation by supporting the socially marginalised and vulnerable to realise their potential to operate as productive economic subjects (Oosterlynck et al. 2013). Analysis of the proportion and content of recommendations that refer to those rights, and the extent to which those recommendations reflect stakeholder submissions and recommendations made by other rights regimes, suggests that UPR does have the potential to accommodate a textual and political third space. The protection of the rights and equality of women is also key to this field and Colombia is a state party to the Convention on the Elimination of Discrimination Against Women, however, despite concerns that there is often 'a significant gap or a 'strategic silence'' (Moulaert et al, 2017, p31, citing Bakker 1994), there is not the scope to specifically include gender here.

In a 'third space', identity is not fixed, it is under negotiation. As such identity exists in a liminal and hybrid space where new initiatives and identities are created. Although Bhabha's work on liminality and hybridity is focused on postcolonialism in former British colonies, for Céire Broderick it 'resonates with the postcolonial situation in Latin America', where 'already complex identities enter into further negotiation to create new hybrid forms' (Broderick, 2019, p750). For Bhabha:

> …the importance of hybridity is not to be able to trace the two original moments from which the third emerges, rather hybridity is to me the 'third space' which enables other positions to emerge. This third space displaces the histories that created it, and sets up new structures of authority and political initiatives… (Rutherford, 1998, p211)

Elsewhere, this author has written in favor of UPR creating 'a uniquely plural space that opens a realm of possibilities not driven solely by one or another international or regional institution, alliance or regime'. Consequentially, 'the pluralism at the heart of UPR creates a broadly conceptualized hybrid space that accommodates similarity and

difference, within which the hybrid and the non-hybrid can coexist' (Riches, 2014, p162). Such pluralism supports the proposition of UPR as an ideational third space, albeit one in which political bias and unequal power dynamics mean states 'are less likely to criticize their friends' and 'are more lenient towards their strategic partners in the peer-reviewing process' (Terman and Voeten, 2018, p1). The discursive and iterative process that characterizes UPR has the potential to influence state practice via mimicry and acculturation (Goodman and Jinks, 2013). Conversely, this process can encourage ritualism and insitutionalisation in which 'ceremonies or formalities that, through repetition, entrench the understandings and the power relationships that they embody' risk an 'embodied performance' that overshadows the significance of a process and its requirements in terms of regulation, or governance (Charlesworth and Larking, 2014, p9). The risk is that these factors encourage a one size fits all approach, stifling state ability or inclination to explore alternatives.

Section I briefly identifies some of the key challenges regarding land rights in Colombia and how these are addressed at a national level. Section II outlines why UPR is an apt global governance mechanism for this study, describing UPR's scope and procedure. Section III analyzes the nature and the proportion of UPR recommendations to Colombia that relate to the right to land, indigenous peoples and human rights defenders over the course of Colombia's most recent (third cycle) UPR. It considers the thematic nature of those recommendations and the identity of the recommending states. Section IV focuses upon the role of various stakeholders within civil society during UPR and how the contribution of civil society to the recommendation and implementation process can be strengthened. The chapter concludes with some final thoughts on the capacity of UPR to create and accommodate a third space that attends to those issues and identities that exist largely at the margins and periphery of formal state structures.

Section I – Colombia: land rights, social and natural capital

Both historically and contemporaneously, land rights, land ownership and land reform in Colombia has been contested (LeGrand, 2003). This has played a central role in the destruction and degradation of both social and natural capital. This section provides some context to the national legal mechanisms designed to address land rights in Colombia and the role of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) as regional institutions involved in the protection of land rights in Latin America more broadly.

Colombia currently boasts the status of being a 'mega diverse' country, home to 10% of the world's biodiversity (Convention on Biological Diversity, 1992). Paradoxically, decades of conflict and civil war appear to have supported the preservation of biodiversity. Despite illegal mining and logging activity at a local level, the virtual absence in conflict ridden areas of national and international investment to develop the country's extractive and agricultural industries has contributed to the preservation of much of Colombia's biodiversity and natural ecosystems (Salazar et al, 2018 and Wheeling, 2019). Yet Colombia is vast and fertile and is enjoying new-found relative

peace following the government's signing of the Peace Accords with the FARC (Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, 24 November 2016, between the government and the Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP). This has piqued the interest of overseas business, prompting investors to make significant in-roads with potentially adverse implications for both natural and social capital (KPMG, 2018 and Smith, 2019).

Struggles in Colombia related to land are entwined in complex narratives of social, cultural and political identity that shape political ecology and, in turn, the methods by which social innovation and natural capital is protected and fostered at a local, regional and national level (Escobar and Paulson, 2005). Displacement from land in Colombia has been primarily through forcible abandonment and coercive legal dispossession (*despojo*) (del Pilar Peña-Huertas, 2017, p1). Legal dispossession of land from smallholders has included sales at an undervalue, with the purchaser subsequently selling the land at up to ten times the price paid (del Pilar Peña-Huertas, 2017, p7). Armed actors and 'powerful civil predators', such as big landowners and agribusiness, took advantage of 'three sources of opportunity to accumulate land' during periods of violence (del Pilar Peña-Huertas, 2017, pp2-3). Firstly, an environment of fear; secondly, opportunities 'to capture or align' state agencies along 'purportedly anti-subversive (legal or illegal) actions'; and thirdly, the weak status of peasant property rights (del Pilar Peña-Huertas, 2017, pp2-3).

Colombia's 'Law 1448', the Victims and Land Restitution Act, was passed in 2011. The objective of the Act, promoted by the then government of President Juan Manuel Santos in direct contrast to what has been described as 'the previous government's policy of denial', is to provide restitution to victims of the conflict (Cortés, 2013). Paula Martínez Cortés identifies a number of factors as to why meeting that objective is problematic. These include the Act being introduced during the conflict; land grabbing; government action to 'dismantle the few legal instruments that defend indigenous, Afro-Colombian and peasant farmers' territories'; and the repression of those attempting to counter the government's approach (Cortés, 2013, p3). There are instances of domestic land tribunals ruling that land be returned to its previous owner but getting to the hearing stage is a long and fraught process, as illustrated by purchases in the Mid-Magdalena River region and rulings in Sabana de Torres – Tribunal de Cúcuta, 09 July 2014 and 25 February 2015 and San Alberto, Tribunal de Cartagena, 1 February 2013(del Pilar Peña-Huertas, 2017, p763). Whilst, the IACHR and the IACtHR have heard cases against Latin American cases involving land rights leading to orders for restitution and reparation, matters before these mechanisms involving Colombia do not currently relate to land (for example, *Xákmok Kásek Indigenous Community v Paraguay*, Series C No. 214, Judgment of 24 August 2010, IACtHR and *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Series C No. 79, Judgment of August 31, 2001, IACtHR).

In the 2016 Peace Accord, the government directly addressed issues of land, committing to large scale land-titling programs, crop substitution, recognition of the displacement and dispossession of land, land restitution and rural reform. All to be underpinned by principles supporting an ethnic-based approach, as detailed in section 3 of the Final Agreement. These commitments are said to hang in the balance. During his election campaign in 2018 the now President, Iván Duque, pledged to dismantle the Peace Accord but has since been hampered by the country's Constitutional Court (Sánchez-Garzoli, 2019). Nonetheless, he is reported to have reduced funding and resources for land related projects as well as truth and justice mechanisms and reintegration programs (Sánchez-Garzoli, 2019).

