

Joining forces weaving strategies

Indigenous and Afro-Descendant Peoples

Pushing for peace in Colombia: "Between Hope and Despair"

Final Synthesis Report for a collaborative project
Financed by the Norwegian Embassy in Colombia and
The Kingdom of the Netherlands
(2014-2017)



Indigenous and Afro-Descendant Peoples

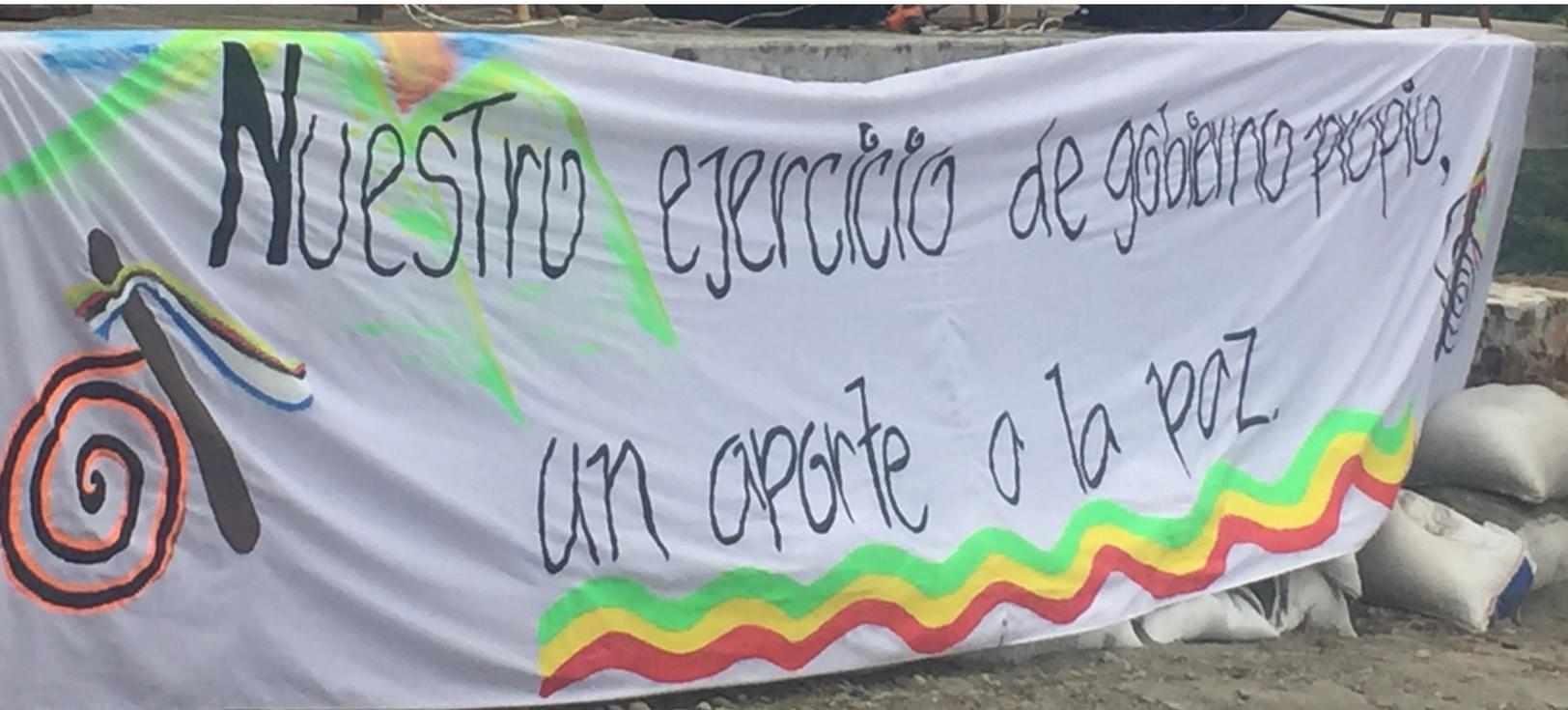
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(2014-2017)

Partners:
*Resguardo Indígena Cañamomo Lomapieta,
Palenke Alto Cauca - Proceso de Comunidades Negras,
Forest Peoples Programme*

Project Title: "Towards the Development of Standards and Mechanisms to Protect Ethnic Peoples Affected by Extractives (Phase II): Consolidating strategies for territorial control by implementing the rights to free, prior and informed consultation and consent in the Palenke Alto Cauca and the Resguardo Indígena Cañamomo Lomapieta through inter-ethnic and international alliances."

By Viviane Weitzner,
Forest Peoples Programme
(March, 2017)



Theme of the 2015 General Assembly of the Resguardo Indígena Cañamomo Lomapieta: "Our Self-Government, a contribution to peace"

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“ENTRE LA ESPERANZA Y LA ANGUSTIA”,
BETWEEN HOPE AND DESPAIR



Almost the entire territory of the Resguardo Indígena Cañamomo Lomapieta has been requested in mining concessions, including their sacred mountains, home of the protector spirits of the Embera Chamí

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• **Joining forces,
weaving strategies**

Executive Summary

This report synthesizes the outcomes of a two-year, innovative, peoples-driven project that brought together Indigenous and Afro-Descendent communities in Colombia whose gold-rich ancestral lands are coveted and threatened by outside actors. Building on an alliance that goes back to 2009, the Black Communities of the Palenke Alto Cauca, a traditional regional governance body represented nationally by the Process of Black Communities (Proceso de Comunidades Negras), and 32 Embera Chamí communities of the Resguardo Indígena Cañamomo Lomapieta, an Indigenous Reserve in the municipalities of Riosucio and Supía (Caldas), joined forces to strengthen their organizational capacities and awareness of rights with regards to the mining sector and territorial defense. With technical support from the Forest Peoples Programme of the UK, the two-year work programme shattered the myth that Indigenous and Afro-Descendant Peoples in Colombia are in conflict. Instead, it underscored how inter-cultural dialogue and sharing of territorial defense strategies can lead to productive, concrete actions that contribute towards uniting peoples, upholding rights, and forging peace in Colombia.

The primary objective of the project was to strengthen self-governance, territorial defense and autonomy by focusing on **appropriating and implementing** the right to free, prior and informed consultation and consent in all decision-making affecting ancestral territories in the Palenke and the Resguardo, specifically with regards to mining. Project activities covered five central themes: strengthening territorial governance and self-government; research and knowledge generation; organizational strengthening; dissemination and sharing of experiences; and awareness-raising, policy influence and advocacy. As our project 'motto' emphasizes, the project was underpinned by a 'joining of forces, a weaving of strategies'— a concrete contribution towards an alternative, inter-ethnic, grassroots peace process.

The work programme coincided with some of the most pivotal moments in Colombia's peace process, including the 2014 re-election of President Santos, whose ballot was supported by indigenous and Afro-Descendent peoples and organizations who believe firmly in negotiated peace; to the September 2016 signing of the FARC-EP – Santos Government Peace Accords, and the October national plebiscite that saw these shot down, to be quickly re-negotiated and taken up.

Colombia's armed conflict escalated particularly for human rights defenders, with Cauca being a hot spot for active armed combat. Territorial pressures continued to grow on ancestral lands, with armed actors turning to gold mining and extortion as a more efficient means to launder their spoils from narco-trafficking. The ancestral lands of the Palenke Alto Cauca were invaded by hundreds of bulldozers operated by outlawed groups, who wreaked environmental and social havoc, while the State looked the other way. And in the Resguardo Cañamomo Lomapieta, the Traditional Authorities' efforts to regulate their ancestral gold mining drew ire from outside interests, with the tragic result of the assassination of our colleague, Fernando Salazar Calvo, on April 7, 2015. Meanwhile, the State continued issuing concessions on ancestral lands, while at the same time weakening human rights and environmental protections across Colombia.

Despite this challenging and violent landscape, we achieved several key successes:

- We set judicial precedent, with collective precautionary measures for the Black Community Council of Pilamo; and Constitutional Court Decision T530/16, which among other things, orders the delimitation of the Resguardo Cañamomo Lomapieta's ancestral lands; recognizes the legitimacy



of self-government over subsoil resources within ancestral territories; and urges the state not to criminalize ancestral mining.

- We continued to deepen the concept and uptake of the concept of 'ancestral mining' within participating communities, and through dialogue with senators, state agencies and peoples' organizations.
- We strengthened internal regulations of FPIC and ancestral mining, including adjusting and implementing existing regulations, and drafting new regulations.
- We made visible internationally the cutting-edge work of the Palenke and the Resguardo in regulating their mining and implementing their own protocols on FPIC, through among other things, facilitating participation in the UN Forum on Business and Human Rights.
- We spoke out against impunity in the death threats to social leaders, particularly the assassination of Embera Chamí Indigenous leader Fernando Salazar Calvo.

Yet the challenges were great. Leaders participating in our project are under ever more intense threats to their lives, from the 80 women participating in the 2014 march to Bogota spurred by the ongoing invasion by criminal miners, but also state-sanctioned mining activities; to members of the Traditional Authorities, such as the Cabildo of Cañamomo Lomapieta, who are setting and implementing their own gold mining regulations. To date dialogue with the State towards recognizing ancestral mining as a differentiated activity that does not fit into current formalization programmes has been far from fruitful; while at the same time rights to FPIC continue to be ignored, and are wilfully violated in practice, despite community regulations being in place.

Looking towards the future, this report identifies key priorities emerging from our work programme; as well as policy recommendations for the Embassy of Norway, Holland and other foreign States with interests in Colombia; the Colombian State; companies operating in Colombia; international donors, and national and international allies supporting Indigenous and Afro-Descendant Peoples in Colombia; and Colombia's Indigenous and Afro-Descendant Peoples, especially those participating in this project.

*“That the subsoil belongs to the State; well, we are the State.
They cannot enter our territory to plunder.”*

—Abel Jaramillo, Indigenous Mayor of Riosucio, 2015

“We know now that posconflict will bring an avalanche of projects, and we need to be prepared to confront all of this. That’s why we need to strengthen the internal regulations of our Community Councils; and make known the contents of our FPIC protocol, as this will be a fundamental tool for defending our vital space.”

—Armando Caracas Carabali, Palenke Alto Cauca, 2016

“Now with the peace accords, our territories will be far more exposed to multinationals. Our people feel we will be far more vulnerable to mining projects.”

—Héctor Jaime Vinasco, Resguardo Indígena Cañamomo Lomapieta, 2016

“... we reject illegal and unconstitutional mining exploitation. The invasion of multinationals and outsiders on our territories have brought us delinquency, violence, sexual abuse and it has affected our culture and life in community. Illegal and unconstitutional mining has done away with our sources of livelihood such as agriculture, fishing and ancestral mining; it has contaminated our water with mercury, our food and our bodies. We denounce the complicity of the authorities with the entrance of illegal mining, the issuing of permits without consulting with us previously, and the persecution of ancestral mining.”

—Declaration from the First National and International Gathering of Black Women Caregivers of Life and Ancestral Territories, 20 November, 2016

“The Government of Colombia through its vicepresidency has announced that prior consultation is an obstacle for the country’s development, but we as Palenke Alto Cauca—PCN consider that it is the most efficient mechanism to guarantee cultural integrity and the territorial rights of our communities.”

—Gabino Hernández Palomino, Palenke Alto Cauca, 2016



Visit to the 'criminal' mines (operated by outlawed, armed actors) in San Antonio and Pilamo, northern Cauca. Some 200 bulldozers mined this area, leaving behind severe mercury and cyanide contamination. On April 30, 2014, between 17 and 40 miners were buried alive in these mines, the number depending on who tells the story.

1. Introduction:

“Entre la Esperanza y la Angustia”, Between Hope and Despair

1.1 Gold and Conflict, Hope and Despair

The recently concluded FARC-EP¹ Colombian government peace accords, together with the peace talks currently underway with the ELN², have raised anticipation and hope that the decades old internal armed conflict ravaging Colombia and its people will soon come to an end.

Yet for many of Colombia's Indigenous, Black and Campesino communities who have been caught in the crossfire, the day-to-day realities speak of intensification—rather than de-escalation—of the armed conflict. Nowhere is this more apparent than in the homelands of Indigenous and Afro-Descendant peoples that are minerals-rich; and especially, those ancestral territories rich in gold. This is creating a situation where, as one Afro-Descendant leader summed up succinctly, “the Black community lives between hope and despair.”

The situation has layers of complexity. On the one hand, Colombia's Indigenous and Afro-Descendant Peoples have been engaged in years

of struggle with the State that has resulted in arguably one of the world's most progressive ethnic rights³ frameworks in the world.⁴ But on the other

³ Ethnic rights here refers to the rights of Indigenous, Afro-Descendant (also self-recognized as Afrocolombian, Black, Palenquero or Raizal) and Rom peoples in Colombia. The term ‘ethnic rights’ and ‘ethnic groups’ is used by these groups themselves as a short form that embraces the diverse peoples who have internationally recognized and guaranteed special rights, which are recognized also by the Colombian normative framework. In brief, there are some 102 Indigenous Peoples in the country (this number is contested, with the government claiming some 84 groups exist, while Indigenous organisations state there are 102), comprising 3.3% of the population with recognized land title to approximately 30% of the country's land mass; while Colombia's Black, Afro-Descendant, Palenquero and Raizal People make up some 10.6% of the population (this number also in dispute), with 6 million hectares recognized as collective ancestral territories (Weitzner 2012).

⁴ Among other international instruments, Colombia has ratified ILO Convention 169 on Indigenous and Tribal Peoples; the American Convention on Human Rights; the Convention for the Elimination of Racial Discrimination; and the Convention on Biological Diversity. It has approved the UN Declaration on the Rights of Indigenous Peoples, and has also invited the presence of the UN Office of the High Commissioner on Human Rights in Colombia, which serves as a guarantor for several State-Peoples processes. The Colombian Constitution (1991) recognizes Indigenous Peoples' territories as special entities with administrative and budgetary autonomy; the right of Indigenous Peoples to apply their own justice systems within their territories; and the right to self-government. Law 70 of 1993 upholds Afro-Descendant communities' rights to collective property and to cultural practices and natural resources use, while guaranteeing their economic and

hand, these protections have remained on paper only; there is lack of political will to implement the framework in practice, and efforts fall far short of the international standards Colombia has committed to upholding. And when mining—or more specifically, gold mining—is thrown into the mix, the complexity deepens, and the potential grows for violence to escalate.

Indeed, Indigenous and Afro-Descendant peoples have been mining gold in Colombia for centuries, prior to the establishment of the Colombian State. Some of these peoples still mine for gold using their ancestral technologies. Yet this way of life is under attack on several fronts. State regulation does not differentiate what Indigenous and Afro-Descendant peoples

social development. And the 2011 Victims' Rights and Lands Restitution Law marked a watershed in redress for forced relocation due to Colombia's armed conflict. In addition, Colombia's Constitutional Court has made cutting-edge judgments on a range of rights issues. Nonetheless the realities of armed conflict, and political pressure from powerful interests to weaken human rights protections in favour of economic interests, are factors leading to the current implementation gap between what is enshrined in the law or in policy frameworks, and what takes place in practice. Various UN Special Rapporteurs have highlighted this enormous governance gap in their reports, including Rapporteurs on Indigenous Peoples Rights (Stavenhagen 2004; Anaya 2010); Minorities (McDougal 2010); Extraducial, summary or arbitrary executions (Alston 2010); and members of the UN Permanent Forum on Indigenous Peoples (2010), with the most recent being UN CERD in August 2015

¹ Fuerzas Armadas Reolucionarias de Colombia – Revolutionary Armed Forces of Colombia.

² Ejército de Liberación Nacional – National Liberation Army.



“ENTRE LA ESPERANZA Y LA ANGUSTIA”,
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call 'ancestral mining' from other types of mining, and as a consequence it is lumped into other 'illegal', informal types of mineral extraction. Moreover, both legal and criminal armed actors are looking to ancestral lands as a place to engage in mining activities for profit; with outlawed armed actors looking to mining also as a means to launder money, or to engage in extortion of others who mine. As several newspaper headlines have announced, mining has become the new 'coca', a far easier way to wash money from narco-trafficking.⁵

Finally, while the price of gold has dampened somewhat since its boom at the end of last

⁵ See, for example: Willis (2013) where there is reference to one kilo of cocaine selling for some 5 million Colombian Pesos (\$2,570 USD) in the Colombian jungle, while one kilo of gold can sell for 19 times that price; Jamasmie (2013a; 2013b).

decade, national and multinational companies are still speculating on the potential to mine in Colombia. Fuelled with expectations spurred by the Santos' Government policies around the 'locomotora minera' where mining is seen as a key engine of economic growth, and lured by the more favourable conditions enabled by the negotiation of several free trade agreements, extractive companies have been drawn to Colombia to mine the vast potential of this largely unexplored country. They are drawn even more so given the prospects of 'post-conflict.' For its part the State continues to issue mining concessions overlapping with ancestral lands without prior consultation or free, prior and informed consent, violating its own Constitution, and its international human rights commitments (**see Box 1**).

“From our Indigenous cosmovision, and within the concept of self-development set out in our plan de vida (life plan), sustained also by our own economy, mining is defined as an ancestral, artisanal traditional production system, practiced by the members of our Resguardo, linked to our uses and customs fundamental to our survival and cultural identity as an Indigenous People.”

—RICL (2017)

BOX 1:

Statistics regarding Mining Concessions overlapping Ancestral Lands

General Stats

- Some 29.8% of the national territory is occupied by 768 Indigenous Reserves (53 of colonial origin, and 715 'new' Resguardos, with 30,590,599 titled hectares, and some 1,192,628 hectares still required).
- Some 5.13% of the national territory is designated to 132 collective territories of Black Communities (some 5,396,377 hectares).
- Some 4.6% of the country is covered with valid mining titles, comprising some 5,308,843.7 hectares (with 9445 issued titles).
- Some 13% of the country has been requested in mining titles (13,469 titles have been requested).

Overlap

- Some 343,303 hectares issued in mining concessions overlap with Resguardo lands (295 titles overlap).
- The State attempted to set aside some 42,733,164 hectares for strategic mining areas (Resolution 0045 of 2012) that overlap significantly with Resguardo lands; yet these were struck down by the Constitutional Court for failing to undergo appropriate consultation.
- Some 360,664 hectares issued in mining concessions overlap with Afro-Descendant communities in the Pacific. The overlap with Black ancestral lands is actually larger, as the official maps do not include overlap with the lands of the Consejos Comunitarios in the Inter-Andean Valley.

Source: Adapted from Duarte (2015), based on information available to 2012.

Indigenous and Afro-Descendant peoples and their territories are caught in the clash between the State's official locomotora minera that is trying to open up the country to investments from multinationals on the one hand⁶, and the unofficial, criminal locomotora minera fuelling the activities of illegal armed groups. With Indigenous and Afro-Descendant peoples outright rejecting how both these locomotoras are careening through their ancestral territories, rolling roughshod over their rights to territory and autonomy, rights enshrined in Colombia's Constitution. In the words of one economist, "the clash between the central government and territorial authorities, and between the two engines that dispute control over natural resources and the capture of mining rents, **deeply exacerbates the internal conflict and places the Nation at the threshold of an escalation of violence, now for the country's minerals riches**"⁷ (emphasis added).

In the face of these multiple tensions and this landscape of conflict, Indigenous and Black communities joined forces, with the support of international allies, to look for solutions.