Section II – UPR: an apt global governance mechanism

Taking inspiration from the work of Robert Keohane, David Victor and Kal Raustiala on global governance and 'regime complexes' (Keohane and Victor, 2011 and Raustiala and Victor), this section introduces UPR as a global governance mechanism situated within a regime complex for the governance of international human rights. It then proceeds to explain why UPR presents an apt vehicle via which to promote a human rights based approach to fostering and protecting social innovation for social and natural capital. In doing so, this section outlines key aspects of UPR process and procedure.

A global governance regime

The concepts of governance and global governance are contested. Governance has been described as 'the exercise of control' (Rosenau, 1992, p3), the 'exercise of authority, control, management, power of government' (World Bank, 1992, p3), and as governance in the absence of global government (Ruggie, 2014, p5). There have been attempts to distinguish its forms according to the governance actors involved (non-state and/or state). Global governance *by* government equating to *world* government; global governance *with* government occurring via institutions such as the United Nations; and global governance *without* governments being pursued by transnational actors, such as the International Accounting Standards Board (emphasis added) (Ruggie, 2014, p4). In this study, global governance regimes are taken as those that have been ascribed powers of regulation and authority, and where the principles and norms referred to are not limited to the national borders of individual states, so that 'the ensemble of all forms of regulation… are oriented towards social values and have cross-border effects' (Calliess and Renner, 2007, p22 citing Zürn, 2005, p121 and 127).

The author of this chapter has argued elsewhere that UPR has a central role to play as a human rights global governance mechanism that connects with and reasserts the governance function of other entities within a proposed international human rights regime complex (Ashley, 2018). A regime complex comprises different entities relevant to a particular field, with an overlapping function (Keohane and Victor, 2011, p15-16). Martti Koskenniemi prefers the term 'rule-complex', with a similarly specific focus or form of expertise, such as, human rights, trade, or the environment, and possesses its own principles and institutions (Koskenniemi, 2006, para 8), whilst

Keohane and Victor focus upon governance in the context of climate change. A regime (or rule) complex comprises a collection of related institutions that have developed over time in response to a variety of factors, including political difficulties, a divergence in state interest, and/or the dysfunction of current or previous international organization (Keohane and Victor, 2011, p13-15). As noted above, such a complex is characterized by institutions that are non-hierarchical with rules that functionally overlap 'yet there is no agreed upon hierarchy for resolving conflicts between rules' (Raustiala and Victor, 2004, p279). In this sense, a regime complex thus reflects the disaggregation that, for some, characterizes international law (Raustiala and Victor, 2004, p295).

Whilst there has been no substantial scholarship on the concept and operation of an international human rights regime complex, there has been some passing reference for some time to 'international human rights regimes' and 'human rights regimes' (Shaffer and Ginsburg, 2012, p21 and 25, citing Moravcsik, p217). Writing in the late 1980s, Bruno Simma and Philip Alston noted that:

> (…) prospects for developing an effective and largely consensual international regime depend significantly on the extent to which those institutions are capable of basing their actions upon a coherent and generally applicable set of human rights norms (Simma and Alston, p82-3).

The UPR enjoys a degree of success in this respect. UPR recommendations are seen to replicate, echo or follow the thematic focus of findings and recommendations of other entities within the regime complex, such as treaty bodies, special procedures and civil society (Ashley, 2018). This repetition and reinforcement both asserts the legitimacy of the UPR and the authority of the entities within the regime complex.

Institutions within particular regime complexes have generally developed over time due to various factors, including political difficulty, divergence in state interest, and/or the dysfunction of current or previous international organisation(s) (Keohane and Victor, 2011, p13-15). The same is true of the international human rights regime complex. It encompasses state and non-state actors and institutions that operate at a domestic, regional and/or global level. This includes, for example, the state and its machinery; international human rights treaties and corresponding committees; the Human Rights Council, including Special Procedures and regular sessions; UPR; regional human rights conventions and corresponding courts; national human rights institutions (NHRIs); civil society; and other treaties that address human rights matters, for example, International Labour Organization (ILO) Convention no. 169 (Indigenous and Tribal Peoples Convention).

UPR origins

UPR is a United Nations Charter mechanism of the Human Rights Council. Its creation was in response to recommendations of a High-level Panel on Threats, Challenges and Change (the Panel) that had been tasked with determining how to adapt the United Nations to meet twenty first century challenges (UNGA, A/59/569, 2004). The Panel acknowledged the interconnectedness of threats to global security and that 'institutions must overcome their narrow preoccupations and learn to work across the whole range

of issues, in a concerted fashion' (UNGA, A/59/569, 2004, vii). Led by the then United Nations Secretary-General Kofi Annan, the Panel proposed an institution-building package. This package would address the 'legitimacy deficit' of the Commission for Human Rights, which was casting 'a shadow on the reputation of the United Nations system as a whole' (UNGA, A/59/569, 2004, para 182), of which much has been written elsewhere (Freedman, 2013; Oberleitner, 2008; Schrijver, 2007). It would do so by creating a Human Rights Council to include in its remit a universal periodic review 'based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States' (UNGA A/RES/60/251, para 5(e)). A somewhat challenging objective to meet given the multiplicity of state and non-state actor motivations, including self-interest.

It is a principle of UPR that all stakeholders, including civil society and NHRIs, participate in the review (although the role of civil society is limited, as discussed in section IV below) (UNHRC A/HRC/RES/5/1, para 3(e)). Each United Nations member state is scheduled for review once during each five year cycle (UNHRC A/HRC/RES/16/21). A state under review receives recommendations during a three and a half hour 'working group session', at the Palais de Nations in Geneva. The state must support or note each recommendation and report on follow up and implementation of recommendations from the previous UPR cycle at the next review (UNHRC A/HRC/RES/16/21).

UPR commenced in 2008. Fast forward ten years, to the start of the current third UPR cycle in May 2017, when the then High Commissioner for Human Rights asked of the mechanism:

> Has there been real improvement? As we enter the third round of scrutiny, is the UPR deepening in relevance, precision and impact? Is it merely an elaborate performance of mutual diplomatic courtesies, or is it leading to real and powerful changes to anchor peace and development and improve people's lives? (Al Hussein, 2017)

These questions are pertinent, and a body of critical literature on UPR has evolved over the last decade or so (Charlesworth and Larking, 2014; Terman and Voeten, 2018; Tomuschat, 2011). Whilst there are risks, as noted above, of aspects of the UPR process becoming an 'embodied performance' based on ritual and ritualism, certain unifying aspects of ritual such as 'enacting a social consensus' can function to reduce contestation and indicate that 'a way of thinking or being has achieved some degree of permanence and importance' (Charlesworth and Larking, 2014, p9). During the cyclical and iterative UPR process, states are repeatedly encouraged to implement and account for their human rights commitments and challenges, yet the implementation of recommendations by states remains a concern. Recommending states and civil society are proactive in holding states to account for their follow up of supported of recommendations, but this is sporadic and in its infancy (Ashley, 2018, section 5.3.4 and 7.4.2). UPR process has been strengthened by the provision of more specific guidance and support in terms of state preparation and follow up, and the need to

consult with civil society and interested parties (Etone, 2017, 264-5). By appropriating aspects of ritual and ritualism, it may be possible that state commitment to UPR processes and principles is developed which in turn leads to normative change.

An apt mechanism

UPR is a unique global governance mechanism within the regime complex for international human rights for two reasons. One, because it has thus far secured universal engagement by United Nations member states, unlike treaty bodies. This fosters UPR legitimacy and authority as well as stakeholder confidence that a state scheduled for review will engage. However, the nature of state engagement varies considerably, with some states advancing UPR legitimacy in a procedural sense only, so that UPR output legitimacy, where state engagement effects actual positive change in rights conditions, is far from guaranteed (Ashley, 2018, 4.4).

Two, UPR has a broad scope that encompasses all legal and voluntary human rights obligations of the state under review. This means UPR is not limited to one right or set of rights, as with the United Nations human rights treaty system. UPR encompasses matters that are not addressed in specific human rights treaties and those included in a treaty that a state is not party to. Colombia was one of 11 states that abstained from voting when the United Nations Declaration on the Rights of Indigenous Peoples (2007) was adopted, but this does not prevent matters relating to the rights of indigenous peoples coming before UPR. Reviewing states can comment and make recommendations in relation to any pertinent human rights matter. This is noteworthy given the intersectionality of indigenous rights with the right to land and rights pertaining to human rights defenders and civil society.

The promotion and protection of human rights is pursued using UPR in a variety of methods. Primarily, this is via a state-to-state peer review during an interactive dialogue whereby reviewing states comment upon the human rights progress of the state under review and make recommendations. The state under review must respond following the working group session to each recommendation by either supporting or noting it. If a recommendation is supported (and the vast majority are), this provides both the recommending state and civil society grounds upon which to approach the state post-review for an update as to follow up and implementation. If noting a recommendation, the state under review is required to explain why that recommendation is not being supported. A new feature of the third cycle is that following the working group session, the OHCHR publishes a matrix of the recommendations made to a particular state, collating them thematically and indicating the status of each (supported / noted). Each recommendation is also aligned to one or more specific sustainable development goals (SDGs), bringing a state's achievements against SDGs into the rights governance arena and emphasizing the link between human rights and development.

Prior to the working group session, the Office of the High Commissioner for Human Rights (OHCHR) summarizes written submissions made by civil society organizations (CSOs) (see section III below) and creates a compilation of recommendations that have

been made to the state under review by other regimes in the international human rights regime complex, such as treaty bodies and special procedures. Increasing importance is attributed to the human rights investigations and advocacy of civil society actors, but this comes with a word of warning. As Makau Matua notes, CSOs are largely dominated by Western agencies that are funded by the global north, risking a civilising mission that echoes imperialism (and potentially validates criticisms levied against the operation of the international human rights framework as a neo-imperialistic vehicle) (Matua, 2016, pviii and 80).

Section III - UPR recommendations to Colombia

This section analyses the proportion and content of UPR recommendations to Colombia on the right to land, indigenous peoples and human rights defenders over the last three cycles. Indigenous peoples and human rights defenders play a key role both directly and indirectly in supporting social innovation and the maintenance and restoration of social and natural capital at a local and national level. Across Latin America those campaigning and advocating to protect community and land rights risk threats and acts of (fatal) violence against them. Activism against the environmental, cultural and health impacts of, for example, the farming of palm oil, geothermal development and illegal logging, has been met with violence (Watts, 2018; Agren, 2019; Associated Press in Lima, 2019). Land related tensions and conflicts are variously rooted in the historical legacy of the slave trade and colonialism (Branford and Torres, 2017), global agribusiness (Romano-Armada et al, 2014), legal and illegal logging and extractive industries (McDonald, 2009), and development projects such as hydro-electric power (Branford and Borges, 2019). For Colombia, land grabbing and dispossession connected to decades of civil war and illicit crop farming and trade, as well as 'forms of accumulation [that] are strongly mediated by national institutions' are also significant factors (Borras et al, 2013 and del Pilar Peña-Huertas et al, 2017).

The insecurity and risk faced by community leaders and rights defenders across Colombia is illustrated by the statistics cited in UPR documentation. Ahead of Colombia's third cycle UPR in May 2018, the Ombudsman's Office of Colombia, Colombia's NHRI, reported that '134 social or community leaders and human rights defenders had been killed in Colombia in 2016', and that in the first seven and half months of 2017, there were 58 killings (UNHRC A/HRC/WG.6/30/COL/2, para 6). The Office also stated that 'some 500 cases of threats against social leaders and human rights defenders, 61 of which involved threats against groups, had also been documented' (para 6). In a joint UPR stakeholder submission made by almost 20 NGOs to the Office of the High Commissioner for Human Rights (OHCHR), it was reported that between 2013 and 2017 there were 'at least 276 killings and 164 attacks' against human rights defenders and social leaders, with many of those killed engaged in defending the right to land in rural areas (UNHRC HRC/WG.6/30/COL/3, para 51).

The data presented in table 1 for Colombia's first and second cycle UPRs is extracted from a database of UPR recommendations compiled by UPR-Info (UPR-Info). At the time of writing, UPR-Info has yet to publish data on Colombia's third cycle UPR, therefore the data presented is calculated with reference to the recommendations matrix

published by the OHCHR (OHCHR, Matrix). The final column of table 1 contains the 'action-category' ascribed by UPR-Info to each recommendation according to a coding methodology devised by Edward McMahon's (McMahon, 2012). There are five action-categories. Those recommendations that require specific, tangible action are the most demanding of the state under review, and often more easily measured in terms of follow up. These are category five recommendations that commonly request the state to 'conduct, develop, eliminate, establish, investigate' and may contain legal verbs such as 'abolish, accede, adopt, amend, implement, enforce, ratify'. States are being encouraged to make recommendations that are precise and require a higher threshold of action (UPR-Info, 2015). Recommendations within category five retain the focus and specificity of category five but err towards the generic, containing verbs such as 'accelerate, address, encourage, engage with, ensure, guarantee, intensify, promote, speed up, strengthen, take action, take measures or steps towards'. Implementation may require little further tangible change on the part of the state. Categories 1-3 require minimal action and are generally simple to evidence in terms of compliance. They contain verbs such as continue, consider, maintain and explore.

Recommendations on the Right to Land

As table 1 indicates, only one recommendation to Colombia in the first UPR cycle referred to the right to land. In the second cycle this rose to 14, amounting to just over 8% of its recommendations, but fell again in the current third cycle to seven (3.3%). These recommendations variously refer to ensuring land restitution and reparation, with nearly half of the second cycle recommendations referring specifically to implementing or enforcing the Victims and Land Restitution Act. This is no doubt in light of criticism of the institutions and processes involved in implementing the Victims and Land Restitution Act (García-Godos and Wiig, 2018). Even so, the proportion of recommendations on the subject of right to land is relatively low. This is surprising given how heavily the issue of land features in the 2016 Peace Accord and in the stakeholder submissions to Colombia's third cycle UPR. The United Nations Western and Other Group (WEOG) made 31% of the total recommendations received by Colombia in its second cycle (statistical data for third cycle reccommending groups is not available at the time of writing) (UPR-Info, Statistics). This group includes four of the five highest investors of foreign direct investment to Colombia, the UK, US, Spain and Switzerland (Colombia Reports, 2020) and may be a motivation for wanting to see progress in human rights protections in accordance with investment treaties (De Brabandere, 2018).

Australia, Bolivia, and Holy See made recommendations on the right to land in both the second and third cycles. The iterative and cyclical nature of UPR reveals the same states making recommendations on a particular rights issue again and again, which have been repeatedly supported by Colombia but have not lead to state action. This reveals the weakness of UPR being absent an enforcement mechanism, but gives a strong foundation upon which those reviewing states, along with civil society (see section IV

below), can approach Colombia to request a full account of follow up and implementation.