1.2 Addressing the Issues: An Innovative, Peoples-Driven Project

Since 2009, Embera Chamí Indigenous communities from the 32 communities making up the Resguardo Indígena Cañamomo Lomapieta, an Indigenous Reserve in the municipalities of Riosucio and Supía (Caldas), have come together with Black Communities comprising the Palenke Alto Cauca, a traditional regional governance body of Black Communities united under the national organization known as the Process of Black Communities (Proceso de Comunidades Negras—PCN), to work on an innovative, inter-cultural process strengthening their organizational capacities and awareness of rights with regards to the mining sector and territorial defense (see Map).⁸ With technical support from national and international allies, these peoples have shattered the myth that Indigenous and Afro-Descendant Peoples

⁸ Phase I (2009-12) of this collaborative project was led by Canada's The North-South Institute, with funding from the Ford Foundation (Chile); the International Development Research Centre of Canada; USAID; The Ministry of Foreign Affairs of Norway; and Rights & Democracy of Canada. All Project Documents can be found at www.nsi-ins.ca. Phase II (2014-17) is undertaken in collaboration with the Forest Peoples Programme of the United Kingdom (www.forestpeoples.org), and funded by the Embassy of Norway in Colombia and the Kingdom of the Netherlands. Viviane Weitzner's fieldwork is further supplemented by The Norwegian Research Council through the project 'Extracting Justice?' (www.nmbu.no), as well as research grants from CONACYT (Mexico) and SSHRC (Canada) as part of doctoral research with the Centro de In-

vestigación y Estudios Superiores en Antropología Social (CIESAS-DF).

in Colombia are in conflict. Instead, they have shown how inter-cultural dialogue and sharing of territorial defense strategies can lead to productive, concrete actions that contribute towards uniting peoples, upholding rights, and forging peace in Colombia. Phase I (2009-2012) of this innovative project achieved successes, among other things, in:

- Opening the national debate concerning recognizing the right to free, prior and informed consent;
- Developing and publishing key tools for Afro-Descendant and Indigenous communities in Colombia (videos, guidebooks and community-based research);
- Deepening and self-defining concepts such as ancestral mining;
- Developing community protocols for territorial defense;
- Supplementing these lessons learned with in-depth research and critical evaluation of Corporate Social Responsibility instruments, with recommendations (at the local, national and international levels) towards implementing in practice ethnic rights in the extractive sector; and
- Undertaking legal actions that set national precedent (for example Constitutional Court decision T-1045A).⁹

vestigación y Estudios Superiores en Antropología Social (CIESAS-DF).

⁹ Project documents from Phase I can be found at <http://www.nsi-ins.ca/governance-of-natural-resources/extractives-and-ethnic-rights-in-colombia/>

⁶ See Duarte (2015) and Weitzner (2012) for a discussion of the extent of overlap between ethnic territories and concessions issued to mining companies in Colombia. Contraloría (2013: 338) offers an excellent and detailed map showing the overlap between ethnic communities and mining concessions.

⁷ Becerra (Contraloría 2013: 188).



Yet despite the tangible and conceptual outcomes of Phase I, partners saw the urgency to follow-up, deepen and grow this innovative inter-ethnic process. Consequently, Phase II (2014-2017)—the outcome of months of joint planning¹⁰ — had as its primary objective continuing to strengthen self-governance, territorial defense and autonomy by focusing now on **appropriating and implementing** the right to free, prior and informed consultation and consent in all decision-making affecting ancestral territories in the Palenke and the Resguardo, specifically with regards to mining.¹¹ Project activities covered five central themes: strengthening territorial and self-government; research and knowledge generation; organizational strengthening;

¹⁰ Financial support for the planning process came from various sources. We are extremely grateful to the Ford Foundation (Chile), for facilitating access to an IIE grant that enabled joint planning workshops. We also received funding from Canada's International Development Research Centre, through an institutional grant made to The North-South Institute, the lead international partner in Phase I of the project.

¹¹ As worded in our joint project proposal, the general objective of Phase II is: “To consolidate self-government... by strengthening territorial autonomy and self-determination, associating local ownership and empowerment by the communities and their leaders of the fundamental and collective rights of Ethnic Peoples, and implementing the rights to free, prior and informed consultation and consent through strengthening and implementing community protocols day-to-day in all internal and external interactions; and by continuing to raise awareness and demanding at the local, national and international levels the conditions required for implementing and verifying processes of free, prior and informed consultation and consent in the Colombian context, in the case of extractive and climate change projects and plans, among others.

dissemination and sharing of experiences; and awareness-raising, policy influence and advocacy.

However, the project team and partners recognize that the strength of this project—its political aim—goes far beyond this primary objective. In the words of one Afro-Descendant leader: “This project is a very important field reference for the peace negotiations. Here, in this project, we are committing firmly to a proposal of unity [between Peoples], not only to a project.” As our project ‘motto’ emphasizes, the project is underpinned by a ‘joining of forces, a weaving of strategies’—a concrete contribution towards an alternative, inter-ethnic, grassroots peace process.

1.3 Purpose of this document

This document synthesizes the activities and outcomes of Phase II (2014-2017) of the joint project, in which the Forest Peoples Programme of the United Kingdom provides solidarity and technical support. It adapts the synthesis report from our first year of work,¹² weaving in activities, reflections and recommendations emerging also from our second year.

The report begins by providing a snapshot of the political moment in which Phase II took place, briefly taking stock of the national and international context. It then hones into the

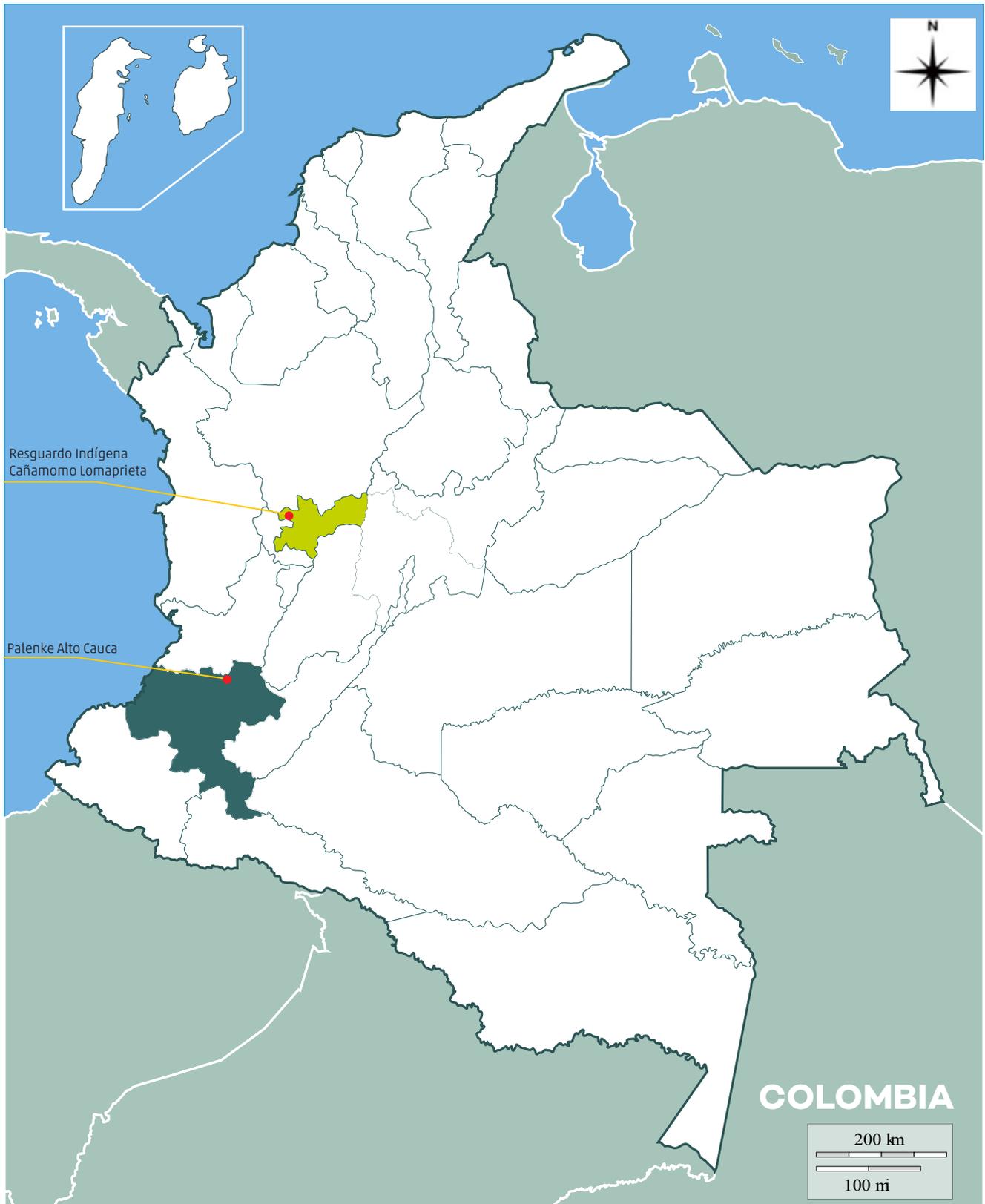
¹² Weitzner (2015) provides a full account of our first year's work programme.

specific project sites, distilling from the project activities the key issues faced by project partners and the various strategies and actions that emerged. The report identifies a range of project successes and results, but also critical challenges and urgencies for future consideration. It closes with recommendations emerging from our work programme.

“This project is a very important field reference for the peace negotiations. Here, in this project, we are committing firmly to a proposal of unity [between Peoples], not only to a project.”

—Afro-Descendant Leader

Map: Location of the Resguardo Indígena Cañamomo Lomapieta and the Palenke Alto Cauca





"Bastones de Mando", are symbols of authority carried by each member of the Cabildo, the Traditional Authority, in the Resguardo Indígena Cañamomo Lomapieta

2. The national context 2014–2017: Elusive Peace, Mining, Violence and Human Rights

Phase II of our joint project coincided with pivotal and historic years for Colombia in many respects.

2.1 The rocky road to peace

Launched in August 2014, right after the narrow re-election in June of president Santos for 2014–2018,¹³ our project coincided with the bumpy FARC-EP-Santos government negotiations around peace. Indeed, the peace process went down a very rocky road, with declarations of unilateral ceasefires that were quickly broken. The result was an escalation of violence and series of massacres, increasing persecution and judicialization of social leaders, and ongoing selective assassinations.¹⁴ Active combat continued to take place in the rural areas that are home to Indigenous and Afro-Descendant peoples and

¹³ Santos narrowly won a further four-year mandate (2014–2018) with 50.9% of the vote; while Uribista candidate Zuluaga obtained 45%. The Indigenous, Afro and other social movements backed Santos because of his pro-peace process stance; a desperate move given the various policies the president had put in place that run roughshod over human rights (such as those related to the ‘locomotora minera’, discussed later).

¹⁴ More details are found in Weitzner (2015). Importantly, however, the April 15 breaking of the unilateral ceasefire by the FARC sparked a dramatic escalation of conflict over the next months, culminating in June 2015 being described by daily newspaper *El Tiempo* as “the most violent month since talks began in Octo-

campesinos. And particularly in Cauca, which became a hot spot in the armed conflict. As the FARC-EP peace process conversations continued in Havana, project partners expressed increasing concern about the disconnect between those negotiating, and those ‘operating’ on the ground. But also, that Indigenous and Afrocolombian Peoples were excluded from planning and negotiations that affect their territories and rights directly; with criminal mining a key topic left out of the discussions completely.¹⁵ In the very small window given to an inter-ethnic delegation to the peace conversations in Cuba, important steps forward were made, however, at negotiating an ethnic chapter to the accords.¹⁶

ber 2012.” <http://www.eltiempo.com/politica/justicia/crecen-acciones-violentas-de-las-farc/16056657>

¹⁵ The National Afrocolombian Peace Council (CONPA), for example, issued several declarations demanding to be at the negotiations table. CONPA is comprised of a number of Afrocolombian organizations, including: Autoridad Nacional Afrocolombiana (ANAFRO); la Asociación de Afrocolombianos Desplazados (AFRODES); el Foro Interétnico Solidaridad Chocó (FISCH); Red Nacional de Mujeres KAMBIRI; el Centro de Pastoral Afrocolombiana (CEPAC); la Asociación de Consejos Comunitarios del Norte del Cauca (ACONC); EL Consejo Laboral Afrocolombiano (CLAF); el Proceso de Comunidades Negras (PCN); and la Conferencia Nacional de Organizaciones Afrocolombiana (CNOA)

¹⁶ An Ethnic Commission attended made up of ONIC, CONPA (Consejo Nacional de Paz Afrocolombiano) and the Gobierno Mayor de Autoridades Tradicionales.

While the peace accords were approved and signed in September 2016, Santos’ commitment to the democratic process and country-wide plebiscite led to a striking down of the agreements through a narrowly won ‘no’ outcome in October. Aside from incredulity, the reaction among project partners—particularly at seeing the map of how Colombia had voted—was anger: the sense that those in urban centres had outvoted those suffering the day-to-day realities of the conflict. In the words of one Indigenous leader: “It’s very sad, because well... after so much suffering, the people who have not been touched, who live in another movie, are those that define the problem. It’s lamentable...”

Yet Santos’ subsequent winning of the nobel peace prize despite the ‘no’ outcome of the referendum helped motivate momentum once again. The renegotiations of the agreements did not dilute the ethnic chapter that was a critical gain in the FARC-EP-Santos government accords, much to the relief of project partners (discussed further below). As can be seen by the excerpts in Box 2, this chapter makes key commitments to upholding ethnic rights in the implementation of the accords, including FPIC.



BOX 2:

Excerpts from the Ethnic Chapter, Peace Accords, Colombian Government-FARC, August 25, 2016 (6.1.12.2.)

6.1.12.2. Principles

In the interpretation and implementation of all the components of the Final Accord for the Termination of the Conflict and the Construction of a Stable and Lasting Peace in Colombia an ethnic focus will be included. This is based upon the international, constitutional, and jurisprudential normative framework. It includes the principles of non-regression, recognized by the International Covenant on Economic, Social, and Cultural Rights. The principles and rights acknowledged in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Durban Declaration and Program of Action, United Nations Declaration on the Rights of Indigenous Peoples, and the International Labour Organization's Convention 169. **In the interpretation and implementation of the Final Accord for the Termination of the Conflict and the Construction of a Stable and Lasting Peace in Colombia, an ethnic focus will be taken into account, as well as, the principles of self-determination, autonomy and self-government, participation, consultation and free, prior, and informed consent; to social, economic, and cultural identity and integrity, and to rights over their land, territory and resources, which imply the recognition of their ancestral territorial practices, their right to restitution and strengthening of their territoriality, existing mechanisms for the protection and legal protection of the lands and territories occupied or possessed ancestrally and/or traditionally.**

6.1.12.3. Safeguards and Guarantees

Substantial safeguards for the interpretation and implementation of the Final Accord of the Conflict for a Stable and Lasting Peace in Colombia:

The principal (and not secondary) character of free, prior and informed consent and the right to cultural objection as a guarantee of non-regression will be respected every time. As a result, the implementation phase of the Accords, as it pertains to ethnic peoples, must be met by guaranteeing the right to free, prior and informed consent respecting the constitutional and international standards. A transversal ethnic, gender, female, familial, and generational focus will be adopted. In no case should the implementation of the accords be detrimental to the rights of ethnic peoples.”

Source: WOLA (2016), emphasis added.

Our project closed with the opening of ELN peace negotiations in Ecuador, where project partners expressed hope that the gaps of the FARC-EP negotiations will be addressed, particularly with regards to participation by ethnic peoples and addressing the critical topic of mining.

2.2 Armed groups turn to mining for 'Fundraising,' the State responds

Throughout our project, while active combat waged between the military and the FARC, with ceasefires being declared from time-to-time, and violence de-escalating and then re-escalating, one

constant remained throughout: The continued 'fundraising' the FARC and other armed groups engaged in through extortion schemes, and increasingly, by turning to small and medium-scale mining to fuel their activities and launder money. Although this phenomenon exists in several remote areas in Colombia, Cauca stands out once again as a hot spot, invaded by bulldozers owned by armed actors.

This situation came to a head the night of April 30, 2014, when some 17-40 miners (depending on who is reporting) were buried alive in the illegal mines in San Antonio, Palmar, municipality of Santander de Quilichao, Cauca. Reports state that some 120 machines were working in the area, which fled quickly following the tragedy, scattering off to other areas to continue their operations. San Antonio swarmed with thousands of people day and night, many of them from neighbouring Black communities who were trying to eke out a living on whatever they could find.¹⁷ But in other parts of Cauca, operators have invaded one-by-one, acquiring access to communal lands through manipulative tactics and threats.

Meanwhile the State has done little to address the situation. A press note issued by Proceso de Comunidades Negras after the San Antonio tragedy highlights that: “This whole area is being devastated by illegal mining activities, while the authorities have done nothing effective to

¹⁷ This mine is now awash in cubico mining, a type of tunnel mining that also has safety issues. Indeed the 1st of April 2016, one caved in with 7 people trapped inside (Leidy Mina, Pers. Comm., 2016).

“Here [in Cauca] ‘miners’ don’t get dirty. They don’t know the mines. Here what there is is a criminal enterprise... Behind each bulldozer there are legal and illegal armed actors. These bulldozers are for money laundering.”

—Afro-Descendant leader

try to stop it.”¹⁸ In the case of San Antonio, authorities actually looked the other way.

A military post is set up just some 500 metres from the mine, and there is no way military personnel could not have known about the activities with heavy machinery at work night and day, and people travelling to the area in droves.¹⁹ There is speculation that in fact they may have benefitted from the operation through ‘compensation’.²⁰

Yet Cauca is not the only area of Colombia affected by illegal—or ‘criminal’—mining. Recent reports and publications highlight the extent of the issue, making evident a situation that is spiralling out of control for authorities, and leaving vulnerable to human rights abuses civilians and also

¹⁸ Proceso de Comunidades Negras (2014).

¹⁹ A May 5, 2014 letter issued by a network of respected academics, noted that: “As in other Afrodescendant territories, between the inoperativeness of the State and the negation of ancestral rights, an incredibly destructive criminal mining has begun affirming itself. In this region, in particular 200 bulldozers have been working day and night. As is well known, people have been coming from all over the place in search for the opportunity when the machines let them lower their gold pans and put their feet in the mud, with hopes that fortune will bring to them some mineral. More that 3000 improvised miners work these mines night and day. All authorities know of this situation, but they tolerate it; even the police and the military know about it, but remain indolent concerning the future of these territories and their peoples” (Grupo de Académicos e Intelectuales en Defensa del Pacífico—GAIDEPAC).

²⁰ Indeed, rumour has it that several high-level public officials invest in illegal mining themselves, with community members citing concrete observations of this involvement.

ancestral miners working in these areas.²¹

A January 2012 news report by Insight Crime, for example, cites Colombia’s national police, who:

“revealed that the FARC and BACRIMS control illegal mining operations in nearly half of the country, an indication of how important the industry has become for the finances of these armed groups. According to the police, the Revolutionary Armed Forces of Colombia (FARC), along with illegal armed groups... such as the Urabeños and Rastrojos, either extort from or have direct control over mines in 489 out of Colombia’s 1,119 municipalities.”²²

A World Bank report meanwhile concluded that organized crime in Colombia could launder annually some \$36 billion COP, of which \$10 billion correspond to illegal mining. This equals some 5.4% of Colombia’s GDP.²³ The Colombian Association of Mining (ACM) and the National Mining Agency has proclaimed that some 88% of gold extracted in the country is illegal.²⁴ There is evidence that the criminal business around Colombian gold is connected internationally with Mexico’s infamous Sinaloa cartel, who with their

²¹ See for example, Massé and Camarago (2012); Defensoria (2010); Contraloría (2013); Indepaz (2012); Semana (2013).

²² Fox (2012)

²³ Becerra in Contraloría (2013: 179). Green (2016) cites diverse sources to show the inextricable link between the price of Gold and coca production in Colombia. Rossi (2016) notes that: “illegal gold mining has become the real money maker for an increasing number of narco-traffickers, paramilitaries and left wing insurgents,” and cites a 2015 UN report that alleges the FARC obtained some 20% of its proceeds through illegal gold mining, with the 34th front earning over \$1 million a month alone.

²⁴ Serpa (2015).



The Black women of northern Cauca's march to Bogotá in November 2014, and subsequent takeover of the offices of the Ministry of the Interior set historic precedent, raising awareness about the grave situation of criminal mining in Cauca's ancestral territories, and spurring dialogues that led to national level agreements.

commercial savvy managing narco-trafficking, are facilitating the commercial aspects of laundering Colombia's gold internationally.²⁵

While the State is engaging in initiatives to try to address these issues, including establishing a specialized police unit²⁶ and issuing decrees that empower the destruction and decommissioning of illegal machinery, the power of illegal armed groups is such—and extortion and corruption so widespread—that the situation is extremely difficult to bring under control.²⁷ The state's attempts to address illegal miners has resulted in a perverse situation where ancestral miners who have been undertaking mining for centuries are caught up in these efforts, and are in essence being declared illegal and criminalized for not having in place the large amounts of

²⁵ Becerra in Contraloría (2013: 178).

²⁶ Efe Economía, Bogotá (17 enero 2014).

²⁷ Massé and Camargo (2012).

paperwork now required to show they are legitimate. This is creating mounting tension, as will be discussed further in the analysis of project activities.

2.3 Regressive environmental and human rights protections in Colombia's national mining framework

Our project coincided with the State issuing a series of national decrees to streamline environmental permits, and consequently, consultation²⁸ processes linked to these. In brief, in November 2013, the government issued *Presidential Directive No. 01* guidelines for

²⁸ That make it very clear, that the aim of prior consultation is to establish agreement on mitigation measures for projects going ahead. The right to FPIC comes into play only during the coordination and preparation phase, when the Directorate of Prior Consultation establishes whether FPIC is required.

implementing prior consultation; and Decree 2613, whereby it adopted a protocol for interinstitutional coordination for prior consultation that goes hand-in-hand with the guidelines for ethnic communities. Both which contravene international standards for FPIC, enabling the Directorate of Prior Consultation to unilaterally determine whether FPIC is or is not required.

While these Decrees were issued unilaterally and could be charged with being unconstitutional for that reason, Decree 2041 (issued October 15, 2014), which establishes new processes for environmental licensing, is perhaps the most controversial of the set. Entering into force January 15, 2015, Decree 2041 derogates Decree 2820 of 2010, to realign procedures around environmental licensing with Colombia's newly established institutions, namely the National Environmental Licensing

Agency (Agencia Nacional para Licencias Ambientales—ANLA). However, the Decree also cuts back timeframes for licensing significantly, for which it has earned its popular moniker as the Decree for express licenses, or “*Licencias Exprés*”, where clearly meaningful community participation is simply not possible.²⁹ During this time the State also rammed through a national mining plan, without appropriate consultation with ethnic peoples despite attempts by concerned consultants.³⁰

A further blow to ethnic rights came in October 2016, with the announcement of a unilaterally drafted Law on Prior Consultation (Proyecto de ley estatuario de consulta previa) that severely reduces the reach of consultation and FPIC in violation of international standards. For example, it states: “Consent should be understood as the result of full understanding, that does not imply the faculty of being able to decide on what is being consulted about” (Article 8). This law is the subject of a national workshop as this report goes to press, and no doubt there will be push back against the government-drafted definitions

²⁹ Briefly, timeframes are reduced from the previous Decree it replaces as follows: The maximum timeframe for obtaining an environmental license is set at 180 days, in contrast to the year and seven months previously allowed; the minimum timeframe is set at 90 days, contrasting with the 270-day minimum set previously. Among the various concerns critics have expressed with this Decree, is the very real possibility that the information generated will not be transparent or independent, but may rely heavily on information submitted by proponents, and remain unverified.

³⁰ See Weitzner (2015).

it contains.³¹ There is irony that this cutting back of the right to consent is taking place almost 10 years after the UN approved the UNDRIP, which Colombia publicly supported in 2009.

2.4 Indigenous Autonomy

Yet there was also some good news around recognition of Indigenous Autonomy. On October 7, 2014 two Decrees were issued: Decree 1953, “by means of which a special regime is established to implement Indigenous Territories with respect to the self-administration of Indigenous Peoples until such time that Congress adopts a law addressing article 329 of the Constitution;”³² and Decree 1952 on Indigenous Education.³³ While there was an action to try to declare the Decrees unconstitutional, in September 2015, the Constitutional Court ruled the decrees constitutional (Sentencia C-617-15). They provide for a range of progressive powers, ranging from management of health services, to potable water, and to the establishment of Higher Education Institutions; as well as strengthening of the Special Indigenous Jurisdiction enjoyed by Indigenous Peoples,

³¹ Foro Internacional Derecho de los Pueblos Indígenas de Colombia a la Consulta y al Consentimiento Prveio, Libre e Informado, February 23-25, 2017, Bogota.

³² “By means of which a special regime is created with a view to making functional Indigenous Territories with regards to the administration of Indigenous Peoples’ own systems until such time that Congress issues a law that addresses article 329 of the Political Constitution.

³³ “By means of which is modified Article 12 of Decree 2500 of 2010.”

managed now directly by Indigenous authorities themselves, rather than through mayors. However, political will to implement these progressively is still a question, as is also the capacity of indigenous peoples themselves to ensure they are translated into practice effectively.

2.5 Constitutional Court Decisions

As well, despite scandal and crisis in Colombia’s highest court described in our first year report,³⁴ several key Constitutional Court decisions were made upholding Peoples’ rights. Importantly, for example, the Colombian legal NGO Tierra Digna, representing 16 Black Community Councils, won a critical Constitutional Court Decision (T-766/15) published in June 2016, against the 516 Strategic Mining Areas the Colombian Government attempted to set aside for mining development, many of which overlapped with ancestral lands. The Court invalidated the SMAs, citing among other issues, that the FPIC of affected Afro-Descendant and Indigenous Communities had not been obtained.³⁵

2.6 Colombia under scrutiny at CERD

In August 2015, Colombia’s human rights record was under scrutiny by the Committee for the Elimination of Racial Discrimination, established by the International Convention Colombia ratified in 1981. In

³⁴ See also Barbosa (2015).

³⁵ Tierra Digna (2016).



its concluding observations, the Committee lauded the Government of Colombia for its progressive 2011 Law on Victims and Land Restitution (Law 1448), among others. It also applauded the establishment of the Early Warning System under the country's Ombudsperson's Office. However, the Committee expressed concern about several issues, including lack of Indigenous and Afro-Descendant participation in the peace talks in Havana, recommending that a mechanism be established to enable such participation; and it made several concrete recommendations around the issues of consultation and consent and the mining sector (see Annex 1). The Committee made clear its concern about the disproportionate impacts on Indigenous and Afro-Descendant communities of the armed conflict. It underscored the need for the State to provide better protections for Indigenous and Afro-Descendant human rights defenders, to take seriously reports of the early warning system, and to undertake rigorous investigations into the ongoing assassinations of Indigenous and Afro-Descendant leaders. The Committee's recommendations provide important tools for the Palenke, the Resguardo and their allies to push for upholding human rights in Colombia.³⁶

³⁶ Voces Afrocolombianas ante el CERD, Agosto 6, 2015. <http://renacientes.net/2015/08/06/voces-afrocolombianas-ante-el-cerd/>

2.7 Evidence of 'Post-Conflict'? The realities in the field

To close this national snapshot, the idea of 'post-conflict' is still elusive in Colombia, particularly for front-line community activists defending their territories. In December 2016, the Cumbre Agraria, a coalition of Indigenous, campesino and popular organizations of Colombia, released data showing that 94 social leaders were killed in 2016, "the highest number in the last 6 years, and 31 more than in 2015." According to Cumbre Agraria, while there has been a decrease in affectations to civilians on account of the peace negotiations, "there has been an increase in the indices of sociopolitical violence against defenders of human rights, leaders and social and popular movement leaders."³⁷ Only one month earlier, this alarming escalation of violence against human rights defenders was highlighted by the Inter-American Commission on Human Rights, and also by the United Nations who issued a press release to alert the upsurge of violence facing social leaders.³⁸ The organization Marcha Patriótica, who tallied the death count at 95 for 2016, noted that Cauca suffered the most assassination of human rights defenders with a total of 40, and stated that: "The close relationship between paramilitary groups, politicians and landowners has led to the emergence of a political,

³⁷ El Espectador (2016).

³⁸ <http://www.elespectador.com/noticias/nacional/onu-preocupada-asesinatos-de-lideres-sociales-zonas-de-articulo-666659>

socio-economic and territorial dispute in the country."³⁹ The United Nations concurred, noting "some of the violence was due to a vacuum of power, where previously the FARC's presence in rural areas would help "regulate" disputes."⁴⁰ In short, the homelands of Afro-Descendant and Indigenous peoples rich with minerals coincide with areas of the most escalation of violence against human rights defenders, according to reports, with Cauca suffering the most. Indeed, project participants expressed often that Colombia is far from living in post-conflict; rather, it is living in 'post-agreement,' where violence will escalate especially with new actors jostling for the country's minerals riches, in a new phase of conflict. The assassination of our colleague Fernando Salazar on April 7, 2015, together with the many real death threats to leaders participating in the project even into 2017, is testimony to the armed conflict that continues to wrack Colombia.

³⁹ <http://www.telesurtv.net/english/news/Human-Rights-Violations-Persist-After-Peace-in-Colombia-Report-20170214-0020.html>

⁴⁰ Cited in Telesur (2016). This dire situation spurred the "Ambassadors with Human Rights Defenders" Initiative, launched in June 2016, and championed by Lars Vaagen (Norwegian Ambassador), Marie Anderson (Swedish Ambassador), Kurt Kunz (Swiss Ambassador), Jean-Marc Lafoet (French Ambassador), Günter Kniess (German Ambassador), Peter Tibber (Ambassador of the UK), Carmen Sylvain (Canadian Ambassador) and Kevin Whitaker (US Ambassador) together with the UN Office of the High Commissioner for Human Rights, a call for urgent protection of Colombian human rights defenders in 'post-conflict'. According to the organization Somos Defensores (2016), "there is no doubt that this backing will be the pivotal piece to help demand better protection for defenders in the transition towards post-agreement."

3. The international context 2014-2017:

Growing awareness of rights impacts, potential shift towards regulating accountability



Doña Paulina has been mining in the Rio Ovejas for over 80 years

Leading up to the launch of our project, international debate on Indigenous and Afro-Descendant rights and the extractive sector culminated when James Anaya, former UN Special Rapporteur on Indigenous Peoples' Rights, published his special theme report on these issues in 2013.⁴¹ This report makes several important observations and recommendations, particularly around recognizing the right to FPIC. Importantly, Anaya argues that FPIC should be regarded as a general rule for decision-making regarding extractives affecting ancestral territories, given the often devastating impacts of extractives activities

⁴¹ Other guidance of relevance to Colombia as it tries to accede to the OECD, is the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition," published in 2013. Due to space constraints, and the fact that Colombia is not yet a member of the OECD, this synthesis report will not explain this voluntary guidance. See Weitzner (2012) for more discussion and analysis of this policy tool.

on the lands and lives of ancestral peoples. Yet the debate continued in 2014-17, with several key initiatives. Among these:

- **The creation of the UN's Open-ended Intergovernmental Working Group in Charge of Elaborating a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights**, following the passing of UN Human Rights Council Resolution A/HRC/26/9, of 25 June 2014, OP 1. This Intergovernmental Working Group has a mandate "to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." It is the outcome of years of making visible the impacts of unregulated human rights violations by transnational corporations, and the realisation that voluntary

mechanisms – including John Ruggie's "Protect, respect and Remedy" framework (2009) and Guiding Principles (2011) simply do not provide adequate protections or remedies, particularly in the context of armed conflict.⁴² To date the Working Group has met twice: July 6, 2015, and 24-28 October, 2016.

- **The passing of conflict minerals legislation in the European Union.** In May 2015, the European Union passed a law requiring companies certify to the government that the minerals they source do not fuel violent conflict or human rights violations, establishing "an obligatory monitoring system for the whole supply chain of 'conflict minerals', affecting 800,000 European companies."⁴³ Building on

⁴² See for example, Weitzner (2012); Alliance for Lawyers at Risk (2012).

⁴³ <http://www.theguardian.com/global-development/2015/may/21/europe>



the US Dodd-Frank Act of 2010 addressing conflict minerals, the EU legislation calls for mandatory reporting and third-party independent certification of smelters and refiners. Both the US and EU sets of legislation are based on OECD due diligence guidelines for conflict sourcing, and “both rules also require companies to come up with a plan to remove conflict minerals from their supply chains.”⁴⁴ While the EU legislation will have big implications for the country and its extractive sector particularly around the exporting of gold (much of which goes to Switzerland), critics underscore it leaves out important minerals, such as emeralds and coal (the latter which is imported by Holland).⁴⁵ The final shape of the legislation was agreed to by the EU on November 22, 2016.⁴⁶

- **The International Council on Mining and Metals (ICMM) began requiring its member companies to implement its Indigenous Peoples Policy.**

an-parliament-tougher-measures-conflict-minerals

European parliament votes for tougher measures on conflict minerals.

44 Mehta (2015).

45 https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/eu-conflict-minerals-agreement-reached-exemptions-added/?gclid=C1j14b_x79IC-FUJAGwodCqYP1A

46 “The EU institutions today reached an agreement on the final shape of an EU regulation on conflict minerals, which aims to stop the financing of armed groups in developing countries through the trade of tin, tantalum, tungsten and gold. The regulation, brokered by the Commission, will ensure that the vast majority of these minerals and metals imported into the EU are sourced responsibly.” European Commission, 22 November, 2016. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1587>

As of May 2015, ICMM member companies such as Anglo-Gold Ashanti are required to implement an Indigenous Peoples Policy that includes respecting FPIC. While the policy has been critiqued for, among other weaknesses, including loopholes that provide for States to override Indigenous Peoples’ fundamental right to FPIC, the ICMM policy is another tool ICMM company-affected communities can use in demanding their rights be respected. South Africa’s Anglo-Gold Ashanti has extensive interests in mining Colombia’s gold, including in the Cauca and Caldas.

- **The World Conference on Indigenous Peoples took place in New York September, 2015. This conference produced an outcome document that focuses on the implementation of Indigenous peoples fundamental rights as enshrined in the UN Declaration on Indigenous Peoples Rights and ILO Convention 169. It commits UN members to develop national action plans to implement the document.**
- **The United Nations declared 2015-24 the International Decade of People of African Descent.**⁴⁷ In November 2014 the UN General Assembly adopted a programme to implement the Decade, whose theme it has officially recognized as “People of African descent: recognition, justice and development”.⁴⁸ This will

47 <http://www.un.org/en/events/african-descentdecade/>

48 http://www.un.org/en/events/african-descentdecade/pdf/A.RES.69.16_IDPAD.pdf

place the political limelight on Black Communities in Colombia as they push for their rights to be recognized.

While this list of relevant initiatives is far from exhaustive,⁴⁹ it evidences the debate taking place internationally around Indigenous and Afro-Descendant rights, minerals extraction and accountability. It also signals the beginnings of a potential new shift away from over-reliance of voluntary mechanisms towards increased consideration of regulation, particularly in sourcing minerals from countries affected by armed conflict. Yet enormous questions arise around the ripple-effect the Trump administration may have on these initiatives, particularly as it works on revoking the Dodd-Frank Act, weakening environmental protections in the US, and scrapping free trade agreements. As well, with the UK leaving Europe, questions arise around accountability of UK companies that were previously subject to EU legislation.

49 For lack of space it does not include for example, discussions around the World Bank’s safeguard reviews; certification initiatives such as the International Responsible Mining Assurance (IRMA); progress in communities accessing domestic legal systems, such as the case of Hudbay’s minerals in Canada, or BP in the United Kingdom; public hearings at the Inter-American Commission of Human Rights, where Canada’s role in mining was examined in 2015 (<https://www.oas.org/es/cidh/prensa/docs/Report-153.pdf>); CSO initiatives, such as Peoples’ Tribunals; and campaigns to hold companies to account, such as the Canadian Network on Corporate Accountability’s “Open for Justice” Campaign that aims, among other things, towards the establishment of a Canadian Ombudsperson to investigate complaints against Canadian mining companies abroad.

4. Key Issues and Moments of our joint project in 2014-2016:

From a critical analysis and learning perspective



Fernando Salazar Calvo, member of the Association of Ancestral Miners of the Cañamomo Lomaprieta Indigenous Reservation (ASOMICARS), who was watching over compliance with the Cabildo's internal regulations, was assassinated on April 7, 2015.



Against this backdrop, the project teams in Cauca, Caldas and internationally at the Forest Peoples Programme, engaged in a range of activities to meet our project objectives. This section provides a snapshot of the key moments and issues that emerged throughout our two-year project, and the joint activities we undertook to begin to address these. It touches only briefly on those already reported in depth for Year 1 (2014-2015),⁵⁰ and highlights in particular the principal moments and activities of Year 2 (2016). Rather than synthesizing results per project theme, objectives and activities as reported in the project proposal,⁵¹ this synthesis undertakes an issues-based, policy-oriented analysis.

The current context for each of the project sites comes through in the analysis, but a more detailed description of each project site can be found in other project documents from Phase I,⁵² and also in the individual documents produced by each team (Palenke, Resguardo and FPP) in Phase II (see Annex 2 for a list for all Phase II publications, videos and other relevant documents).

The section begins by placing front-and-centre the most fundamental issues at stake in both project sites, namely territorial ownership and governance, the key issues underpinning the possibilities of self-determination and peace. Next follow subsections outlining the most salient political events and points of friction during the project process; legal efforts towards territorial defense, and political gains; and international efforts to support the Palenke and Resguardo. The section concludes with some reflections on operational aspects of the project, and identifies new priorities emerging from our work programme.

⁵⁰ See Weitzner (2015).

⁵¹ An exercise undertaken in internal narrative reports and other project documents.

⁵² See Weitzner (2012); Herrera and Garcia (2012); Jimeno (2012) and other reports reports available at <http://www.nsi-ins.ca/governance-of-natural-resources/extractives-and-ethnic-rights-in-colombia/>



4.1 Fundamental Issues: Who owns the subsoil resources? Who sets the rules?

At the heart of conflicts facing the Resguardo and Palenke are different visions around some fundamental questions: Who owns the subsoil? Who sets the rules for what type of ‘development’ takes place in ancestral lands? Who has a final say? And how can these rules be enforced?