Recommendations on Indigenous Peoples

The number and proportion of recommendations that refer to the rights of indigenous peoples, and often include Afro-Colombian communities, has risen steadily over the course of Colombia's three UPRs. In the first cycle, there were seven recommendations (6.25%), in the second cycle, nine (5.39%) and in third cycle, 21 (20%). Those made in the first cycle referred to the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples and UNDRIP. Second cycle recommendations cited the need for consultation, support for a better quality of life, and protection from armed groups. Concerns raised in the third cycle relate to transitional justice, truth and reconciliation, justice and reparation for victims of the violence, access to health, education and protection regarding non-discrimination, and consultation. Bolivia, Brazil, Canada, and the UK all made recommendations in the first and third cycle referring to indigenous peoples' rights, and Norway and Senegal in the second and third.

It is surprising to see that only one recommendation (third cycle) refers to the principle of free, prior and informed consent (FPIC). This recommendation was by the Holy See to: Ensure that indigenous and rural communities can express their free and informed consent prior to any measure that may affect their lives and their ancestral land. FPIC is central to development projects and land use. A 'major demand of indigenous peoples facing development projects likely to impact their livelihoods (e.g. mines, dams) is to be able to have a say about whether and how the project should proceed', and FPIC is the vehicle via which having this say is possible, despite it being 'very far short of the ideal' (Hanna and Vanclay, 2013, p146).

Colombia received recommendations on this matter from other human rights regimes within the international human rights regime complex as highlighted within the OHCHR compilation prepared as part of Colombia's UPR, and which state missions have access to (UNHRC 'A/HRC/WG.6/30/COL/2, para 93). Those regimes include the Human Rights Committee for the International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination for the Convention on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women for Convention on the Elimination of Discrimination Against Women, each of which monitor Colombia's implementation of commitments as a state party to the respective international human rights treaties.

Recommendations on Human Rights Defenders

During the first cycle UPR, the second highest proportion of recommendations to Colombia referred to human rights defenders, which also includes community and social leaders. This was the seventh highest issue in the second cycle, out of 40 issues cited. In the first cycle, 17 states made recommendations citing themes such as, the need for human rights defenders to be acknowledged and for the state to refrain from linking them, and trade unionists, with illegal guerrilla groups; for their protection to be strengthened and crimes and violations against them, trade unionists and advocacy

groups punished; and to ensure that high ranking officials and security forces do not qualify human rights defenders and NGO members as terrorists.

Second cycle recommendations on human rights defenders retained a similar focus. They required Colombia to prevent incidents of violence against all of its people, including community leaders; to strengthen and provide appropriate protection; to recognize the legitimacy of their work; to increase efforts to investigate and prosecute those responsible for threats or violence against human rights defenders, trade unionists, community leaders and journalists; and to ensure judicial authorities carry out thorough and impartial investigations. The protection of human rights defenders has remained consistently high on the agenda with almost a quarter of the third cycle recommendations on this subject, with a continued focus on the need to fight impunity and take measures to prevent killings and attacks against human rights defenders, and social and community leaders.

The majority of these recommendations are category four and five requiring to specific action. Hungary made a strong category five recommendation, that Colombia '[e]nact legislation recognizing the legitimate work of human rights defenders and ensuring their life, security and integrity'. By supporting this recommendation Colombia is ostensibly committing to take action, and to reporting to the international community during its fourth cycle review the measures that have or have not been taken. Due to the lack of an UPR enforcement mechanism, state motivation to implement supported recommendations is driven by one or more of a variety of factors including 'politicisation, the 'club' mentality, reciprocity, acculturation and being held to account through naming and shaming' (Ashley, 2018, section 5.6). Furthermore, state motivation to implement particular resolutions may be that the recommendations were of a type that 'had been made to all states, they were not biased or targeted by one grouping of states against another, and that made them acceptable' (Ashley, 2018, section 5.6).

Hungary made two recommendations in the previous cycle on the subject of human rights defenders, one asking the government to agree to a visit by the Special Rapporteur on human rights defenders and another referring to the implementation of the Ministry of the Interior's protection program to defend human rights defenders in the field. Norway and the UK made recommendations on this subject to Colombia during each UPR cycle, Sweden during the first and third cycle, and Slovenia during the second and third. The UK and Sweden have also raised this issue via third cycle advance questions. The UK asked whether the Government would invite the Special Rapporteur on the situation of human rights defenders to visit Colombia and agree to collaborate on recommendations. Sweden asked for the government to outline its approach 'to ensure that human rights defenders, including those defending social rights and issues regarding land and natural resources, are guaranteed relevant protection' (OHCHR Advance Questions: Colombia Third Cycle).

It is worth noting here that in July 2018, two months after Colombia's third cycle UPR, it was announced that the IACHR was taking matters relating to political violence against members of the Patriotic Union (Union Patriotica – UP) to the Inter-American Court of Human Rights for the government's failure to take action against its

recommendations (IACHR Press Release 2018). These related to investigations of 'successive serious human rights violations perpetrated against more than 6,000 victims who were officials or members of the political party Patriotic Union in Colombia, for over 20 years starting in 1984' (IACHR Press Release 2018). The IAHCR's conclusions included violation by the government of the right to a fair trial and to judicial protection, as well as violating the right to humane treatment of victims' families (IACHR Press Release 2018). There is no explicit reference in UPR recommendations to this particular matter which would have been with the IACHR (rather than the IACtHR) at the time. It would be interesting to see if this would have been different had this announcement been made before Colombia's UPR.

As indicated, a handful of states have made one or more recommendations on one or more of the above rights issues to Colombia in more than one UPR cycle (and there is scope for future research into the motivations for states recommending as they do to Colombia). All of the recommendations have been supported. In supporting a recommendation in a forum such as UPR, a state is (in theory) expressing its political will and commitment to accept relevant human rights norms and principles and to take action accordingly. However, as the renewed focus upon follow up and implementation at the start of the third UPR cycle illustrates, state action in response to recommendations is often lacking. The diplomatic and political relationship Colombia has with individual recommending states has the capacity to have a positive impact on prospects for compliance with supported recommendations, particularly where the recommending state is a significant aid donor, such as the US, UK and the EU.

Section IV – UPR and civil society

This section assesses the nature of civil society engagement with UPR in general and Colombia's third cycle in particular (it does not engage in critical debate as to the function and operation of civil society – see Matua, 2016; Oberleitner, 2007; Armstrong et al, 2011). Pursuant to Human Rights Council Resolution 5/1, it is a principle of the UPR that all stakeholders, including NGOs and NHRIs, participate in the review (UNHRC A/HRC/RES/5/1, para 3(e)). In addition, the objectives of the review require 'the sharing of best practice among states and other stakeholders', and under the process and modalities of the review states are 'encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders' (UNHRC A/HRC/RES/5/1, paras 4(d) and 15(a)). The investigation and reporting of human rights violations by civil society is an important source of information and data for states in preparing their UPR recommendations. However, two challenges arise for stakeholders, one is the extent to which the subjects of their submissions are translated into UPR recommendations, the second is state implementation and follow up of those that are ?.

Civil Society – Third Cycle submissions for Colombia

Representations by civil society to reviewing states in the lead up to a state's review are crucial in influencing and shaping recommendations and comments made by peer reviewing states. NGOs will write their submissions and then draft recommendations

to send directly to reviewing states, advocating for that state to and adopt and make that recommendation (Ashley, 2018, section 7.4.2). This advocacy process is strategic and can include lobbying smaller states that might be more open to making a particular recommendation.[1] Post-review, there is scope for CSOs to engage in proactive follow up with relevant government and public institutions regarding the implementation of relevant recommendations.

Land related rights featuring heavily in civil society stakeholder submissions to the third cycle (UNHRC HRC/WG.6/30/COL/3). They are also cited in the compilation of recommendations to the Colombian government made by other United Nations human rights institutions in the IHR governance regime complex (UNHRC A/HRC/WG.6/30/COL/2). Given the issue of land ownership is a fundamental part of the 2016 Peace Accord, this is to be expected. Yet with only 3.3% of third cycle recommendations relating to land, there is a gap between stakeholder submissions and the recommendations that get made, suggesting that CSO recommendations are not aligned with reviewing country interests.

Stakeholder submissions refer to land and related rights both generically and specifically. The Ombudsman's Office of Colombia, Amnesty International and Proyecto Nasa (a Colombian NGO that works to protect indigenous peoples and other communities) raised general concerns of limited progress in implementing and providing reparation pursuant to the Victims and Land Restitution Act, noting in particular that the restitution of land and protection of indigenous and Afro-Colombian communities was lacking (UNHRC HRC/WG.6/30/COL/3, paras 7-10, 44 and 101). These issues were the subject of recommendations by six countries in the third cycle, Australia, Bolivia, Haiti, Holy See, El Salvador, France.

In a joint submission by 18 CSOs, it was submitted that the land use planning designations of "mineral reserve areas", "rural, economic and social development areas" and "national strategic interest projects" had been used but without any consultation with local communities and without an environmental impact assessment. A joint submission by over 40 NGOs referred to 'serious social and environmental effects, such as soil contamination, the loss of flora and fauna and severe water pollution' due to drilling for oil and gas and the granting of mining concessions. This submission went on to state that in 2017, '21 departments in Colombia had rivers polluted by mercury from mining activities' (UNHRC HRC/WG.6/30/COL/3, para 25). Specific reference was made to the Macarena's Special Management Area, an area significantly affected by violent conflict and illicit crop production (Castro-Nunez, 2016), as having suffered 'indiscriminate deforestation' and an adverse impact on the ecosystem due to the extraction of hydrocarbons (UNHRC HRC/WG.6/30/COL/3, para 25). No specific reference to these matters was made in the recommendations Colombia received.

[1] As explained to the author of this chapter during an informal conversation with an international NGO representative at the 14th session of UPR, January 2014.

Conversely, those CSOs making representations about human rights defenders have had some success with that cause being addressed by 26 states each making one recommendation (24.76% of the total recommendations made). Stakeholder representations indicated 91 per cent of human rights defenders' deaths remained unpunished and that 51 human rights defenders had been killed from January to June 2017 (UNHRC HRC/WG.6/30/COL/3, para 52). There was a reported increase in violence against and killings of human rights lawyers, with some lawyers abandoning emblematic cases (UNHRC HRC/WG.6/30/COL/3, para 53). Reporters Without Borders referred to the killing of journalists in Colombia whilst World Alliance for Citizen Participation (CIVICUS) and the International Trade Union Confederation (ITUC) noted that the trade unionists were subject to threats and targeted assassinations (UNHRC HRC/WG.6/30/COL/3, para 53). Poverty and the advance of extractive industries had led to changes in the lives of indigenous women who migrated to the cities, where they experienced extreme poverty and labor or sexual exploitation (UNHRC HRC/WG.6/30/COL/3, para 56).

In relation to indigenous rights, it was reported that despite the peace process, 58 indigenous people had been killed (UNHRC HRC/WG.6/30/COL/3, para 97); indigenous and Afro-Colombian peoples 'continued to be victims of the various armed groups' (UNHRC HRC/WG.6/30/COL/3, para 97); and violations continued despite special protection orders of the Constitutional Court (UNHRC HRC/WG.6/30/COL/3, para 97). It was noted by Akabadura that largely due to the armed conflict the nomadic Nukak people 'were at serious risk of physical and cultural extinction', whilst Proyecto Nasa voiced concerns that the indigenous Nasa community 'was at risk of disappearing' (UNHRC HRC/WG.6/30/COL/3, para 98). Further submissions referred to efforts by the government to limit the scope of ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) with regard to consultation, with a particular lack of consultation in mining areas. One joint submission from a number of CSOs stated that of the 7.4 million displaced people (and citing this as the highest in the world), 'indigenous and Afro-Colombian populations had been affected disproportionately' (UNHRC HRC/WG.6/30/COL/3, para 106). Whilst 20% (21 recommendations from 20 different states) of third cycle recommendations related to indigenous rights, which is a similarly high proportion as those focusing on human rights defenders, UPR state recommendations were constructed in general terms, rather than referring to specific communities or instances of violations and concern.

During Colombia's third cycle UPR, the Ombudsman's Office of Colombia welcomed the release of the country's Action Plan on Business and Human Rights (2015). The Action Plan implements the United Nations Guiding Principles on Business and Human Rights, and also takes account of other 'major relevant related standards',[2] and the Sustainable Development Goals. The government appears to pride itself as the first non-European country to have public policy in the field of business and human rights

[2] Stated as being: The United Nations Principles for Responsible Contracts, the Guidelines of the OECD for Multinational Enterprises, the OECD Due Diligence Guidelines for Responsible Mineral Supply Chains in the Areas of Conflict or High Risk; the Voluntary Principles on Security and Human Rights (VP), the Principles of Global Compact and the ISO 26000 Standard.

(UNHRC A/HRC/WG.6/30/COL/1, para 141), offering during its review to share good practice (UNHRC A/HRC/39/6, para 118).

However, whilst the Ombudsman's Office welcomed progress on human rights within the framework of international investment agreements, it noted 23% of social protests or demonstrations related to business activity (UNHRC A/HRC/WG.6/30/COL/3, para 4). Further, two CSOs, Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) and Taller de Vida, were concerned that efforts had focused only on the dissemination and adaptation of the Plan, leaving evaluation mechanisms incomplete and capacities at the local level to implement policies in need of strengthening (UNHRC A/HRC/WG.6/30/COL/3, para 4). However, there were only comments welcoming the action of Colombia regarding business and human rights, there were no recommendations. Nonetheless, the government made a voluntary commitment to implement the second phase of the Action Plan (UNHRC A/HRC/39/6, para 123.4).

Civil Society – Communities of Practice

The stakeholder submissions highlighted above demonstrate UPR being utilized as a third space within which 'communities of practice' can give voice to matters those communities and concerns in an international forum and demand action. The voices, communities and identities represented are those that are repeatedly marginalized and excluded by dominant legal and political discourse, and by the machinery of the state and its institutions. A community of practice is formed by those with a shared interest, practice or pursuit of knowledge (Lave and Wenger, 1991 and Wenger-Trayner, 2015), and can generate legitimacy for the community and its cause in a social sense (Thomas, 2013, p22).

There are three primary methods by which civil society communities of practices can be facilitated via UPR: one is to form a coalition and make a joint submission, as referred to above. The second is the hosting of a parallel event at the United Nations in Geneva alongside the relevant Working Group of a state under review, and the third is via in-country workshops. Making a written submission to UPR is relatively straightforward. Single submissions should be no more than five pages, joint submissions up to ten, and there is no requirement for ECOSOC consultative status (UNHRC A/HRC/DEC/6/102). Consultative status is required to host a parallel event at the United Nations in Geneva at the time of the working group session. Other NGOs and state delegations are invited to attend a side event at which a panel of speakers will speak for a few minutes about matters of concern and the floor will then be opened for questions. In addition, CSOs have the potential to work with the in-country office of the OHCHR to create a democratic space for in-country UPR workshops, engaging relevant state personnel in the process. This process is ad hoc but has met with success in, for example, Cambodia.