Time and again, Indigenous and Afro-Descendant participants in this project have articulated that their territories cannot be separated out into pieces. Territory includes the resources under, on, and above the surface. And the integrity and wellbeing of the territory is inextricably linked with the integrity and wellbeing of the people—economically, culturally, physically and spiritually. In the words of the Chief Governor of the Resguardo Indígena Cañamomo Lomapijeta:

“We have serious conflicts with the State about their mining vision. They say that the subsoil is theirs; we say that the land is one with the subsoil; you cannot separate it from a spiritual point of view. We are very far from the State’s vision. The ‘locomotora minera’ (mining engine) runs roughshod over us; it tramples us. This is the war we are waging...to have the air, the land, the subsoil, together.” (Gathering in Resguardo Indígena Cañamomo Lomapijeta on occasion of the visit of the Ambassador of Norway in Colombia, March 2014).

Afro-Descendant people share similar conceptions of ancestral territory; for them, territory is inextricably related to being able to ‘be’, where land, underground and overground are intertwined with identity, with being Afro, and where territory transcends the physical realm only.⁵³ True Autonomy can take place only when the subsoil is considered part of the territory, as one Black leader states:

“Today we have to make progress in constitutional reform since it is necessary to modify the question of ownership of the subsurface...in order to advance in true exercises of autonomy. Because what we are living is really autonomy in quotation marks; because you cannot exercise autonomy when bullets are flying.” (Workshop in Pilamo, 2015, emphasis added.)

Not only is there a clash in terms of concepts of territories versus resources, but a power struggle in terms of who can set the terms for what takes place, and from what

⁵³ “The territory comprises the space TO BE. There is no way of BEING without territory, and this, keeping in mind territorial dimensions or of occupation in which the Black population is located, whether rural or urban. The territory implies particular ways of doing things in a system of traditional production. When you trace back the policies and actions to defend the territory you are defending life itself. The territory also transcends the physical realm, because the spiritual realm is also present in physical spaces within the nation, but also spaces that are supranational (when we go back in our imaginaries, without ever having gone to Africa).” Excerpt from a women’s workshop summary, where impacts of mining on Black women in Cauca were discussed (June 2015), following the guiding principles that inform Proceso de Comunidades Negras, where territory is defined as ‘the space enabling being.’

vision of ‘development’. While Colombia’s normative framework recognizes Indigenous Autonomy as pointed out in the national context-setting, prior consultation and consent, and also the right to self-development, in practice these rights are extremely circumscribed.

In the words of the Indigenous Mayor of Riosucio in power during 2014-15: “That the subsoil belongs to the State; well, we are the State. They cannot enter our territory to plunder.” There is a firm position that in Indigenous and Afro-Descendant territories, Indigenous and Afro-Descendant Peoples set

“That the subsoil belongs to the State; well, we are the State. They cannot enter our territory to plunder.”

—Abel Jaramillo,
Indigenous Mayor of
Riosucio, 2015

the rules, they are the state. And that in their territories, their aspirations as articulated in their *Planes de Vida*—their life plans—prevail over the Colombian State’s vision of development, in keeping with their autonomy, self-government and self-determination. This fundamental conceptual clash, cultural disconnect and power struggle underpins all the issues that emerged as this project unfolded. The clash is compounded by the ongoing realities of the armed conflict,

and the lack of political will of the State to protect Indigenous and Afro-Descendant rights in this context of land invasions for minerals and other natural resources extraction, and violence.

4.2 Key moments and points of ‘friction’

4.2.1 Point of Friction #1: National Development Plan (2014-18)

Our project was launched during debates around the proposed 2014-2018 National Development Plan (NDP), whose theme is: “All for a new Country: Peace, Equity and Education.” We were just consolidating our project teams and work programme when the NDP debate was at its most intense. Knowing that the discussions on mining code reform were at a halt in Congress, and aware that relevant issues would be advanced through the NDP which would have the force of law, we attempted to influence outcomes and engaged at the national level with senators, national peoples’ organizations, and representatives from state agencies. Yet despite producing a brief with our policy proposals,⁵⁴ ensuring senators received copies of these, developing relations with Indigenous senator Luis Evelis to help champion our proposal,

⁵⁴ Entitled “Indigenous and Black Peoples’ political proposal for addressing mining in Colombia” (“Propuesta Política de los Pueblos Indígenas y Negros frente a la minería en Colombia: Discusión frente al Plan Nacional de Desarrollo”), the document summarized our concerns with the lack of effective consultation around the plan; analysed the substance of the plan, and put forth some of our biggest concerns related to mining; and summarizing concretely our policy proposals.

and workshopping it, our efforts were far too late in the game. The NDP was tabled without reference to ancestral mining or the need for Mining Code reform; and indeed the Santos government blocked the topic of mining from being considered at all in ‘consultations’ around the NDP.

This experience drove home the importance of building stronger local-national level alliances, and more sustained work to push for legal and policy change nationally. Intervening at the national level is an enormous challenge given the already over-saturated workload at the local level.

“[The march was] a concrete struggle... to look at how mining is being practiced irresponsibly, illegally and unconstitutionally, as we say; it is eliminating us as a people. Because as we said when we started to march, we didn’t start marching because we are Black women; we marched because we give birth to life, and we are interested in giving birth to a clean life, we are interested in a healthy life, we are interested in continuing to live as a Black Community. And mining that is illegal and unconstitutional is mining that kills us as a people.”

—Black activist Sofia Moreno, Palenke Alto Cauca, inter-ethnic workshop, Cauca, October 2016

4.2.2 Point of Friction #2: Invasion of ancestral territories by illegal armed miners in Cauca: Black Women’s March November-December 2014, negotiations and fallout

By November 2014, as we were launching our project, land invasions in Northern Cauca by criminal actors operating bulldozers for medium-scale mining/money laundering grew to such an extent, it sparked a quickly organized historic women’s march to Bogota. The specific spark for the action was the presence of over 12 bulldozers operating in the Black Community Council of La Toma, municipality of Suárez, a well-organized community council that in 2010 had won a precedent-setting Constitutional Court Decision (T-1045A), largely as an outcome of Phase I of this project. T-1045A protected La Toma’s ancestral lands from concessions issued to third parties, suspending all mining activities by third parties until appropriate consultation and consent processes take place. Yet mining was taking place illegally in La Toma, especially in the much-valued Ovejas River, wreaking environmental and social havoc.

Because of the lack of action leading to results from approaching agencies such as Defensoria and OACNUDH, the women of Northern Cauca decided to march to Bogota to force action at the highest levels. Setting out on November 17, 2014 from La Toma, Suárez a total of 80 Black women, accompanied by 50 members of the Guardia Cimarrona—the autonomous,



guard established by the Black Communities that was gaining popularity and membership from activist Black youth—participated in what they called the “*Movilización por el cuidado de la vida y los territorios ancestrales*,” the action for the care of life and ancestral territories.

This historic march, subsequent occupation of the Ministry of Interior and resulting negotiations are described at length in Year 1’s Synthesis Report. While the march was not a pre-planned activity of our project, the project clearly facilitated some of the spaces where this march was planned, and later debriefed. We also supported an important women’s gathering in November 2016, marking two years since the march (See Annex 3 for the declaration that emerged from this gathering)

Despite these historic efforts, implementation of the agreements made at the highest levels remains elusive; and leaders returning to their homelands after the march faced increased threats. However, there were some important gains, as women who took part in this march later noted in an inter-ethnic exchange in Cauca, October 2016. These included raising awareness of the realities nationally and internationally, and consolidating and growing networks. But also, young women marchers became more empowered and gained more confidence at speaking out, while members of the Guardia Cimarrona grew more motivated and proud, and have continued to strengthen

their ranks and capacities at territorial defense. Nationally, the march was applauded as a cutting-edge, courageous action to defend human rights. One of the most vocal women leaders, Francia Marquez, received a prestigious national human rights defender’s prize in recognition of the action’s importance.⁵⁵

Yet the situation of lands invasion by criminal miners remains urgent in Cauca, compounding the various other territorial pressures and rights violations ethnic communities are suffering from agribusiness and hydroelectric schemes, among other projects. The State’s inertia and lack of political will to implement several sets of agreements made with communities to address territorial conflicts, including those around criminal mining, has spurred further political protest and marches in Northern Cauca, with undue force exhibited by the State’s special riot police (ESMAD) in the most recent wave of protests taking place in January 2017, as this project closes.

4.2.3 Point of Friction #3: ‘Gobierno Propio’ versus State Formalization of Ancestral Mining

Both the Resguardo’s Cabildo and the Palenke Alto Cauca call for full respect for FPIC and aspire to obtain State recognition of Indigenous and Afro-Descendant ancestral mining as legitimate and legal; where the State recognizes also the role of Traditional

⁵⁵<http://www.semana.com/nacion/articulo/el-poder-de-las-razas-afro-francia-marquez-amenazada-en-cauca/478260>.

Authorities in establishing and enforcing the regulations governing ancestral mining within ancestral territories. These aspirations are also in keeping with international human rights instruments that recognize Indigenous autonomy and self-government over ancestral territories, and the resources integral to these. Yet they are not without controversy, particularly in light of State efforts at formalizing mining considered ‘illegal’ or ‘informal’. This sub-section briefly outlines Resguardo and Palenke efforts at organizational strengthening and self-government on these issues which in many respects are the ‘backbone’ of the project, followed by a description of their interactions with the State around formalization.

Resguardo – Internal regulations and organizational strengthening

In the Resguardo, the Cabildo has made much progress in terms of internal resolutions establishing regulations for mining; organizing its miners through a mining association (ASOMICARS); and implementing Cabildo rules and regulations with the support of the *Guardia Indígena*. Indeed, this project has enabled further strengthening of these regulations and the mechanisms to implement them, through consultation with experts including representatives of the state.⁵⁶ From 2014-2017, the Cabildo complemented its

⁵⁶ During Phase I of this project, the Resguardo established the following regulations: “Resolution 031 (17 July 2011) Regulating the artisanal ancestral mining within the territory of the Resguardo In-

existing regulations by drafting and debating its Resolution, “Regulating environmental aspects of the ancestral territory of the Resguardo Indígena Cañamomo Lomaprieta (Riosucio and Supía, Caldas).”⁵⁷

In addition, the Cabildo continued efforts to strengthen ASOMICARS, the Resguardo’s ancestral miners’ association. The Cabildo has worked arduously at enforcing its rules and regulations in the Resguardo’s ancestral mines, a task that has stirred up external actors with interests in Resguardo gold. It has led to multiple threats to the lives of Resguardo leaders, culminating in the assassination April 7, 2015 of Indigenous leader

dígena Cañamomo Lomaprieta; Resolution 048 (29 May 2012) Establishing and Regulating the self-governed protocols of consultation and free, prior and informed consent of the Resguardo Indígena Cañamomo Lomaprieta; Resolution 046 (13 March 2012) Declaring the territory of the Resguardo Indígena Cañamomo Lomaprieta an exclusion zone for medium and large-scale mining; and Resolution 047 (13 March 2012) Delimiting the Zones for Artisanal Ancestral Mining in the Territory of the Resguardo Indígena Cañamomo Lomaprieta, Jurisdiction of the Municipalities of Riosucio and Supía, Caldas.

⁵⁷ Among other things, this resolution establishes that the Cabildo is the maximum environmental authority of the Resguardo’s territory in conformity with national, international and self-government legal frameworks; determines the management, administration, planning and use of the natural resources in the Resguardo’s territory in conformity with customary use; and sets out the scope and reach of the resolution, which applies to renewable and non-renewable resources of the Resguardo and is obligatory for community members and individuals that remain permanently or temporarily within the Resguardo. The Resolution covers rights to and management of water, solid waste, agriculture and mining, outlines the management bodies in charge of monitoring implementation, and includes sanctions for infringement of these regulations.

Fernando Salazar Calvo.⁵⁸ Yet the Cabildo continues enforcing its rules and strengthening its ancestral mining association, now instituting also monthly meetings for each of its mining zones, where environmental committees have been established to engage in communal projects geared towards environmental protection. It has also linked with the Ministry of Mines and Corpocaldas, state agencies that have provided training on occupational health. There is a budding alliance with the University of Cordoba (Spain), with experts examining the feasibility of innovations to mitigate select environmental impacts. As well, the Cabildo engaged in a census to track its members involved in mining, and generate better understand of how many families benefit from this activity.⁵⁹ There is also a careful coordination with the Indigenous mayor of Riosucio, and now also of Supía (the two municipalities the Resguardo overlaps with), who support Indigenous self-regulation efforts; and ongoing relations with the national police, who support the Cabildo’s enforcement of their rules and are present for mine closures, when summoned by the Cabildo.

⁵⁸ On April 7, 2016, at the one year date of Fernando’s assassination, the Cabildo issued Resolution 009, “By which is honoured the memory of Fernando Salazar Calvo, leader and defender of collective and territorial rights of the Indigenous community.”

⁵⁹ RICL (2017) contains detailed information on the census outcomes. Among other figures, the 2015 census revealed that in the municipality of Supía there were 11 alluvial mines, with 38 workers, benefitting some 221 people; in the municipality of Riosucio, there were some 53 mines (minas de filón), with 264 workers, benefitting some 1502 people.

Despite these rigorous efforts to manage and control the impacts of ancestral mining, and despite recognition of Cabildo authority at the municipal level, the Mining Agency’s efforts to crack down on ‘informal’ and criminal mining and to force these into State formalization schemes in order to be ‘legal’ has led to heated debate within the Resguardo, spawning internal conflict.

Indeed, the effect of the State’s continued crack-down on illegal mining, which in 2015 included the issuing of a Decree making it extremely difficult to commercialize gold without a title,⁶⁰ combined with the effect of its continued issuing of concessions and licenses despite awareness that these overlapped with Resguardo lands, produced a lethal concoction of internal defiance to Cabildo Authority and ultimately, violence. A handful of miners have opted to defy Cabildo rules and regulations, and take-up instead state-sanctioned titling processes, requesting from the National Mining Agency individual titles on collective lands. One went so far as to renounce his **indigenous** identity as a means to avoid compliance with Cabildo rules. The situation turned violent when the Cabildo and Guardia Indígena attempted to enforce the closure of one of these mines for lack of compliance with both Indigenous (but

⁶⁰ Decree 0276, 17 February 2015, “Por el cual se adoptan medidas relacionadas con el registro unico de comercializadores - RUCOM.” (By which measures are adopted related to a single registration of commercializers – RUCOM.)



also state) rules.⁶¹ The mine owner pointed a gun at the Cabildo Gobernador during the attempted mine closure, threatening him. This violent act is the result of the state's lack of recognition of the Resguardo's territorial rights and ongoing issuing of individual concessions on collectively held territory, and criminalization of ancestral mining. Failures to uphold Indigenous rights that in turn feed the aspiration of these individual '*mineros rebeldes*' as Fernando Salazar used to call them, to sell their mines to multinational companies.

⁶¹ The mine was fully operational, even though its owners had only requested a concession not been issued one, and the mine had not undergone the required consultation process prior to operations, or received the required environmental license, if operating under state rules.

These internal divisions, fragmentation of social cohesion and violence point to an urgent need to obtain more 'formal' clarification of the Resguardo's territorial rights, and recognition of the Cabildo's authority over mining within the Resguardo. Internally, the Cabildo has worked hard to maintain unity with members of ASOMICARS, holding a key assembly in April 2016 at Gavia—the most densely mined area of the Resguardo where the violent threat had taken place – that resulted in "a reaffirmation of unity between the miners and the Cabildo to counter the intentions of large multinationals and individual businesspeople", and a reinforced mandate to hold up self-government as the alternative to state

envisioned possibilities around formalization. Politically⁶², it has attempted to address the disconnect between State options for formalization and Resguardo regulation through meetings with mining agency representatives at the highest levels, which to date have failed to find resolution to the legal quagmire. Legally, however, as this project closes, much-needed formal clarification has recently been obtained through a precedent-setting Constitutional Court Decision (T-530/16)— another outcome of this project published January 2017, described briefly below in the section on legal support.

⁶² RICL (2017).

BOX 3:

An 'island' in a shark-infested sea of mining interests

As the Resguardo's final narrative report states: "The territory of the Resguardo Indígena Cañamomo Lomapieta, is like an island in a surrounding filled with sharks." There are mining companies everywhere undertaking exploration and exploitation without due process, some with manifest interests in the gold in Resguardo territory.

The significant mining interests within Resguardo lands have recently been clarified through Constitutional Court Decision T-530/16 made public as this report goes to press. Documents submitted by the National Mining Agency (ANM) indicate there are a total of 20 mining titles that overlap with Resguardo lands. Yet the Ministry of Interior registered only 3 concession holders who had requested certificates for the presence of Indigenous communities with a view to eventual consultation processes. "The upshot," according to the Court decision, "is that the ANM has understood that the road is free for issuing concessions within the territory claimed by the embera –chami, kumba and afrodescendant communities, and that private individuals have been able to undertake mining activities without consulting the communities" (paragraph 116, Decision T-530/16).

Documents submitted to the court revealed that **Anglo-Gold Ashanti** ceded its mining concession overlapping with Resguardo territory to Canadian company **Seafield SA** in June 2010, a transaction registered with the national mining registry November 7, 2012. As previous documents and testimony to the Court have highlighted, flyover prospecting commissioned by AGA in 2008 (undertaken by Canadian Company **Colombia Goldfields**) without consent of the Traditional Authorities, had significant impacts on the 32 communities in the Resguardo, which AGA dismisses in its letter to the Court.

For their part, Seafield's Colombian subsidiary, **Minera Seafield S.A.S**, told the Court that in 2013 it had tried to meet with the Indigenous Authorities several times to initiate prior consultation in order to use their mining title. On July 23, 2014 the mining company renounced its concession at the ANM, which was accepted by the agency in a resolution dated March 2015 terminating its contract.²

Mining company **Exploraciones Northern Colombia S.A.** submitted to the Court documents showing that their mining concession had at one point overlapped with claimed Resguardo territory, but that the company asked the ANM for a partial reduction of its concession to avoid this. It should be noted that Exploraciones Northern Colombia SA is directly affiliated with Anglo-Gold Ashanti, with AGA appearing on its letterhead.

Sociedad Inversiones Villamora S.A.S affirmed they were not obligated to undertake prior consultation as the Resguardo was not delimited, while other companies contacted by the Court did not submit documents, with the Court concluding that the titles of the following companies must still be valid: Delta Gres S.A. and the **Exploradora La Esperanza S.A.**, the latter which operates in the ancestral mines of Gavia.

In short, the 'sharks' have indeed entered Resguardo waters, to extend the metaphor made in the resguardo's narrative report. While the court case has provided much needed information on which companies have interests in the Resguardo's resources, this information, together with the information on what is taking place in neighbouring communities recounted in the Resguardo's internal final narrative report, makes evident that the pressure is regional in scope. Not enough attention has been paid to cumulative effects of these projects, or to the fact that companies operating just outside of Resguardo territories, as in the case of AGA-affiliated Exploraciones Northern Colombia SA, have direct effects both on the territorial and cultural integrity of the people in the Resguardo, which should also trigger FPIC processes even if they are located just outside territorial boundaries. Canadian companies are particularly active in the region, and apparent linkages between some of the smaller operators and Anglo-Gold Ashanti generate fears that the area may be the subject of a regional 'La Colosa' (one of the largest gold mining projects proposed for Colombia (Tolima Department), and indeed globally), as the resguardo narrative reports.

Notes:

¹ In the neighbouring municipality of Marmato, for example, Canadian Company Gran Colombia is undertaking mining; in Quinchia (Department of Risaralda), five other Canadian companies have interests: Tolima Gold, Batero Gold, Seafield Resources, Antioquia Gold and Miranda Gold. Of these, Seafield, Antioquia and Miranda also have had interests in the Resguardo, according to Cabildo interactions with these companies, which as previous reports documented, were far from respectful of Indigenous rights. See Weitzner (2012).

² Importantly, Seafield Resources and its subsidiary Minera Seafield SAS have been the subject of enormous controversy and protests in neighbouring Quinchia, on account of its Dosquebradas and Miraflores mining projects. Affected Embera communities made national headlines with widespread protests against the increased violence and violation of rights they have encountered as a consequence of Seafields' activities. Importantly, in September 2014 Seafield announced receivership and bankruptcy in the province of Ontario, and filed for Creditor Protection for its Colombian subsidiary (<http://sffresources.com/>). As of May 2016, Minera Seafield SAS is now a wholly owned subsidiary of Australian company Metminco Ltd. (<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=327534376>).



“ENTRE LA ESPERANZA Y LA ANGUSTIA”,
BETWEEN HOPE AND DESPAIR

“I’m scared of getting pregnant for fear that my son will be born with some type of problem, or some malformation. I’ve heard it rumoured that a university conducted some studies and found out that the river contains cyanide. There, in that river, I have bathed, I have washed clothes, and not long ago we even have community gatherings using water from that river. Knowing that this could happen to my child gives me anxiety.”

—Palenke woman, Cauca
(in PAC 2017)

Cauca – Internal Regulations and Organizational Strengthening

In Cauca, the challenges are of a different league. The number one priority for Community Councils is addressing criminal mining that takes place mostly with bulldozers and the use of mercury and cyanide, and its effects. Key actions in this regard are attempting to stop criminal mining, and seeking redress for its impacts; obtaining security measures for threatened leaders; and strengthening the *Guardia Cimarrona*, who are the front line for territorial defense of ancestral territories. Yet given the importance of ancestral mining as an integral livelihood activity for a majority of Black people in Northern Cauca—and in light of the onslaught and invasion of

criminal mining—ensuring State protection for ancestral mining is of fundamental importance. Indeed, given the continued invasion of ancestral lands by criminal miners, with Cauca remaining a hot spot of armed conflict, there was little opportunity to make significant progress on internal regulations beyond those related to FPIC. Work on developing internal mining regulations was slow. In the words of the Palenke’s coordinator for this project:

“Mining regulations in our territories need to be developed with utmost prudence, in such a way that the process mitigates the high risks it could bring about. Despite the current landscape described, there are men and women ready to keep advancing in the consolidation of our own mining rules to enable... the survival of communities, with the understanding that mining needs to be undertaken in a way that is controlled, environmentally sustainable, economically competitive, but above all, in a way that does not threaten life (‘que no atente contra la vida’)” (PAC 2017).

Importantly, however, the Palenke continued gathering local history of the Community Councils, and testimony of the impacts of projects on the lives and territories of the people in Northern Cauca, which will support exercises towards territorial defense, organizational strengthening and drafting of internal regulations. This research has shed light on the devastating impacts of mining on the social fabric of communities, and particularly on women.

Interactions with the State on Formalization

Efforts at dialogue on ancestral mining and formalisation with senior bureaucrats have been far from fruitful, constrained as they are by the realities of the current national mining normative framework. Indeed, pressure intensifies for the Resguardo and Black communities to conform with State formalization schemes, particularly in light of recent catastrophes, such as the April 30th burying alive of 17-40 miners in the criminal mine of San Antonio, Cauca; and the May 2015 death of 15 miners trapped in ‘El Playon’, a mine close to the Resguardo Indígena Cañamomo Lomapieta, that flooded on May 19.⁶³ Yet, as described in more detail in our Synthesis Report from Year 1, analysts have concluded that to date State formalization programmes have been far from successful.⁶⁴ The new 2013 National Formalization policy represents “a promising turning point” in the Colombian government’s approach, according to renowned mining

⁶³ See Lydersen and Cardona-Maguigad (2015).

⁶⁴ Becerra (2013) states: “In sum... Colombia has been a country expansive in issuing norms, most of which are extemporaneous or mistimed, but **the most severe problem is the little efficiency in their application, that has later translated in poor results in the final analysis.** This situation is compounded by the weakness of the authorities in charge of their execution, the distance of the central authority from the territories, the existence of extremely complicated realities that are sought to be changed from a distance and not just a few cases of corruption among authorities in charge of enforcing the norms.” (emphasis added). See also Echavarría (2014).

specialist Cristina Echavarría.⁶⁵ Yet while promising, how this approach pans out in practice is a key question.⁶⁶

⁶⁵ Echavarría writes: “It [the 2013 National Formalization Policy] aims to achieve 40 per cent formalization of ASM by 2019, and full formalization by 2032. It is based on the premise that working under legal title is the foundation for any successful formalization process; therefore providing miners with a legal basis for working is the first priority. It also establishes grades of formalization to enable miners to progressively comply with technical, environmental, economic, tax, social and labour requirements. **Addressing the formalization of ASM as a process – of which obtaining legal title is only the first step – is significant progress for government policy**” (2014: 48, emphasis added).

⁶⁶ One investigative report raises the following questions: “In 2013, the government of President Juan Manuel Santos launched a formalization process intended to provide training and improve conditions and worker benefits for informal miners. The plan looks promising on paper. However, it raises a host of thorny questions. Who should be allowed to mine where, given conflicting ancestral and legal claims to land and the minerals therein? How will the plan deal with mining operations controlled by or profiting armed groups, considering that these mines also

While project teams interacted with State officials on these issues at high level bilateral meetings, but also at regional round tables, we also invited representatives of the national mining agency to an inter-ethnic workshop in the Resguardo February 2016, to outline state policy on formalization, and clarify questions and concerns related to the state’s normative framework with regards to mining and ethnic rights. The discussions highlighted the disconnect that exists between Colombia’s mining law and constitutional and international ethnic rights (see Box 4). In short, the discussion with state representatives provided more motivation and evidence of the urgent need to work towards re-opening the national debate on reform of the mining code

often employ local people? And can the government truly muster the resources or political will to improve environmental practices and safety in informal mines...?” (Lydersen and Cardona-Maguigad 2015).

so that it includes a chapter recognizing ancestral mining and ethnic rights, given that current ‘formalization’ options fail to guarantee these rights, and in fact make communities more vulnerable to outside mining interests and pressure to open up their lands; and to obtain further clarification through the courts. Indeed, in this context of inefficient State formalization programmes—and if the ultimate goal is environmental and social protections, as well as royalties—then there is a strong argument that Indigenous and Afro-Descendant control over mining in ancestral territories might well be far more effective, as well as in line with ethnic rights.⁶⁷

⁶⁷ Aside from self-government, participating communities also became better informed about possibilities of certification through the Alliance for Responsible Mining (ARM), and were excited at the prospects of Switzerland’s pilot project “Better

BOX 4:

Interactions with mining agency representatives on state formalization Inter-ethnic workshop, hosted by Resguardo Indígena Cañamomo Lomapieta (February 2016)

In their presentation on current mining policy, mining agency representatives insisted that prior consultation did not need to take place prior to issuing concessions or during exploration, but only when a project moves into potential exploitation; that land rights had first to be officially recognized and registered within the cadastre system, for ethnic rights to be upheld; and highlighted that despite the Resguardo’s colonial title, its territory does not show up in state databases, accounting for the many concessions issued that overlap with the Resguardo. These stances violate ethnic rights established in Colombia’s Constitution (which enshrines ILO Convention 169), as well as its international commitments (CERD, American Convention, UNDRIP) and related international jurisprudence.

Discussions around the State’s mining formalization options and programmes revealed that none currently available would protect Indigenous and Afro-Descendant rights to determine where and how mining takes place on their lands. Mining agency representatives acknowledged and pointed out the failure of state formalization programmes in the past. In the words of one representative: “It must be said that all of these [formalization] processes have not been favourable in that...the rules of the game kept changing and that hindered clarity in how to undertake the processes.” Nonetheless, state representatives extolled the virtues of the new programme, insisting that communities allow state consultants to enter into the communities to undertake characterization programmes of the ‘state of mining’ and minerals.



Yet Resguardo representatives noted that none of the options presented could work for its current situation: a) The ‘zona minera’ does not work, as it invokes the right of ‘prelación’ (preference), which means Indigenous peoples must mine according to state regulations or risk losing this zone to others; b) the ‘area de reserva especial’ (special mining reserve) does not work, as titles have already been issued that overlap with where ancestral miners do their work, preventing such a reserve from being declared; and c) the third option of subcontracting with mining titleholders on their own lands—titleholders that violated rights to consultation and consent and undermined indigenous authority and self-government in the first place—is an affront, and places Indigenous miners in a precarious position, answering potentially to multinationals rather than their own authorities.

Participants concluded about the dialogue with mining agency representatives that:

- There is a total disregard for ethnic rights in the national mining law and the bureaucracy upholding it.
- There is non-recognition of the plurilegal landscape in Colombia, and the fact that Traditional Authorities are the environmental and mining authorities within their own territories, according to self-government, but also constitutional and international law. Instead, the Mining Agency assumes it is the only authority for regulating mining.
- Through decrees and policies that have not been subject to FPIC, the state is attempting to force unilaterally its reform of the national mining code, despite the constitutional court’s orders that overturned the state’s proposed reform in 2010 for failing to uphold FPIC. “Seguimos comiendo carnada a poquito”, we continue eating this bait little by little, one leader noted. “It is important to have a united front so that the National Mining Agency does not end up passing on to us the Code without our FPIC.”
- Communities should prohibit representatives and their consultants from ‘characterizing’ the state of mining and minerals and metals within ancestral lands, as this policy and these studies have not undergone FPIC and could result in detrimental speculation. This in fact has been the position of communities in Palenke Alto Cauca, and also in the Resguardo.

4.2.4 Point of Friction #4: Threats, Violence and Impunity

While northern Cauca became a hotspot for active armed combat and the invasion of criminal mining, the Resguardo Indígena Cañamomo Lomapieta is also living in a landscape of conflict. Indeed, a November 2014 report issued by Colombia’s Ombudsperson’s early warning system outlined the various illegal armed groups present in the area, and the threats to Indigenous and social leaders.⁶⁸ The report describes in detail the links between illegal armed actors and escalation of armed conflict in relation to mining in the area, where tactics range from extortion of miners and select killings, to investments in new

mines, and attempts by armed actors to have local people seek title over mines the armed actors control.⁶⁹ The report describes threats to leaders involved in territorial defense, and in the case of the Resguardo Cañamomo Lomapieta, specifically those

⁶⁹ This in the case of the Resguardo Nuestra Señora Candelaria de la Montaña, where the SAT report describes how an illegal armed group associated with the ‘demobilization’ of the AUC was attempting to gain control over a gold mining operation by obtaining a traditional mining title. When authorities became aware of the situation and undertook investigation, the mining title process was not allowed to proceed, and the mayor was ordered to close the mine. However, the illegal armed group has not let authorities near the operations, which they continue to mine; and the families living in the area have been forcefully displaced.

involved in enforcing Cabildo authority over mining.⁷⁰

Throughout the project, several participating Afro-Descendant and Indigenous leaders received death threats. In Cauca, Francia Marquez had to leave her home and territory after participating in the women’s march to Bogota, on account of increasing numbers of death threats to her and her children. Yet several other women were threatened following the march, as were Afro-

⁷⁰ The current Gobernador Carlos Eduardo Gomez, and the former governor and coordinator of mining issues, Hector Jaime Vinasco; as well as David Abel Jaramillo, the Indigenous Mayor of Rio-sucio until October 2015, whose National Protection Unit’s scheme ‘ran out’ or was called off in 2013 (the scheme had been ordered by the Inter-American Court on Human Rights in 2009).

⁶⁸ Defensoria-SAT (2014).

Descendent male leaders who are part of the Palenke-PCN process.

And in Caldas, almost as if the November 2014 Ombudsperson Early Warning System Report were a harbinger, on April 7, 2015, Fernando Salazar Calvo, one of the Resguardo's most active Indigenous leaders involved with enforcing Cabildo law over mining, was assassinated. Several ASOMICARS members were subsequently singled out in death threats, as well as members of the Cabildo. Currently, Héctor Jaime Vinasco, project coordinator for Caldas and former Governor, remains almost house bound following threats to his life.

Yet the State's responses to these threats have been far from adequate. Fernando Salazar's death remains in impunity despite national and international efforts and letter-writing campaigns calling for high-level investigations.⁷¹ His death now is another one that contributes to the 98% impunity rate that exists in Colombia for assassinations involving Indigenous leaders.⁷² And State investigations into the very personalized death threat against Héctor Jaime Vinasco made December 2016 have failed to review key evidence, with requests for increased resources for protection personnel denied (he is already the beneficiary of precautionary measures, yet needs increased protection). Meanwhile other Indigenous and Afro-descendant leaders threatened have received State-issued cell phones and bullet-proof vests, with the cell phones breaking or running out of minutes very quickly, and leaders resisting wearing the bullet proof vests as these are extremely heavy and hot, and single out vulnerable leaders even more. Of the women who marched to Bogota from Cauca, only Francia Marquez was afforded a full protection scheme;

⁷¹ See, for example, a Press Release and links to several reports and relevant letters at: <http://www.forestpeoples.org/topics/legal-human-rights/news/2015/04/press-release-indigenous-controlled-mining-under-fire-colombia>

⁷² ONIC (2014).

“Consent is a right held by the Black People of Northern Cauca, and it is the purpose and end goal of consultation. The decision of the Community Councils does not come to an end through the process of consultation. The Black People of Northern Cauca will define their decisions autonomously, and consent can be negative or positive with regards to the intervention of third parties on Black territories, that affect their social, cultural, economic and political life.

The cultural and economic objection to projects, activities and administrative and legislative measures, comprises a criterion to determine or not consent with regards to the intervention of third parties.”

—FPIC protocol, Palenke Alto Cauca-PCN

and even then, it does not cover basic security needs⁷³. In short, there is urgency in ensuring that investigations are far more rigorous, and in reviewing and boosting the types of security measures offered by the UNP, including its budgets.

But more importantly, the emphasis in both the Resguardo and the Palenke is to continue strengthening their own non-violent,

⁷³ This is the case of La Toma activist, Francia Marquez. Bodyguards are not providing 24-hour protection. As well, there is a minimum allotment of vehicle fuel for Francia to be able to be driven around in the gas-guzzling SUV she was furnished with (Pers. Comm., January 2015).

self-protection schemes including through the Guardia Indígena in the Resguardo, and the Guardia Cimarrona in the Palenke; and also training their own bodyguards.

4.2.5 Point of Friction #5: ‘Consulta Previa’ and Free, Prior and Informed Consent

State rules around consultation were weakened significantly in 2014-15 through unilateral decrees around ‘express environmental licenses’ that significantly shortened timeframes for approval, and with it possibilities for meaningful prior consultation. And in 2016, the State published unilaterally developed draft regulations for prior consultation that stoops way below the minimum standards embraced in UNDRIP. In short, State discourse hinges on ‘consulta previa’ rather than the fundamental right to free, prior and informed consent. Despite this regressive national context described earlier in more detail, both the Palenke and the Resguardo continued efforts to strengthen their understanding of their fundamental rights to prior consultation and free, prior and informed consent, and further appropriation of their FPIC protocols.⁷⁴

In the case of the Palenke, there was also a focus on discussing further and adapting the community FPIC protocol developed in Phase I of this project to a broader number of community councils who have now “adopted [the protocol] as their own, declaring it a basic tool for addressing consultation processes”.⁷⁵ This protocol is seen

⁷⁴ Both engaged in a series of workshops around this topic, examining national and international instruments and jurisprudence, as well as their own definitions and concepts of consultation and consent.

⁷⁵ PAC (2017). In Phase I of this project, the Resguardo developed its own proto-



as the key mechanism for territorial defense, the means to exercise the rights “to continue being and existing in the territories.” Indeed, the significance of the protocol as a tool to achieve *buen vivir*, community aspirations of living well, is underscored in the Palenke’s final project narrative like this:

“...the ‘why’ of the protocol finds its answer in the desperate and almost agonizing call that the community makes to be able to guarantee the bare minimum for its existence. The ‘for what?’ is nothing more than to resist the prognosis of disappearance.

The Consultation and Consent Protocol is life, it is to enable life, and it is for life. It is, as one community member said “the carta magna of the community... it is the sense of community [‘el sentido de comunidad’],” built from the grassroots in meetings, conversation groups, gatherings and workshops.⁷⁶

Yet while progress has been made, and the protocol is very well received as an important mechanism to safeguard natural resources, and territorial, cultural, economic and social rights especially with regards to external actors, challenges surface when considering projects involving, or championed by, community members. In these cases, interested community representatives note this mechanism becomes an obstacle. Members of the Palenke

col for consultation and consent, which it formalized through Resolution 048 of 29 May 2012). And in the case of the Palenke, a joint Suárez-Buenos Aires protocol was developed, spurred by the Community Council of La Toma. One objective for Phase II was to deepen the conversation of the first protocol developed, and to adapt it to all communities in the municipalities of Puerto Tejada, Padilla, Caloto, Santander de Quilichao, Guachené, Miranda and Villa Rica.

⁷⁶ PAC (2017), emphasis added.

and the project team consider this ‘anti-protocol’ posture to be the result of ‘bad faith’ strategies by outside interests to coopt and buy community members, who then resist internal regulations. This in turn undermines community organization, generates mistrust, and increases risks of victimization of those community members who vocally favour implementing the principles in the community protocol. Indeed, the Palenke’s final narrative report underscores the urgent need to continue raising community members’ knowledge of FPIC and the instruments that uphold this right, because “our weakness is that not all people in the communities know about Law 70, consultation, and consent even less; some don’t even know that they live in a territory that has as its own administrative unit that is a considered an authority;”⁷⁷ and the importance of uptake of this protocol in all regions where ethnic communities exist. Yet the key challenge remains implementing the protocol in practice in light of the landscape of conflict.

Further, ongoing capacity strengthening around rights to FPIC is particularly important in light of the strong state discourse that limits this fundamental right to ‘consulta previa.’ In the view of State officials, the objective of consultation is to mitigate impacts, and not to feed into decision-making regarding whether a project goes ahead or not; and if it does, on what conditions.⁷⁸ Indeed, consent is simply not a part of state discourse, despite Colombia’s having approved the UN Declaration on the Rights of Indigenous Peoples; being a signatory to the Convention for the Elimination of Racial Discrimination; and being a signatory to the

⁷⁷ PAC (2017).

⁷⁸ Interview with Director of Consulta Previa, June 2015.

American Convention.⁷⁹ Officials conflate FPIC with rights to veto, arguing vehemently that indigenous communities do not have this right, particularly in relation to minerals resources, which, they argue, are owned by the state. All discussions are limited to the ‘bloque de constitucionalidad’, the rights entrenched in the Constitution, including ILO 169, which State officials interpret narrowly, rather than as embracing FPIC.