The UPR role of civil society at the main event of the working group session is, however, diluted compared to the treaty system of human rights monitoring and protection. An NGO with consultative status can be accredited with observer status and attend the UPR Working Group session of a state under review (Working with

ECOSOC', 2011, p18). This is the same for treaty reviews, but in addition there are informal briefings by civil society with members of the committee of experts prior to the formal review. Such close-quartered contact with reviewing state missions prior to a state's UPR is only possible via informal pre-sessions organised by the NGO UPR Info. Furthermore, civil society can submit a report directly to a treaty committee for consideration, which is then provided in full to the state concerned.

Paradoxically, civil society's absence from the Working Group session may prompt state actors to voice the more difficult topics otherwise left to NGOs. During this author's PhD research, one interviewee was asked if states over-rely on civil society. The response was an emphatic yes, particularly in those forums where civil society has a voice:

> (…) within the UN human rights system and the Human Rights Council in particular I think states are very reliant on civil society saying the difficult things. Even countries we would consider like-minded might not say something that is going to impact on their relationship with a particular country if they know an NGO that is further down the speakers' list will say that thing (Ashley, 2018, p229).

Therefore, the 'heavy-lifting' where difficult matters are to be addressed sits with the states themselves during UPR. Nonetheless, the role of civil society has been identified as central to securing peace in Colombia (Sánchez-Garzoli, 2016). Success is precarious given threats against the safety and security of human rights defenders and civil society members (Daniels, 2019). However, being represented during UPR via stakeholder submissions and UPR recommendations generates national and global awareness and pressure, with the potential to influence and generate political will to act.

Conclusion - Towards a third space?

This chapter has demonstrated how the UPR as a central mechanism in the global governance of human rights is being used as a relational and ideational space in which to raise awareness of pertinent matters regarding the right to land, rights of indigenous peoples, and human rights defenders in Colombia. The potential of UPR to operate as a third space nexus, accommodating the inter-connectedness of those rights that contribute to stable conditions for the maintenance and restoration of social and natural capital is to some extent being harnessed. The proportion of recommendations addressing land rights, indigenous peoples and human rights defenders, particularly when aggregated, is significant. In the third cycle this was approximately 32% (34 out of 105 recommendations). For the second cycle this was c. 21% (36 out of 167 recommendations), and for the first cycle, c.23% (26 out of 112). These figures are approximate given that one recommendation may overlap with one or more of the other rights issues, however they suggest an overall increase from the first cycle to the third,

with almost a third of UPR recommendations carrying currency for social and natural capital and innovation.

There are no third cycle recommendations that refer specifically to the environment or business and human rights, despite these matters being addressed in stakeholder submissions. Yet the High Commissioner for Human Rights in the annex to her letter to Colombia's Minister of Foreign Affairs, and copied to the Minister of Interior, following the third cycle refers directly to the cross-cutting issues of development, the environment and business and human rights, warning of the need to protect the environment, particularly when exploiting natural resources (High Commissioner for Human Rights, 2018).

Furthermore, by coming together to create communities of practice, civil society is using UPR as a vehicle via which to create and support a textual, literal and metaphorical space akin to Homi Bhabha's concept of a third space. In such a space, 'the historical identity of culture as a unifying force' is challenged by seeing cultural knowledge and cultural performance as a process of translation and negotiation (Bhabha, 2006, 155-175). Forging links and combining interests between different organisations and groups through UPR means civil society can create new, dynamic, hybrid and ideologically open spaces within which difference is shared and new goals, action and initiatives agreed and pursued. By building coalitions, it has been suggested that the UPR recommendations reviewing states make are more relevant and better facilitate follow up by civil society with the relevant government (OHCHR, 2013).

Communities of practice are those that are subject to the 'power' that claims authority, and by being subject to that power confer upon it its legitimacy (Cotterell, 2016, p262 – 268). By engaging with UPR before and after a state's review, those actors that comprise communities of practice legitimise the UPR process; it is worthy of their time and effort. This (social) practice also aligns with the concept of a third space. For Bhabha, the third space is a liminal and hybrid arena where binary distinctions are dissolved in a bid to understand cultural knowledge and cultural performance not as something that is homogenous, original or pure, but rather as a process of translation and negotiation (Bhabha, 2006, p155-157). In this way, identities resist subjugation by the dominant and restrictive narratives of patriarchal and colonial discourse (Bhabha, 1990). This dynamic process is at the heart of UPR where myriad cultures interact and intersect, negotiating, sharing and disseminating international human rights norms within a particular defined territory. The state delegation receiving UPR recommendations is generally comprised of high level government ministers with decision making powers and authority; by supporting the recommendations received, a political commitment to act is being made in a high profile international arena.

Civil society, other stakeholders and recommending states can therefore use these public commitments and the iterative, recursive and cyclical nature of UPR to assist in holding the government and state machinery of Colombia to account. This is particularly so where the same states are making recommendations on the same theme cycle after cycle. In this way UPR continues to give voice to and maintain focus on those issues and identities that are politically, legally and culturally marginalized yet central to social innovation and the advancement of social and natural capital. Yet,

when it falls to reviewing states, CSOs, treaty bodies and others to repeat recommendations on the same theme and issue cycle after cycle, the flaws of UPR are also laid bare. Namely, that UPR is a political mechanism driven by voluntary state engagement, with no formal follow up and implementation enforcement powers to oversee supported recommendations lead to positive action and change.

Nonetheless, there is evidence of UPR strengthening the relationship between civil society and the state under review, two exmaples being Thailand and Colombia. In the second UPR cycle in 2017, joint stakeholder submissions supported by sixty-four CSOs were made ahead of Thailand's second cycle UPR. Following Thailand's review 'in an unprecedented step, the coalition was invited to present [to the Thai government] their views on the recommendations Thailand received after their second UPR', with the CSO coalition noting 'a clear shift in the way the Government approached them' (UPR Info, 2017, p14). During the first UPR cycle, a recommendation was made by the Czeh Republic to Colombia in 2009 'to ensure effective national birth registration, including through programmes of mobile registration units and registration of those without documentation'. The issue of a significant number of unregistered children due to the incomplete process of modernizing and automating the National Register was raised in the summary of stakeholder submissions (by a CSO coalition comprising World Vision, Plan Internacional Colombia, Aldeas SOS Colombia (SOS Children's Villages), Observatorio sobre Infancia de la Universidad Nacional de Colombia (Children's Observatory of the University of Colombia), and Save the Children (UK)). This recommendation has been cited as prompting a partnership between the state and civil society to assist in the process of registration of over half a million children, ensuring access to education and other services (CSO interview, 2017, transcript on file with the author).