Countering State discourse and its constrained and erroneous interpretation of FPIC as simply a right to veto—when it goes far beyond such a concept—is an ongoing challenge. Cabildo and Palenke authorities struggle with moving away from the state-centric rhetoric of ‘consulta previa’ to embrace FPIC; and to begin looking beyond ILO Convention 169, to embrace other international instruments and jurisprudence that clarifies rights to consent, instruments ratified or approved by Colombia. While inroads are being made, capacity strengthening in this regard is an ongoing need.

One key issue that has surfaced throughout this project is whether communities have the right to reject a consultation being initiated by the State if they do not agree with the project that is being proposed from the get-go. Such a position—that communities need to give their consent to be consulted—is one that Anaya espouses in his thematic report on extractives.⁸⁰ And it is one

⁷⁹ As mentioned above, the ‘ABC’ de consulta, the guidelines the State unilaterally established to go along with its Presidential decree 01, refer to consent only in three cases, not as a general rule for extractives activities, which should be the ‘general rule’ or norm according to Anaya (2013) and international jurisprudence.

⁸⁰ “States should not insist, or allow

that aligns with growing debate in the Palenke and Resguardo.

⁸¹ Moving this position forward in

companies to insist, that indigenous peoples engage in consultations about proposed extractive projects to which they have clearly expressed opposition. As is now well understood, States have the obligation to consult with indigenous peoples about decisions that affect them, including decisions about extractive projects. In complying with this obligation States are required to make available to indigenous peoples adequate consultation procedures that comply with international standards and to reasonable encourage indigenous peoples to engage in the procedures (See paras. 58-71 below). **In the view of the Special Rapporteur, however, when States make such efforts to consult about projects and, for their part, the indigenous peoples concerned unambiguously oppose the proposed projects and decline to engage in consultations, as has happened in several countries, the States' obligation to consult is discharged.**" (emphasis added). (Anaya 2013: para 25).

⁸¹ In an internal project narrative from the Palenke Alto Cauca (June 2015), Marlin Mancilla, the Palenke's Year 1 project coordinator, makes the following obser-

policy (at all levels) and practice is now a challenge.

Finally, joint analysis in both cases leads to the conclusion that to date consultations have been far from aligned with best practice or good faith negotiations (see Box 5). Indeed, community discussions lead to the conclusion that in practice, this officially

vation: "I insist that we remain stuck in the framework of consultation, and where I think us communities should reverse the order of things due to the negative experience with consultation processes; and propose that first consent take place including as a measure to be able to say no to consultation if we consider that this process will be detrimental for our internal processes. As well, while the topic of consent goes through the awareness of politicized groups, it does not necessarily trickle down to the grassroots. My hypothesis derives from the fact that in many cases the communities (at their bases) have an idea of what consultation is, but in terms of a right such as consent there is still not very much awareness of this topic and this can be seen as a weakness in terms of access to rights."

recognized 'fundamental right' has been 'una burla', a joke, far aligned with community decision-making processes and needs for effective decision-making. Project participants concluded that more work needs to be done to strengthen and uphold community protocols on FPIC, and to ensure their implementation rather than being railroaded by the State's criteria and guidelines which fall well below national commitments and international standards.⁸²

⁸² Among the various regulations developed in this project, participants underscore that the FPIC protocols are among the hardest to implement. For example, even though the Cabildo presented their protocol formally to the Ministry of Interior in 2014, spurred by the lack of appropriate consultation processes undertaken particularly in the case of Cellphone towers (a process that went all the way up to the Constitutional Court), demanding that the protocol be fulfilled for all processes, the Ministry continues imposing its unilateral guidelines that violate Resguardo due process and self-determination.

BOX 5:

Select reflections on experiences of prior consultation and FPIC (Palenke-Resguardo Inter-ethnic workshop, February 2016)

- "The State doesn't value us as communities. They underestimate us. They speak of the 'ABC of consultation' [the guidelines of the Ministry of Interior for consultation]. They come and they give us a notepad and pen, and they tell us: 'Consultation is like this!' They tell us—even the very Director of Prior Consultation—that we don't have rights to veto! They underestimate us; they think we don't have political possibilities to claim our rights. We really feel that in those institutions there are people who really have no knowledge, they are not even interested in the subject."
- "It isn't consultation, it isn't prior, and it isn't free—it's forced. We haven't experienced prior consultation. It is post, and it isn't free. The State is far more friendly with companies than with communities."
- "Consultation is someone visiting my home. I have to open the door for that person. Or, I can speak to them from the window, or from the second floor. There are projects that seem convenient that require consultation, and others that don't require consultation, because we don't want them."
- "The Cabildo hasn't experienced a consultation process as it is conceived in the law, and how our FPIC protocol conceives it."
- "The Colombian State has recognized consultation not as something prior, but only at the moment that an environmental license is requested, or if the project is of national interest; when consultation and consent should be required before issuing the contract for concession."
- "If the State mistreats us, who are organized, in this way [in the application of FPIC], What of the other communities in Colombia who aren't organized?"



Council member Lisifrey Ararat (left) and other officials and participants in the plenary of the Palenke organized inter-ethnic workshop on mining, Santander de Quilichao, April 2015.

A key issue, clearly, is the violent political situation in which consultations are taking place. When leaders have to flee their territory because of threats to their lives for speaking up for their rights—as in the case of Francia Elena Marquez, for example, vocal leader of the Palenke Alto Cauca—they are clearly then not ‘free’ to be involved in consultations. Indeed, as we have been insisting since Phase I of this project, if consultations cannot take place freely, then this begs the question of whether projects should take place at all in these conditions; and whether moratoria—or no-go zones—should be established, and under what conditions. This issue simply has not made it into the public debate.⁸³

⁸³ Nonetheless, one important legal decision that suspended for 6 months all mining titles and activities affecting the Embera Katio People and their ancestral territory by ordering the application of a territorial precautionary measure, makes reference to the links between armed conflict and mining activity, noting the impossibility of undertaking consultations in these conditions. (“Freno a minería en territorio indígena de Chocó: Fallo suspendió hasta por 6 meses licencias y concesiones para otorgamiento de permisos mineros.” <http://www.eltiempo.com/archivo/documento/CMS-12589101>. 11 de febrero, 2013).

4.2.6 Point of Friction #6: Peace, territorial integrity and participation

Colombia’s Peace process was a crosscutting theme in this project, with multiple moments dedicated to analyzing the process and its substance, particularly as these relate to ethnic rights, with specific focus also on a gendered analysis.

Reflections and conclusions included that the armed conflict—and therefore peace—is intimately linked to the economic model, to capitalism, and to a structural analysis. One Black leader put it this way: “Peace has to do with a structural analysis. Peace has to do with territorial management, and the autonomous management of time. The issue is reconstructing the individualist imaginary. And to

use the principles of PCN⁸⁴ as a foundation for peace based on difference.” Another said: “The armed conflict in Colombia was born with the birth of capitalism here! We aren’t victims of the State! We’re victims of capitalism!” For example, illicit drug cultivation is forced on the people, or else they are treated as a ‘sapo’, a whistleblower. Another corroborated that: “Peace is not living in capitalism hungover; we have to modify it!” One leader asked: “How can we think of peace, if we don’t speak about the economic model?”

In terms of substance of the agreements between the FARC and the Santos Government, participants underscored the absence of allusions to criminal mining, pointing out the irony of its being relegated to one of the ‘exceptions’ that remained untouched in the agreement-making process when it is precisely criminal mining and resources that are sparking the most conflict and violence, and fuelling war. One leader said: “It’s a negative peace, because Black people aren’t there, and structural issues

**“Peace is not living in
capitalism hungover; we
have to modify it!**

—Afro-Descendant leader

⁸⁴ These 9 principles can be found at www.renacentes.org

“I’m thinking that this peace will be financed by mining. When I see that the state wants to ‘characterize’ [minerals and metals], it wants to legalize the illegal so that the bulldozers become legal and finance peace.”

—Leidy Mina, Black activist, PCN

are not touched. There will be an avalanche of mining with peace.” Indeed, the government’s handing out lands to multinational corporations will spark, rather than mitigate peace: “As long as they hand over more lands to multinational corporations, we cannot have any guarantees that we will live in peace,” one leader emphasized. Participants concurred that recognition of ethnic rights to consultation has been a key tool in helping to detain capitalist development: “What has not let the country ‘develop’, is consultation! We need to keep on asserting this right to survive in our territory!”

They also emphasized the lack of participation of ethnic peoples at the negotiations table:⁸⁵ “This is an agreement between the FARC and the Santos government... because we aren’t there... We kill ourselves, and others are negotiating, not taking us into account.” Several leaders called attention to the regressive nature of the Agreements for ethnic people on account of

⁸⁵ The Synthesis report for Year 1 includes several declarations and actions related to this point. See Weitzner (2015).

“The Black community lives between hope and anguish,”

—Armando Caracas, Palenke Alto Cauca

their granting campesinos the same special rights as Indigenous and Black Peoples; one Black leader expressed concern that Black people would need to rename themselves as ‘campesinos’ to be considered by some of the provisions: “We Black Communities will need to regress to become campesinos, in order to Access the rights in the agreements.” Worry was also expressed that lands that had been illegally acquired by armed actors would then be redistributed to campesinos.

“While the FARC-EP and the national government denied civil society participation in the negotiation, in this new process they are inviting us as communities to put forward a proposal of how our participation should take place, which we have not yet done. This project and these [inter-ethnic] gatherings should point to developing an inter-ethnic strategy with regards to this new process.”

—Final internal project report, PAC (2017)

“The Black community lives between hope and anguish,” one leader concluded. Despite these failures, delegations that went to Cuba—including Gabino Hernandez, the Palenke’s lawyer and member of the Cauca project team—did manage to negotiate an ethnic chapter, which participants at the workshop touted as an enormous success (see Box 2). The emphasis now, project participants agreed, was to ensure that implementation upholds the rights of ethnic peoples. For the Palenke Alto Cauca, another key issue will be participating in how the transition zones for

demobilized FARC (Zona transitoria de normalización) are established and monitored, given that one will be established in Buenos Aires, one of the most gold-rich municipalities in the Palenke, that has seen a rush of outsiders to mine its lands, and become one of the hottest spots in the armed conflict.⁸⁶

At a February 2016 inter-ethnic meeting, delegates also discussed how violence affects Indigenous, Black and other women differently, yet also the deleterious role and impacts of mining on women’s lives. These impacts will continue and deepen, especially if mining is seen as the key way to finance peace.

Analysis of the FARC-Santos government Peace Agreements was rich and wide-ranging, but as one leader cautioned, this is only the first step towards peace: “The government does not mind signing at all, because later it does not fulfil its agreements; the agreements aren’t ‘the end’. On the contrary, they are the beginning of the peace process.” Workshop participants discussed a series of strategies on how to engage in bottom-up peace-building, which placed at its centre deepening inter-ethnic alliances, including deepening exchanges between women.

Much is at stake now in trying to influence the new Ecuador conversation table with ELN, and to try to address some of the failures in the process and outcomes of the FARC-Santos government agreements, including achieving high-level ethnic participation at the table, highlighting mining as a key point of discussion, and being directly involved in monitoring of implementation.

⁸⁶ On June 24, 2016 the Ministry of National Defense announced the establishment of 23 “zonas veredales transitorias de normalizacion”, with two in Cauca: Buenos Aires and Caldono. <http://reliefweb.int/map/colombia/zonas-veredales-transitorias-de-normalizaci-n-zvtn-24-junio-2016>



4.3 Legal Support, Alliance-Building and Political Gains

4.3.1 Judicial actions for territorial defence

The territorial status and context of both the Resguardo and the Palenke are extremely complex, as well as vulnerable to state-sanctioned pressure from third parties. One of the central objectives of this inter-ethnic project was to strengthen territorial defence and protection through judicial actions adapted to the specificities of each context.

Resguardo: Tutela

Very briefly, while the Resguardo was established as a colonial Resguardo in the 1500s,⁸⁷ its boundaries are not registered in the State's information systems (IGAC/ INCODER) in their entirety, even though the Cabildo has requested this be done.⁸⁸ One of the severe consequences—compounded by State rules that violate international human rights norms around consultation and consent—is that almost the entire Resguardo has been requested in mining concessions.⁸⁹

In an effort to address these territorial threats, on July 8, 2015 the Cabildo submitted an ‘*acción de tutela*’—a constitutional writ for the protection of fundamental rights—to the court in Manizales. The tutela's aim was to obtain the protection for the fundamental rights of the Resguardo Indígena Cañamomo Lomapieta to their

⁸⁷ Herrera and Garcia (2012).

⁸⁸ The Cabildo organized meetings with both IGAC and INCODER as part of this project.

⁸⁹ Research from Phase I of of this project showed that in 2011, 44 titles had been issued formally, with 123 titles under active consideration. Despite formal requests to state agencies, it was difficult to update this information in Phase II.

“This [Constitutional Court Decision T-530/16] is an historic Decision for the Resguardo Indígena Cañamomo Lomapieta. For centuries the different leaders of the Resguardo have defended our collective rights to the land. They have sought from the institutions to resolve the problems around titling of the territory. This decision orders that the delimitation and titling of the Resguardo be resolved without delay. It's a great opportunity to resolve the problems that are generated by the ‘vacuum’ around title, in exercising authority, in applying our own justice, in thinking about our economic development, in opposing projects that affect our survival as an Indigenous People.

This decision supports the community in its rights claims. It suspends business behind the backs of the community that is taking place through mining titles, concessions, legalizations and licenses and makes clear that without consent of the community, mining cannot take place in our territory.”

—Héctor Jaime Vinasco,
Resguardo Indígena Cañamomo
Lomapieta, February 2, 2017

territory; to prior consultation and FPIC; to autonomy and self-determination; to access to information; and to ethnic, cultural, social and economic integrity, violated by the actions and omissions of State agencies (National Mining Agency; Ministry of the Interior; INCODER; and CORPOCALDAS).⁹⁰

In the first instance, the Manizales tribunal did not allow the tutela to proceed on technical grounds.⁹¹

⁹⁰ The Synthesis report for year 1 (Weitzner 2015) outlines the contents in far more detail.

⁹¹ Arguing that INCODER was the agency in charge of delimiting the Resguardo; and that the subsidiary nature of tutela

In appealing this decision, the Resguardo's lawyer submitted to the Constitutional Court a request to review the case. This request was successful, with the Court publishing on October 30, 2015 its decision to review the case. In its considerations for agreeing to review the case, the court cited that the case dealt with a fundamental right, and that it was innovative. In 2016, the project team submitted follow-up documents for the Court's consideration. These included supplemental information submitted by the Resguardo Indígena Cañamomo Lomapieta; an *amicus curiae* submitted by the Forest Peoples Programme; and interventions by Colombian legal defense NGOs REINICIAR and CAJAR (Colectivo de Abogados José Alvear Restrepo).

As this report goes to press, the Court published its precedent-setting decision T-530/16, which has already made headlines in national papers.⁹² While we are still analyzing the contents of the decision,⁹³ there is no doubt it has far-reaching impacts. Among other important outcomes, it calls for an inter-disciplinary team to delimit the Resguardo's territory with participation of the traditional authorities within 18 months of the date of the Decision; and in the meantime, it orders the

actions was not adhered to, as there are other mechanisms of recourse.

⁹² See for example, <http://www.elespectador.com/noticias/judicial/corte-ordeno-suspender-titulos-mineros-protoger-comunid-articulo-677361>; <http://www.rcnradio.com/locales/ordenan-suspender-titulos-mineros-supia-riosucio-caldas/>; <http://www.lapatria.com/caldas/canamomo-y-lo-maprieta-por-una-mineria-responsable-346067>; <https://colombiaplural.com/la-corte-constitucional-avala-la-autonomia-indigena-territorios/>

⁹³ T-530/16 recognizes the presence of the Black Community of Guamal within Resguardo lands and the territorial aspiration of some of its leaders, as well as claims made by ‘Kumba’ people inhabiting the ‘La Iberia’ community, asking that the Resguardo's delimitation process aim towards addressing these.

Resguardo's lands as presented in its map be temporarily registered in the mining cadastre until they are officially delimited; it suspends all issuing of licenses for exploitation environmental permits and mining concessions on Resguardo lands until the delimitation process is complete, after which they will be subject to consultation processes with a view to consent; and it asks for all companies with concessions within Resguardo claimed lands to socialize their projects with the Indigenous authorities, and to explain the project impacts. Important observations are also made with regards to the power of Indigenous rules and regulations over subsoil resources, with the judgement calling for coordination among the Cabildo and the state in formalizing mining within the Resguardo, and legitimizing Cabildo regulations and environmental planning. And importantly, it calls on the state not to criminalize traditional miners. More analysis needs to be done to assess these and other outcomes.

Palenke Alto Cauca: Collective Precautionary Measures

In the case of the Palenke Alto Cauca, collective title has been extremely difficult to obtain. In short, Colombia's legal framework—and specifically Law 70—fragmented Black Communities, with collective title seen largely as the purview of communities living on Colombia's Pacific coast, rather than also those established in the Inter-Andean valley. Inroads have been made, for example in the case of the Constitutional Court's Decision T-1045 A (2010)—largely an outcome of Phase I of this project—where the lands of the Black Community Council of La Toma were described as an ancestral territory. That decision also suspended mining activities in La Toma, until such time that appropriate processes of consultation leading to consent take place. Yet despite these inroads, questions remain about

what the best legal tools might be to further territorial defense in northern Cauca, particularly given the enormous complexities it currently faces not only on account of the State issuing mining concessions to third parties, but also in light of the devastating invasion of criminal mining.

Following careful consideration—including the possibility of obtaining a Constitutional Court pronouncement extending the reach of T-1045A to other Community Councils—the Palenke's lawyer argued that the most robust legal strategy was appealing to the 2011 Victim's Law for collective precautionary measures, among other tools. In the lawyer's words:

“Decree 4635 gives us the possibility to move forward so that the State fulfills its responsibility of AUTO 005 of 2009. And Law 1448, the Victim's Law. By this and other norms, we hope to obtain precautionary measures to protect the territory. The compelling proposal is to work to achieve precautionary measures for our territories, that would then pull apart all of the 'legal' and illegal plans to mine the territories” (Inter-ethnic workshop, Pilamo, June 2015).

Collective precautionary measures would in essence shield ('blindar') the territories from outside interests by putting a halt to all activities, enabling Consejos Comunitarios to establish territorial use regulations.⁹⁴

⁹⁴ The lawyer explained the importance of medidas cautelares in a workshop in Pilamo as follows: “That precautionary measure is very important. For example, once that precautionary measure is issued, none of the children of Pilamo community members would be obligated to do military service. Also, this measure allows that it is the Community Council that regulates its use by means of internal regulations of the territory. It also pulls up all the actions taking place in Pilamo so that there is a prohibition—so that Pilamo becomes a collective territory” (workshop on legal route in Pilamo, april, 2015)

Already, the Community Council of “La Toma” obtained such a collective precautionary measure on February 5, 2015. As part of this project, the Palenke's lawyer prepared and submitted similar actions for other community councils participating in the project.⁹⁵

Namely, a writ was submitted to protect the territorial rights and cultural identity of the communities represented by the Community Council of Pilamo. It went beyond the writ that led to T-1045A, in that aside from calling for protection of due process, it includes also protection for life, and for ethnic and cultural diversity. In March 2016, the judge decided in favour of the Council, giving the Unidad Especial de Restitución de Tierras Despojadas del Ministerio de Agricultura 15 days to issue the required administrative acts to prioritize and initiate the characterization of the territorial rights of this community in order to present to the judge of the special unit of land restitution headquartered in Popayan a claim for the recognition and reparation of Pilamo's territorial rights. A multidisciplinary team has been hired for the characterization, made up of a lawyer, and environmentalist, a social worker, and two community members. The work initiated late November 2016, and will last some four months.