References

Agren, David, ‘Mexican activist shot dead before vote on power project he opposed’, 20 February 2019, The Guardian, https://www.theguardian.com/world/2019/feb/20/mexican-activist-shot-dead-before-vote-on-pipeline-he-opposed

Al Hussein, Zeid Ra'ad., ‘Denial of access and lack of cooperation with UN bodies will not diminish scrutiny of a State's human rights record’, Human Rights Council 35th Session, 06 June 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21687

Appiah, Kwame Anthony and Bhabha, Homi., ‘Cosmopolitanism and Convergence’, (2018) 49(2) New Literary History, 171-198

Armstrong, David. et al, *Civil Society and International Governance: the role of non-state actors in global and regional regulatory frameworks* (Routledge 2011)

Associated Press in Lima, 'Unprecedented' murder charges for loggers in deaths of indigenous activists’, The Guardian, 31 October 2019, https://www.theguardian.com/world/2019/oct/31/peru-logging-indigenous-activists-murders

Ashley, L.J., ‘A Critical Appraisal of Human Rights Monitoring through the Lens of Global Governance Theory: The Universal Periodic Review in relation to Yemen as a State in Crisis’, Doctoral Thesis, University of Leeds, November 2018

Bakker, I. (ed.) *The Strategic Silence: Gender and Economic Policy*, (London: Zed Books 1994)

Bhabha, Homi K. ‘Cultural Diversity and Cultural Differences’, in ed. B. Ashcroft, G. Griffiths, H. Tiffin, *The Post-Colonial Studies Reader*, (Routledge, New York 2006)

Borras Jr., Saturnino M., Franco Jennifer C., and Wang, Chunyu ‘The Challenge of Global Governance of Land Grabbing: Changing International Agricultural Context and Competing Political Views and Strategies’, (2013) Globalizations, 10(1), 161-179

Branford, Sue and Borges, Thais. ‘3 massacres in 12 days: Rural violence escalates in Brazilian Amazon’, 08 Aril 2019, Mongabay, https://news.mongabay.com/2019/04/3-massacres-in-12-days-rural-violence-escalates-in-brazilian-amazon/

Branford, Sue, and Torres, Maurício, ‘Quilombolas’ community land rights under attack by Brazilian ruralists’, Mongabay, 25 August 2017,

https://news.mongabay.com/2017/08/quilombolas-community-land-rights-under-attack-by-brazilian-ruralists/
Broderick, Céire 'Creating a 'Third Space' through Narration in Mercedes Valdivieso's Maldita yo entre las mujeres', (2019) 96(7) Bulletin of Hispanic Studies, 747-761

Castro-Nunez, Augusto., Mertz, Ole., Quintero, Marcela., 'Propensity of farmers to conserve forest within REDD + projects in areas affected by armed-conflict', Forest Policy and Economics, 2016 (66), 22-30

Cortés, Paula Martínez., The Victims and Land Restitution Law in Colombia in Context: An analysis of the contradictions between the agrarian model and compensation for the victims, FDCL TNI, December 2013, 3, https://www.tni.org/files/download/martinez-victims-law-web.pdf

Calliess, Gralf-Peter., and Renner, Moritz., 'From Soft Law to Hard Code: The Juridification of Global Governance' (2007), Ratio Juris, (2009) available at SSRN: https://ssrn.com/abstract=1030526

Charlesworth, Hilary, and Larking, Emma, (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, (Cambridge: Cambridge University Press 2014)

Colombia Reports, 'Foreign Investments', 09 March 2020 https://colombiareports.com/colombia-fdi-statistics/

Convention on Biodiversity: Colombia https://www.cbd.int/countries/profile/?country=co#facts

De Brabandere, Eric., 'Human Rights and International Investment Law', in Markus Krajewski and Rhea Hoffmann (ed.), Research Handbook on Foreign Direct Investment (Cheltenham: Edward Elgar) (Forthcoming); Grotius Centre Working Paper 2018/75-HRL; Leiden Law School Research Paper. Available at SSRN: https://ssrn.com/abstract=3149387

del Pilar Peña-Huertas, Rocío., Ruiz, Luis Enrique., Parada, María Mónica., Zuleta, Santiago., Álvarez, Ricardo., 'Legal dispossession and civil war in Colombia', Journal of Agrarian Change, 2017 (17), 759-769

Cotterrell, Roger., 'Transnational legal authority: a socio-legal perspective' in Roger Cotterrell and Maksymilian Del Mar (eds), *Authority in Transnational Legal Theory: theorizing across disciplines*, (Cheltenham, UK, Northampton, MA, USA, Edward Elgar Publishing 2016)

Daniels, Joe Parkin., 'Wave of killings threatens civil society work in Colombia', 06 November 2019, Devex, https://www.devex.com/news/wave-of-killings-threatens-civil-society-work-in-colombia-91435

Escobar, Arturo and Paulson, Susan, 'The Emergence of Collective Ethnic Identities and Alternative Political Ecologies in the Colombian Pacific Rainforest', in Susan Gezon, Paulson and Lisa L. (eds) *Political Ecology Across Spaces, Scales, and Social Groups* (Rutgers University Press 2005) 257-278
Etone, D., 'The Effectiveness of South Africa's Engagement with the Universal Periodic Review (UPR): Potential for Ritualism?' (2017) 33(2) South African Journal on Human Rights 258

Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, 24 November 2016, between the government and the Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP), http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf

Freedman, Rosa., *The Human Rights Council: A Critique and Early Assessment* (Routledge 2013)

García-Godos, Jemima,. and Wiig, Henrik., 'Ideals and Realities of Restitution: the Colombian Land Restitution Programme', *Journal of Human Rights Practice*, Volume 10, Issue 1, February 2018, 40–57

Human Rights Voices, 'UN Rights Council trumpets process of equating Norway with Iran and company', 28 April 2014, http://www.humanrightsvoices.org/site/developments/?d=12139

Goodman, Ryan., and Jinks, Derek., *Socializing States: promoting Human Rights through International Law* (New York: Oxford University Press 2013)

Hanna, Philippe., and Vanclay, Frank., 'Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent', (2013) 31(2) Impact Assessment and Project Appraisal, 146–157

High Commissioner for Human Rights: Letter to the Foreign Minister, 2 November 2018, https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/CO/HC_LetterColombia_30Session_EN.pdf

IACHR Press Release: 'IACHR Takes Case Involving Colombia to the Inter-American Court of Human Rights', *Caso Integrantes y Militantes de la Union*

Patriotica Vs. Colombia, 25 July 2018, https://www.oas.org/en/iachr/media_center/PReleases/2018/162.asp

Keohane, Robert O., and Victor, David G., 'The Regime Complex for Climate Change', (2011) 9, Perspectives on Politics, 5

Koskenniemi, Martti., 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission' General Assembly, International Law Commission, fifty-eighth session, A/CN.4/L.682, 13 April 2006

KPMG: Investment in Colombia, 2018 LeGrand Catherine C. (2003) The Colombian Crisis in Historical Perspective, Canadian Journal of Latin American and Caribbean Studies, 28:55-56, 165-209, 169 DOI: 10.1080/08263663.2003.10816840

Lave, Jean., and Wenger, Etienne., *Situated Learning* (Cambridge: Cambridge University Press 1991)

McDonald, Geraldine., 'Impacts of Extractive Industries in Latin America: Analysis and Guidelines for Future Work', CIDSE **(**Coopération Internationale pour le Développement et la Solidarité), January 2009, https://www.trocaire.org/sites/default/files/resources/policy/latin-america-extractives.pdf

McMahon, E. 'The Universal Periodic Review: A Work in Progress, An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council' in Dialogue on Globalisation Report (Geneva: Friedrich Ebert Stiftung, September 2012)

Matua, Makau., *Human Rights Standards: Hegemony, Law and Politics*, (New York: State University of New York Press 2016)