The project is also providing legal support to the prior and informed consultation process for the collective reparation of victims of the armed conflict in the territory of the Community Council of

⁹⁵ As well as these actions, in July 2015, Renacer Negro-Timbiquí obtained a collective precautionary measure over 71,000 has. (See “Restitución devuelve su territorio a Renacer Negro, en Timbiquí.” 6 de julio de 2015. El Tiempo. <http://www.eltiempo.com/colombia/cal/restitucion-de-tierras-en-cauca/16049415>.)



Gold panner in the mining area called Gavia, Resguardo Indígena Cañamomo Lomapieta

La Cuenca del Río Cauca and Microcuenca Mazamorero. This could be a precedent-setting process in that it would be the first Collective Reparation for Black Communities in Colombia.

Finally, the Palenke has been involved in the definition of a Special Mining Zone (Zona Minera Especial) for the Community Councils in Suárez and Buenos Aires. This intervention was critical, as the Ministry of Mines initially intended on granting the ZME to the Mining Cooperative of Buenos Aires and Suárez, rather than to the Local Authorities of these ancestral lands.

In addition, the Palenke lawyer and team held workshops to follow-up on Decision T-1045A. They concluded there was indeed no need to engage in follow-up because in effect all the Court orders in this Decision have been implemented, except for one. And this order is one which the Community Councils and Palenke have decided they would rather not have implemented, namely consultation of the concession that was issued to third party Hectór de Jesús Sarría. The reason being that the concession remains suspended until such time that consultation leading to consent takes place, and community members are clear they do not want this project

going ahead, and would rather the concession remain suspended indefinitely.

There is no doubt that important judicial inroads were made from 2014-2017. Nonetheless, judicial actions take an enormous amount of energy and resources. And in the final analysis, the implementation of cutting-edge decisions relies upon the political will of the State and other implicated actors to uphold them. For this reason, while the Palenke and Resguardo place high importance on these actions, they are simultaneously progressing with other much-needed strategies, such as the ongoing strengthening of their internal governance processes, and inter-ethnic strategizing and actions.

4.3.2 Inter-Ethnic alliances and exchanges

The inter-ethnic alliances between Black and Indigenous communities forged in this project are among its most innovative aspects. There are at least three types of inter-ethnic alliances at work: the alliance between the Resguardo and the Palenke: the inter-ethnic coordination taking place within the Palenke Alto Cauca; and the inter-Resguardo cooperation taking place in Caldas.

Resguardo-Palenke Workshops and Alliance-building

Four programmed inter-ethnic workshops took place throughout the project, two per year.⁹⁶ These were extremely important moments for updating on the local, national and international contexts, and establishing priorities for joint action. But they were also critical moments for deeper relationship-building and mutual support. They are organized around critical themes identified by the teams (ranging from refining the concept of ancestral mining and its reach, to the peace process and the ethnic chapter negotiated, to joint analysis on prior consultation and FPIC, and women's participation in governance, among other topics); include site visits to diverse mining sites to inform discussions (from criminal mining, to technified mining, to ancestral mining); include a cultural component where dance and music are showcased; and sometimes include also participation at other important community events.⁹⁷ There is a

⁹⁶ Finca Madragora, Resguardo (January 2015); Pilamo, Cauca (June 2015); Finca Madragora, Resguardo (February 2016); Salvajinas (Suárez), Cauca (October, 2016).

⁹⁷ The January 2015 Resguardo workshop, for example, was followed by the formal ceremony and 'possession' of mandates by the Traditional Authorities of the Cabildo, where the Governor and his Council of Government, and each community 'cabildante' or elected representative, officially swore oath to their

concerted effort in these gatherings to include gendered analysis of the topics discussed.

Importantly, at times these inter-ethnic meetings also include invited guests and multi-partite discussion, to build capacities on key topics, or to engage in dialogue. Yet aside from these important meetings in each territory, project teams negotiated additional funding from Swiss Cooperation to engage in further dialogue and strategy sessions around mining, with an 180-participant strong workshop between the Resguardo and Cauca, April 17-19, 2015.⁹⁸ A critical event in further consolidating concepts and strategies around ancestral mining, among other issues; and to also showcase the types of collaborations taking place, including with international actors who were able to attend the sessions, such as from the Embassy of the Kingdom of the Netherlands and Switzerland.

Despite these important workshops, and joint action between the Palenke and the Resguardo particularly around trying to influence the NDP through various high level meetings in Bogota, participants underscored more needs to be accomplished to build alliances between the Black Communities participating in the project that go beyond our project mandate. Delegations from the Resguardo have visited Cauca and vice versa for important moments outside of official project activities. Yet Palenke participants in particular called for stronger

mandates. The Cauca delegation was a very important presence at the ceremony, where a space was opened up for them to address the assembly, solidifying the relationship and the joint struggle towards peace. The theme of the 2015 'posesion' de Cabildo was "Gobierno Propio: Un aporte a la paz" – "Self-government, a contribution to peace'.

98 The workshop was called "Diálogos Interculturales sobre la minería en Colombia". A summary report (Spanish only) can be found at http://www.aconc.org/wp-content/uploads/2015/09/dialogos_interculturales_sobre_mineria_colombia.pdf

Palenke-Resguardo political action to influence this historic moment in Colombia's history, and the peace agreements that will mark the course of ethnic peoples in the next decades. They are pointing to a joint political project that transcends weaving forces around extractives, to engage in forging peace more broadly.

Black-Indigenous Workshops and Exchanges in Northern Cauca

In Northern Cauca, there has been an important rekindling of Black-Indigenous Alliances. In the case of Pilamo (a Black Community Council) and López Adentro (an adjacent Resguardo), for example, leaders met for the first time in 15 years, to discuss issues around mining important to both ethnic groups who live side-by-side. The inter-ethnic commission that had been established and rekindled as part of Phase I of this project, was reconfigured in Phase II to involve deeper coordination on mining issues, and its name change to "inter-ethnic table" to denote its ongoing importance. As well, throughout the project, Black and Indigenous communities in Northern Cauca worked together on the very dangerous task of decommissioning bulldozers that had entered ancestral territories without permission, among other strategies to address this invasion; taking in their hands the role of the State, simply because their territories were at risk and the State was not present or responding to these invasions. These joint actions are not only deepening relations, but are critical instances of building peace, and territorial defence, from the grassroots; and across ethnic groups that historically have warred with one another, often on account of state policies catalyzing inter-ethnic animosity particularly around land.⁹⁹

99 A very concrete example is the case of the historic agreement between Black and Indigenous groups around the Finca San Rafael; a finca that the State gave Indigenous people in an area Black communities recognized as ancestral. The innovative solution arrived at was to share

Exchanges among the Resguardo Cañamomo Lomapieta and Neighbouring Resguardos

The Resguardo has become the 'go-to' Resguardo for neighbouring Indigenous communities wanting to learn more about how to organize their own mining, and capacity strengthening in this regard, and on Indigenous rights issues. Particularly, members of the neighbouring San Lorenzo Resguardo have participated in several of the Resguardo's capacity-strengthening events, and inter-ethnic workshops. And on occasion, other neighbouring Resguardo's have also asked counsel from Cañamomo. For example, the Resguardo La Montaña has asked for support in organizing its own miners, and addressing outside mining interests, particularly from Canadian company Miranda Gold.

4.3.3 Other alliances and exchanges

While the inter-ethnic alliance building is an extremely important component of our project, so too are growing alliances nationally and internationally. Various members of the Forest Peoples Programme made field visits, deepening those already forged internationally.

But also, we deepened relations between each of the partners and organizations at the national level, such as with Reiniciar,¹⁰⁰ CAJAR, the Universidad del Rosario,¹⁰¹ and the

the finca between these groups, a symbolic territory of inter-ethnic peace. In 2014 and 2015, bulldozers have also tried to invade this finca; unsuccessfully, due to joint action between the Indigenous and Black owners of this collectively held land.

100 Who helped lead a request for a public hearing at the Inter-American Commission on Human Rights on the issue of Mining and Violence in Colombia.

101 U. Rosario expert Gloria Amparo Rodríguez participated in two capacity-strengthening workshops in the Resguardo Indígena Cañamomo Lomapieta on Indigenous rights.



Universidad Javeriana,¹⁰² among others. We are keenly aware that building a critical social mass for change and strengthening strategic alliances, and forging new ones, are critical in attempting to influence Colombia's policy and legal framework to uphold ethnic rights.

4.3.4 Afro-Descendant and Indigenous political gains, and social protest

Aside from pursuing self-government and autonomy, project partners are keenly aware of the importance of high-level political appointments within the State system for Indigenous and Afro-Descendant peoples, as well as local level political appointments, as a means to further rights recognition and participation. Yet these political appointments come at much risk.

The position of Mayor is considered of utmost importance because it is the first order of Traditional Government-State relations. But also, because mayors are considered the 'first' authority in terms of decision-making around mining—they carry out state orders, including closing mines.

During 2014-15, the municipality of Riosucio—which overlaps Resguardo lands—was in the hands of an Indigenous Mayor. However, as David Abel Jaramillo explained when the Ambassador of Norway came to visit in March 1 and 2, 2014: “In 1819 the municipality of Riosucio was established, with a very strong history of invasion and dispossession; this territory was very hard hit. The presence of insurgents, paramilitaries, political violence, has been very strong. **For me to arrive here, blood has had to run.**”

¹⁰² Experts from the Universidad Javeriana were key in supporting the demands made by the Cauca Black women's March to Bogota in November–December 2014, providing evidence and support at the negotiations table with the State, among other types of support.

Previous Indigenous candidates to the position have been murdered, and indeed, politically, there is strong influence of *Uribismo* among the elite in the area. Yet in October 2015 history was made when Indigenous candidates were voted in both to Riosucio and Supia, the other municipality that overlaps with Resguardo lands. Indeed, this was the first time in history that an Indigenous candidate was voted as mayor of the minerals-rich Supia municipality, boding well for future 'coordination' with regards to ancestral mining.

In northern Cauca, Black mayors have also been voted in.¹⁰³ In 2014-15, there were plans to attempt to have one of the most vocal Black woman activists of the area run for Mayor, but the security situation among other considerations prevented this plan from being carried out. Yet there are Black municipal councillors, who are critical spokespeople in local government. And in 2015, Gabino Hernandez Palomino, a lawyer with the Palenke integral to our joint project, was appointed as the Secretary of Government of Cauca.

Posts in congress and the senate are also much sought after. A major win for the Resguardo was having in place a representative from Cañamomo when we launched this project. Unfortunately Hernando Hernandez lost his congress seat in October 2014. There is ongoing discussion amongst the Palenke and the Resguardo to band together to attempt to put in place a congressperson that could serve both groups.

Yet there are also deep internal discussions, particularly within the Proceso de Comunidades Negras, about how much energy to spend trying to obtain these posts, recognizing that there is much work

¹⁰³ The late Plutarco Sandoval Ararat, the coordinator of Phase I of this project, had been mayor of Santander de Quilichao.

to be done within the traditional governance systems.¹⁰⁴

Aside from these positions within the State system, two other political developments within our project are noteworthy: one was the inclusion of Palenke lawyer Gabino Hernandez Palomino in the Ethnic Commission that travelled to Cuba for the FARC-EP-Santos Government peace process, and who was pivotal in helping achieve the ethnic chapter. And the second, the appointment of the first woman to the highest political position within the Resguardo, namely Arnobia Moreno Andica who in 2017 became the Resguardo's first Cabildo Gobernadora. Importantly, she is from the community of Guamal, an Afro-Indigenous community within Resguardo lands, and her election could bring more unity to some of the political tension that has developed among some members of Guamal trying to carve out a Consejo Comunitario on Resguardo lands. In general, women's rights were highlighted in this phase of our project, and the connection between women of the Resguardo and the Palenke was deepened.

Importantly, parallel to project activities, project partners pushed to obtain political gains also from spearheading (in the case of the Black women's march) and participating in, regionally and nationally organized marches and social protests. In April, 2016, for example, Black Communities and their representatives occupied the Panamerican highway to protest State inaction with regards to collective land titling, among other issues. And at the end of May and early June, Indigenous Peoples, Afros and campesinos took to the streets across Colombia for 15 days of MINGA, spurred by the Cumbre Agraria, Campesina Étnica y Popular, to protest lack of action on previous agreements made

¹⁰⁴ Internal narrative report, Palenke Alto Cauca (June 2015).

with the State to uphold peoples' rights.¹⁰⁵ The outcome of these mobilizations were agreements that attempt to hold the state accountable for upholding previous agreements, with more judicial measures (such as decretos) enacted to try to ensure this. In the words of one Indigenous leader: "The government has no problems signing agreements... there are more than 1200 agreements that have not been fulfilled." Taking to the streets has become a critical means of moving things forward in Colombia, and part of a pattern that goes from agreement-making with the state, followed by inaction, leading to social mobilizations, with new agreement-making, with the cycle seemingly starting over again.

Importantly, the national MINGA did result in one key new agreement around mining policy. Namely, a joint revision of all administrative acts related to issuing licenses, permits and concessions for mining projects to confirm their legality, or proceed to revoke these. There was also a commitment to establish a national dialogue on extractive projects with a view to influencing public policy; and to undertake socio-economic evaluation pilots of specific projects. According to Gabino Hernandez Palomino of the Palenke Alto Cauca who participated in the joint commission to review the status of titles: "There are 9064 mining titles in Colombia, 97 of which are in Northern Cauca, and of these, more than 70 are only in 6 community councils. Some 80% of the titles have environmental permits. But all of them require prior consultation! We need to denounce the process!" Yet he also reported that this work and commission has

¹⁰⁵ <https://viacampesina.org/es/index.php/nuestras-conferencias-mainmenu-28/mociones-adaptadas-en-la-quinta-conferencia-mainmenu-69/37-noticias-de-las-regiones/2706-colombia-la-cumbre-agraria-campesina-etnica-y-popular-avanza-como-propuesta-de-pais>

come to a halt, "because the government has not fulfilled the logistical aspects of the work."¹⁰⁶

4.4 International

Actions at the international level included continuing to strengthen relations with international players within Colombia, as well as international advocacy. More specifically:

- The Palenke and Cauca teams continued strengthening direct relations with high-level representatives of embassies in Bogota. Both participated in Norway's national day (May 17) invited by outgoing Ambassador Lars Vaagen. Lars Vaagen became a champion for efforts to address the impunity in the assassination of Embera Chamí leader Fernando Salazar Calvo in April 2015, and in 2016 he united with other embassies (Sweden, Canada and Mexico among others) in an initiative called "Embajadores con defensores humanos", to raise the profile of threats and assassinations of human rights defenders. As part of this initiative, he visited the Resguardo in July, and raised profile in national media by visiting Fernando Salazar's grave, and speaking with local authorities about the investigation.¹⁰⁷ Incoming Norwegian Ambassador Johan Vibe visited Timba in northern Cauca, September 9.
- Héctor Jaime Vinasco also visited the Canadian Ambassador together with other Colombian Indigenous and NGO representatives, in an initiative led by CAJAR

¹⁰⁶ Pers. Comm, January 27, 2017.

¹⁰⁷ See: <http://www.eltiempo.com/colombia/otras-ciudades/emba-jador-noruego-lucha-contra-los-asesinatos-de-defensores-de-ddhh/16662546>

(Colectivo de Abogados José Alvear Restrepo), to discuss the impacts of Canadian companies on rights and territory, and follow up on a 2014 special hearing by the Inter-American Commission on this issue.¹⁰⁸

- The Forest Peoples Programme and Tebtebba Foundation co-organized a workshop at the 2016 UN forum on Business and Human Rights in Geneva, entitled "Using leverage to forge leadership: Indigenous Peoples' rights in business operations." The Resguardo Indígena Cañamomo Lomapieta's Héctor Jaime Vinasco made an important intervention at this November 15 panel discussion,¹⁰⁹ advocating for the rights of Indigenous Peoples to self-determination, and jurisdiction over the resources in their territories, and underscoring the importance of Indigenous legislation (see Box 6).
- The Resguardo Indígena Cañamomo Lomapieta became a member of the Global Call to Action on Indigenous and Community Land Rights,¹¹⁰ a global coalition with a goal to secure all Indigenous and community land rights, with a target of doubling the global area of land legally recognized as owned or controlled by Indigenous Peoples and local communities by 2020.

¹⁰⁸ A special hearing to spotlight the Canadian Government's failure to prevent harm and ensure justice for mining-affected communities abroad took place at the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. on Tuesday, October 28th, 2014. <http://miningwatch.ca/news/2014/10/23/washington-dc-hearing-spotlight-canadian-government-s-failure-prevent-harm-and>

¹⁰⁹ <http://webtv.un.org/watch/panel-discussion-on-using-leverage-to-forge-leadership-forum-on-business-and-human-rights-2016/5210863435001>

¹¹⁰ <http://www.landrightsnow.org/en/home/>



- FPP Communications' team visited the Resguardo, and gathering materials for a series of web articles highlighting the Resguardo's realities and campaigns around reforestation, territorial rights and women's rights.¹¹¹

¹¹¹ See, for example: <http://www.forestpeoples.org/topics/gender-issues/news/2016/12/interview-arnobia-moreno-women-and-indigenous-land-rights-colombia>

BOX 6:

Excerpt from Héctor Jaime Vinasco, Resguardo Indígena Cañamomo Lomapieta's, presentation to the UN Business and Human Rights Forum, November 15, 2016, Geneva

“In the last years, in our Resguardo we have been undertaking and consolidating an internal control of our ancestral mining, based on our Authority and Self-Government under the Special Indigenous Jurisdiction, recognized by the Colombian Constitution; rights that are also recognized in the United Nations Declaration on the Rights of Indigenous Peoples. We are an example for other Peoples in terms of self-regulating our mining.

We have resolutions that have emerged from exercising our own legislation, specifying that the practice of ancestral mining requires environmental management plans and occupational safety plans. We do not permit the use of environmentally harmful substances (for example cyanide and mercury); and neither foreign investment in the areas that we have set aside for our ancestral mining. In many ways, we believe that our People is exercising an alternative model to mining...

Nonetheless, as we have witnessed in our Resguardo, those who have interests in our minerals and natural resources riches view our actions with displeasure. This is how the 7th of April 2015, leader and miner Fernando Salazar Calvo was assassinated. He was president of the Mining Association of la Union, and spokesperson of the Association of Miners of the Resguardo Indígena Cañamomo Lomapieta (Riosucio y Supía), ASOMICARS. This constitutes an aggression against our ancestral collective right to our territory, against our Indigenous Authorities of the Resguardo Cañamomo Lomapieta, against the guidelines of our organizational processes, and against the community in general who today see this deed as an aggression against our territory and against their collective rights to life and integrity of people.”