Moravcsik, 'The Origins of Human Rights Regimes: Democratic Dialogue in Postwar Europe' (2000) 54 International Organisations 217

Moulaert, Frank., Mehmood, Abid., MacCallum, Diana., and Leubolt, Bernhard., *Social Innovation as a Trigger for Transformations The Role of Research* (European Commission 2017)

Oberleitner, Gerd., *Global Human Rights Institutions: between remedy and ritual*, (Polity Press 2007)

Oberleitner, Gerd., 'A Decade of Mainstreaming Human Rights in the UN: Achievements, failures, challenges' (2008) 26(3) *Netherlands Quarterly of Human Rights*, 359-390

OHCHR: 'How to Follow Up on United Nations Human Rights Recommendations: A Guide for Civil Society', October 2013, https://www.ohchr.org/Documents/AboutUs/CivilSociety/HowtoFollowUNHRRecommendations.pdf

OHCHR Advance Questions: Colombia Third Cycle, https://www.ohchr.org/EN/HRBodies/UPR/Pages/COIndex.aspx

OHCHR Matrice of Recommendations produced by the Office of the High Commissioner for Human Rights, https://www.ohchr.org/EN/HRBodies/UPR/Pages/COIndex.aspx

Oosterlynck, S., Kazepov, Y., Novy, A., Cools, P., Barberis, E., Wukovitsch, F., Sarius, T. and Leubolt, B. (2013a), 'The butterfly and the elephant: local social innovation, the welfare state and new poverty dynamics', ImPRovE Working Paper 13/03

Raustiala, Kal and Victor, David G., 'The regime complex for plant genetic resources', (2004) 58, International Organization, 277-309

Romano-Armada, Neli., Amoroso, María Julia., and Rajal, Verónica B., 'Impacts of Agriculture in Latin America: Problems and Solutions', in *Bioremediation in Latin America: Current Research and Perspectives* (Springer 2014)

Rosenau, James., *Governance without Government* (1st ed, Cambridge University Press 1992)

Riches, Louisa, 'Legal and normative pluralism, hybridity and human rights: The Universal Periodic Review' in Nicholas Lemay-Hébert and Rosa Freedman (eds), *Hybridity: Law, Culture and Development* (Oxon and New York: Routledge 2017)

Ruggie, John Gerard., 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights', (2014) Global Governance, 5

Rutherford, Jonathan, 'The Third Space. Interview with Homi Bhabha', in *Identity: Community, Culture, Difference* (London: Lawrence & Wishart, 1998)

Salazar, A; Sanchez, A; Villegas, JC; et al, 'The ecology of peace: preparing Colombia for new political and planetary climates', (2018) Frontiers in Ecology and the Environment, 3 https://ore.exeter.ac.uk/repository/bitstream/handle/10871/34420/Salazar_et_al-2018-Frontiers_in_Ecology_and_the_Environment.pdf?sequence=1&isAllowed=y

Sánchez-Garzoli, Gimena., 'Civil Society is Colombia's Best Bet for Constructing Peace', WOLA, 04 April 2016 https://www.wola.org/analysis/civil-society-is-colombias-best-bet-for-constructing-peace/

Sánchez-Garzoli, Gimena., 'The Slow Death of Colombia's Peace Deal', Foreign Affairs, 30 October 2019, https://www.foreignaffairs.com/articles/colombia/2019-10-30/slow-death-colombias-peace-deal

Schrijver, N. 'The UN Human Rights Council: A New "Society of the Committed" or Just Old Wine in New Bottles', (2007) 20(4), Leiden Journal of International Law, 809–823

Shaffer, Gregory., and Ginsburg, Tom., 'The Empirical Turn in International Legal Scholarship', (2012) 106, American Journal of International Law 1-46

Simma, Bruno and Alston, Philip, 'The Sources of Human Rights Law: Custom, Jus Cogens and General Principles', (1988-1989), 12, Australian Yearbook of International Law, 82-107

Smith, Jennie Erin, 'A group of botanists' fight to save Colombian wax palms', The Independent, 14 November 2019, https://www.independent.co.uk/news/long_reads/wax-palms-endangered-tochecito-colombia-botanist-a9185826.html

Terman, Rochell, and Voeten, Erik, 'The Relational Politics of Shame: Evidence from the Universal Periodic Review' (2018) 13, The Review of International Organizations, 1-23

Thomas, CA., *The Concept of Legitimacy and International Law*, LSE Legal Studies Working Paper, 12/2013, (London, London School of Economics, 2013)

Tomuschat, C. 'Universal Periodic Review: a New System of International Law with Specific Ground Rules?' in Ulrich Fastenrath et al (eds) *From Bilateralism to Community Interest: Essays in honour of Bruno Simma* (Oxford University Press 2011)

UNHRC A/HRC/DEC/6/102: 'Follow-up to Human Rights Council resolution 5/1' A/HRC/DEC/6/102 (27 September 2007)

UNHRC A/HRC/RES/5/1: 'Institution building of the United Nations Human Rights Council', 18 June 2007

UNGA A/RES/60/251: 'Human Rights Council', 3 April 2006

UNHRC A/HRC/RES/16/21: 'Review of the work and functioning of the Human Rights Council', 25 March 2011

UNHRC A/HRC/WG.6/30/COL/1: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Colombia', 26 February 2018

UNHRC A/HRC/WG.6/30/COL/2: 'Compilation: Colombia', 12 March 2018

UNHRC HRC/WG.6/30/COL/3, 'Summary of Stakeholders' submissions on Colombia: Report of the Office of the United Nations High Commissioner for Human Rights', 12 March 2018

UNHRC A/HRC/39/6: Report of the Working Group on the Universal Periodic Review: Colombia, 09 July 2018

UNGA A/59/569: Kofi Annan, 'A More Secure World: Our Shared Responsibility', report of the Secretary-General's High-level Panel on Threats, Challenges and Change, 2 December 2004, http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf last accessed 05 March 2018

UPR Info: 'A Guide for recommending States at the UPR', 2015, https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_guide_for_recommending_states_2015.pdf

UPR Info: Database https://www.upr-info.org/database/ and statistics https://www.upr-info.org/database/statistics/

UPR Info: The Civil Society Compendium: A comprehensive guide for civil society organisations engaging in the Universal Periodic Review, UPR Info 2017, https://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_cso_compendium_en.pdf

Watts, Jonathan, 'Murdered land activist adds to rising death toll in Brazil's Amazon', The Guardian, 17 April 2018 https://www.theguardian.com/environment/2018/apr/17/murdered-indigenous-land-activist-adds-to-rising-death-toll-in-brazils-amazon

Wenger-Trayner, E and B., 'Communities of Practice: A brief Introduction' (EB 2015) 2, http://wenger-trayner.com/wp-content/uploads/2015/04/07-Brief-introduction-to-communities-of-practice.pdf

Wheeling, K. (2019), 'How conflict influenced land use in Colombia', *Eos, 100,* 20 November 2019, https://doi.org/10.1029/2019EO136714

‘Working with ECOSOC: an NGO’s guide to consultative status’, United Nations (New York 2011) http://csonet.org/content/documents/BrochureLite.pdf

World Bank, *Governance and Development* (World Bank 1992) http://www.gsid.nagoya-u.ac.jp/sotsubo/Governance_and_Development_1992.pdf

Zürn, Michael., ‘Global Governance’, in Schuppert, GF (ed), *Governance-Forschung* (Baden-Baden, Nomos 2005)