- Both the Palenke Alto Cauca and the Resguardo Indígena Cañamomo Lomapieta were involved in project-related international academic projects, namely 'Extracting Justice' spearheaded by the University of Life Sciences of Norway; and the Centre for Indigenous Conservation and Development Alternatives (CICADA), led by McGill University in Canada. Peer reviewed academic articles will be published in a special issue of *Third World Quarterly* in May 2017 as part of the "Extracting Justice?" project; and in August, Héctor Jaime Vinasco of the Resguardo was selected by the Cabildo to participate in a CICADA conference in Wendake First Nation, Québec, Canada, as part of a network of Indigenous Peoples and academics collaborating on joint work.
- The Forest Peoples Programme supported local partners with participating in a wide variety of project events; facilitating capacity-building on several issues as requested by project partners; providing legal counsel and drafting an Amicus Curiae to support the Resguardo's Constitutional Court Case on land rights and FPIC, which included also drawing up a map of claimed territory; letter-writing and liaising with

global actors as a means to raise visibility regarding the impunity in the case of the assassination of Fernando Salazar Calvo, and to pressure the Colombian government towards the case's resolution;¹¹² ongoing support and feedback on project activities; and accompaniment in meetings with donors, and preparation of project documents.

- FPP's Viviane Weitzner presented outcomes related to the inter-ethnic project at several fora, including at McGill University (Canada), the University of Warwick (United Kingdom), and the Latin American Studies Association (New York, USA), each time acknowledging support from Norway, the Netherlands and other funders for this work.

4.5 Operational Aspects and Priorities

4.5.1 Reflections on operational aspects

There is constant tension in being able to meet the many needs of the communities where we are working, with the opportunities provided by funding, and the realities of armed conflict. The complexity of the political and security situation even during and after the negotiations and signing of the FARC-Santos government peace accords made working at the pace we hoped to extremely challenging,

¹¹² For example, Fernando Salazar's case was highlighted in reports such as Global Witness' June 2016 publication, "On Dangerous Ground", with FPP responding to calls for interviews from media around Fernando's case as a result.

especially given the small project teams. In Cauca, the challenge was reaching all 5 of the Consejo Comunitarios identified as priority with equal attention. Indeed, participation in capacity strengthening and drawing up community regulations competes with the daily work activities of the people who live in poverty and hunger, and represents an enormous livelihood opportunity cost. This is similarly the case in Caldas, where the amount of time addressing regulation of mining has become so time-consuming for the Cabildo—and also for the individual miners participating in the mining association.

Important lessons emerge from the operational aspects, including:

- Programming fewer activities, with more time between them, to take into consideration the extremely challenging contexts; but also, to enable communities and local team members to attend other important processes taking place, preventing oversaturation of project activities.
- Engaging in team skype meetings was critical for keeping up-to-date, and planning and making adjustments to our work programme. Many times, however, these meetings were cancelled or postponed due to field urgencies and other important commitments. During our least year of work, the technology and connexions failed continuously, whether this

was because our calls were intervened as some speculated, or because of the simply bad network connections in rural areas (especially Cauca). This became a major source of frustration given the importance of these calls.

- Administering the project through one of the local partners, who then struck MoUs with the participating partners, including the international partner, was an innovative flip in the usual International-local project model, enabling strengthening capacities of local project partners, and building more direct relations between them and the donors.
- Hiring an independent, external auditor—a requirement from Norway, which we continued through to our second year of funding from the Netherlands helped us achieve consistency and rigour in financial reporting across the three components: Cauca, Caldas and International (FPP).

4.5.2 Priorities emerging from our Work Programme

Some very specific priorities have emerged for urgent follow-up in future work. These include:

- **Consolidating our specific proposals for reform of the Mining Code, and developing a differentiated chapter for Ethnic Peoples.** This will require:
 - a) Broader discussion



among Indigenous and Afro-Descendant communities and organizations to further refine the concept of ‘ancestral mining’; and how its regulation by Traditional Authorities would work in practice, in coordination with the State (and what concrete mechanisms would be established to monitor and verify the practice of ancestral mining).

b) Continuing our conversations with senators on these issues, and growing our alliances with other actors at the national level, to spur movement towards opening the mining code reform process; or a parallel process leading to recognition of ancestral mining.

c) Ongoing discussions with state representatives who are pressuring both the Resguardo and the Palenke to uptake state formalization programmes, despite the self-government approach both are taking.

“The dream of our community is very diverse: not everyone chooses mining.”

—Governor Carlos Eduardo Gómez Restrepo, Resguardo Indígena Cañamomo Lomapieta

“Mining is not the only source of income; we want it to be an alternative, side-by-side with agriculture... that it be in communion with agricultural work.”

—Afro-Descendant Leader, Palenke Alto Cauca-PCN

- **Strengthening the Indigenous Guard and the Guardia Cimarrona** to enable territorial defense in light of the invasion of criminal/illegal mining; prevent companies from entering ancestral lands to undertake exploration and prospecting activities without the consent of Traditional Authorities; and provide self-governed, non-violent protection schemes for threatened leaders and communities, particularly in light of the deficient protection schemes and measures provided by the National Protection Unit.
- **Strengthening self-government, and continuing to develop and implement internal regulations with regards to mining on ancestral territories, including community protocols on prior consultation and FPIC.** These actions, while at the same time supporting alternative economic activities for community members that go hand-in-hand with ancestral mining; and for those community members who are interested in activities other than gold mining.
- **Continuing to explore possibilities for fair trade of ancestral gold,** through potential uptake of schemes such as those promoted by the Alliance for Responsible Mining (ARM), as well as Switzerland's Better Gold Initiative.
- **Following up closely and providing support for implementation of court decisions that we have already won through this project (the precautionary measures in the Palenke, and T-530/16 in the case of the resguardo),** while preparing future legal challenges to address some of the loopholes and ‘grey’ areas in these decisions, with particular attention to strengthening collective legal title.
- **Deepening the inter-ethnic alliances between the Palenke and the Resguardo** in all aspects (cultural, territorial, political, economic and legal strategies, with a gendered and inter-generational focus), and considering also joint actions and strategies around influencing and implementing the peace accords.
- **Strengthening alliances at the national and international level** with Peoples’ organizations, universities, NGOs and other actors.
- **Continuing to organize visits from high-level international dignitaries and from foreign embassies in Colombia** to make visible the realities of Black and Indigenous Peoples affected by the minerals sector and the internal armed conflict; and to facilitate the possibility that the urgent territorial and security issues that affect the peace of Indigenous and Black Peoples in Colombia be profiled in high level discussions between these representatives and Colombian State officials, among other relevant contacts.
- **Raising more funds to strengthen and deepen our interventions and** possibilities of success at all levels.

5. Moving Forward with Hope: Conclusions and Recommendations

El indígena que conmovió al embajador de Noruega

Lars Vaagen y sus homólogos de otros países buscan cooperar para que estos crímenes no se repitan.

Por: JOSÉ FELIPE SARMIENTO |
© 10:07 a.m. | 3 de agosto de 2016



Foto: José Felipe Sarmiento/ EL TIEMPO

En la tumba del líder asesinado, Fernando Salazar, en el cementerio de Riosucio, el embaja...

"Colombian national media covered Norwegian Ambassador Lars Vaagen's interest in pressuring for the resolution of the murder of Indigenous leader Fernando Salazar Calvo."

This synthesis report has highlighted the key issues emerging from Phase II (2014-2017) of our joint project, "Towards the Development of Standards and Mechanisms to Protect Ethnic Peoples Affected by Extractives: Consolidating strategies for territorial control by implementing the rights to free, prior and informed consultation and consent in the Palenke Alto Cauca and the Resguardo Indígena Cañamomo Lomapieta through inter-ethnic and international alliances."

It showcases a turbulent period for both the Palenke Alto Cauca and the Resguardo Indígena Cañamomo Lomapieta. In Cauca, territorial defence became a critical issue in the face of ongoing invasions by criminal mining. These land invasions prompted a series of actions, ranging from an historic Black women's march to Bogotá, and occupation of the Ministry of the Interior; to joint actions between Indigenous and Afro-Descendant Peoples

to decommission and remove illegal bulldozers from ancestral territories.

And in the Resguardo, efforts to continue to articulate, promote and exercise self-governance of ancestral mining were stepped up in the face of intense pressure from the State who considers this self-governance illegal, and even criminal. Yet these measures to increase Cabildo control were urgent also in light of the presence of illegal armed groups in the area, and their

interest in the Resguardo's gold. Further, pressures in Cauca and Caldas were compounded by the state's continued issuing of mining concessions without due consultation and free, prior and informed consent.

In the context of active armed conflict—particularly in Cauca, which became a 'laboratory' for testing political will in implementing ceasefires and adhering to commitments made in the Havana Peace Process—our project provided an alternative, bottom-up experiment in building peace and alliances among Indigenous and Afro-Descendant Peoples.

"This project is a very important field reference for the peace negotiations. Here, in this project, we are committing firmly to a proposal of unity [between Peoples], not only to a project."

—Afro-Descendant Leader



5.1 Successes

Together, we achieved several successes:

- We continued developing and implementing internal regulations related to mining on ancestral lands, from our jurisdiction and autonomy. We worked intensely to produce and implement a series of regulations ranging from environmental protection and management plans for ancestral mining; to guidelines on how outsiders should approach the Cabildo and Consejos Comunitarios to uphold the fundamental right to free, prior and informed consent; to declarations of our collective territory as a zone where we don't allow medium- or large-scale mining, as is the case with the Resguardo Indígena Cañamomo Lomapieta. This internal regulation is going through a process of rigorous internal debates, and is still under construction.
- We profiled the concept of 'ancestral mining' through regional and national discussions, further refining it, and upholding the need for ancestral mining to be protected and differentiated from other types of mining.
- We spurred legal actions towards the protection of our ancestral lands and our people, through appealing to the Victim's Law (Law 1448 of 2011) and collective precautionary measures in the case of the collective lands of

Black Communities; and through the a constitutional writ that resulted in the precedent-setting T-530/16 Constitutional Court Decision, in the case of the Resguardo Indígena Cañamomo Lomapieta. The Court has recognized the legitimacy of ancestral mining and Indigenous rules-making over subsoil resources, and ordered the State to no longer criminalize this activity; it has asked for lands not yet officially titled to be set aside temporarily as if they were titled, and registered in the mining cadastre until the process of delimitation takes place; and it has ordered a multi-disciplinary team to be struck to engage in studies leading to rigorous delimitation with the Cabildo's participation, among other things. While we are still examining the reach of this decision, it has clarified further Indigenous rights over their territory and resources in Colombia.

- We forged ahead with strengthening our organizations through capacity-building workshops on diverse rights issues, involving Traditional Authorities, women and youth.
- We linked with other communities who wanted to learn from our approaches and knowledge.
- We made visible our realities by inviting to our territories high-level dignitaries so they could see first-hand.
- We produced videos and publications to profile our work —our challenges and our successes—for others interested in learning from us; and

- We gave visibility to the struggle of the Resguardo and Palenke through outreach to press, radio and television, as well as actions on the internet and social media

5.2 Challenges

Yet our challenges were great. Leaders from the Resguardo and the Palenke were the subjects of ongoing death threats from illegal armed groups. The assassination of our colleague Fernando Salazar Calvo of the Resguardo Indígena Cañamomo Lomapieta April 7, 2015—a member of the Resguardo's Mining Association (ASOMICARS)—was a tragic moment in the history of this inter-ethnic process, stark evidence of the level of outside interests in the resources of our territories, and how far they are willing to go. But it was also a wake-up call for the importance of developing and implementing self-protection schemes, especially given the impunity that is the norm for State investigations, such as is in the case of Fernando; and in light of the insufficient measures offered by the National Protection Unit.

And in Cauca, the upshot of the women's march to Bogotá was a series of State commitments that remain to be fulfilled; but also increased threats to the lives of the most vocal leaders, both women and men, with no provision of efficient State protection measures. In Cauca, it is often the communities that are on the frontlines of actions to seize or stop the heavy machinery

used in criminal mining, who are pushed into this on account of the absence of the State; or because of corruption of State representatives in the field who do not act to support human rights.

We also have a long way to go in discussions with the State to attempt to obtain recognition of Traditional Authorities as the main decision-makers regulating minerals activities on ancestral lands, and particularly ancestral mining—even though we have made important headway now through the Constitutional Court. A big challenge on this front will be to ensure that Decision T-530/16 is implemented rigorously, and that the provisions for community participation in the delimitation process and team providing support are fulfilled. We will need to be as proactive as possible, with very concrete suggestions to the State agencies involved on how this Decision should be implemented. But we also need to proceed strategically so that ancestral mining is also recognized politically and in the normative framework, and with policy makers to move this forward as efficiently as possible.

5.3 Pushing for Peace in Colombia from the ground up: Excitement and Worry

The FARC-EP – Government Santos got off to a rocky start with its approval in September, 2016; voting down through the popular vote in September, and then renegotiation. Yet there is a long way to go for peace to become a reality, particularly

in resource-rich ancestral lands; and leaders of both the Palenke and the Resguardo are sceptical of the term 'post-conflict'. And mindful of the fact that so far a peace agreement has been negotiated with only one of the warring factions.

In the words of former Governor Carlos Eduardo Gómez Restrepo of the Resguardo Indígena Cañamomo Lomapieta: "They tell us Caldas is a post-conflict zone. But the Cacique Pipintá and the Rastrojos have cells there. We don't know post-conflict. We will continue to provide the dead."

Indeed, many participants in the project voiced concern that violence in and around ancestral territories will now escalate, particularly since these territories are resource-rich. In 2015, a declaration to support a mechanism to include Indigenous and Afro-Descendant voices at the Havana negotiations emphasized this same concern, noting: "The war isn't over for Afro-Colombian and indigenous peoples. They continue to be displaced, murdered, and threatened. And the stakes are just as high for these communities in a post-conflict Colombia." And as we saw in the context-setting, the figures are evidence that this is indeed the case.

Key questions around the peace process are its impacts on collective land titling for Indigenous and Afro-Descendant Peoples, as well as the role of minerals extraction in 'funding' peace and economic prosperity. A Black leader from Cauca shared the following concern: "While the Peace Accord is necessary for Colombia, it isn't necessarily

for us as the Black community, when there are plans to give up our territories to mining exploitation, and in this way finance the implementation of peace in the country. This isn't peace."

Yet other leaders fear lands that should be considered for collective titling will instead go to illegal armed groups who have 'demobilized': "To date there is land speculation in Cauca, but that speculation is being thought of only for the demobilization process, when there is an enormous need for lands for ethnic groups. In this context you can see the State seizing lands from a narco-trafficker, but the land is then given to industry without considering the possibility of handing over these lands to the communities. These are the types of things that are happening in Cauca."

Further, there is worry that the continued land invasions for criminal mining will continue to take place, especially if viable economic alternatives for Afro-Descendant communities are not considered.

There is a mixture of excitement at the FARC-EP – Santos Agreement and the Ethnic Chapter that is part of it; but also worry, that the situation on the ground will become even more complex, potentially temporarily more violent, and that the resources in ancestral lands will continue to be coveted by outside interests. In this context, continuing to join forces between Indigenous and Black Peoples to weave strategies and joint action will be imperative in pushing for peace in Colombia from the ground up.



5.4 Recommendations

Several recommendations emerge from our project. Specifically:

...Those relevant to the **Embassy of Norway, Holland and other foreign States** with interests in Colombia, include:

- **Continue Norway’s strong support as guarantor of the peace process, emphasizing Indigenous and Afro-Descendant Peoples’ demands to be included** in the implementation of the final Agreements.
- **Encourage momentum to the “Embajadores con Defensores Humanos Initiative,” where Ambassadors and their teams make field visits to Indigenous and Afro-Descendant communities (among others)** to get to know first-hand the urgent realities, build their knowledge base within which then to intervene in political discussions nationally and internationally, while at the same time raising visibility of the issues at stake in the media.
- **Continue to provide both political and financial support to Indigenous and Afro-Descendant organizations at the grassroots.** Work programmes at this level have a direct impact on communities who may not feel represented by regional or national organizations. The inclusion of an independent auditor to ensure consistency on the financial reporting strengthens the process

and outcomes. Specifically, actively consider backing projects that strengthen Indigenous and Afro-Descendant approaches and strategies to:

- a) Address extractive and other infrastructure projects affecting their ancestral lands, as well as the impacts of climate change mitigation schemes, through diverse strategies (political, legal) at the local, national and international levels (without making a requirement their working alongside the private sector).
 - b) Provide increased protection to their people, through the strengthening, for example, of the Guardia Indígena and Cimarrona so they can fulfil stronger roles with regards to territorial defence and self-government in light of the insufficient protection afforded by Colombia’s National Protection Unit.
 - c) Obtain official legal recognition for their ancestral, collective lands.
- **Continue intervening against the impunity of the murder of Indigenous and Afro-Descendant leaders**, such as our colleague Fernando Salazar Calvo; and in support of more efficient investigative systems.
 - **Articulate in relevant political spaces, the urgent need to catalyze a new process of reforming the Mining Code**, that includes appropriate participation of ethnic peoples as ordered by Colombia’s Constitutional Court; and specifically,

a dedicated process for negotiating a differentiated chapter for ethnic peoples towards the protection of ancestral mining. This is a critical input for moving peace along in Colombia.

- **Call attention to the Committee for the Elimination of Racial Discrimination’s August 2015 recommendations to Colombia (see Annex 1).**
- **Consider putting in place robust regulations prohibiting trade and purchase of gold from criminal mining taking place in ancestral territories, whether these have or have not been officially delimited.** This recommendation goes hand-in-hand with legislation related to conflict minerals approved by the European Union in 2015, with final approval in 2016; and by the Frank Dodd Act approved by the United States in 2010.
- **Contribute towards the possibility of internationally regulatory mechanisms**, such as the UN’s efforts towards an internationally binding instrument on human rights and business; while at the same time supporting access for affected communities to domestic courts in the home countries of companies operating in Colombia.

...Those relevant to the **Colombian State** include:

- Strengthen Colombia’s human rights mechanisms (Defensoría, Procuraduría, Fiscalía), through, among other things, ensuring adequate funding;
- **Align Colombia’s normative framework, policies and**

mechanisms related to the extractive sector with international standards and best practice for human rights and environmental protection, with particular attention to:

- Environmental and social impact assessment of exploration projects, as a key aspect of fully acceding to the OECD.
- Respecting the right to free, prior and informed consent throughout the full project cycle, which includes the issuing of concessions, as highlighted in international jurisprudence, by following the rules and regulations developed by Traditional Authorities for guiding this process.
- **Implement the August 2015 Observations of the Commission for the Elimination of Racial Discrimination (excerpted in Annex 1).**

... Those relevant to **companies** operating in Colombia, but with headquarters outside Colombia include:

- **Uphold in practice** ILO Convention 169; the UN Declaration of the Rights of Indigenous Peoples; the Convention for the Elimination of Racial Discrimination; the American Convention; and other related human rights instruments ratified or supported by Colombia (particularly in light of an increase of investment due to the recent negotiation of FTAs, including those by Norway and the EU). **This means** raising awareness

and strengthening the capacities of company personnel on these rights and instruments, from the operational field level (including suppliers and consultants) up to headquarters; putting in place resources towards this training, and re-aligning company policies and practice; being aware of and respecting the rules and regulations of traditional authorities who consider the lands of the proposed project as ancestral, whether these are or not officially delimited by the state.

- **Put in place due diligence and safeguard rules to prevent allocation of land to mining and investments in areas** where there have been massacres, active armed combat, presence of criminal armed actors, and early warning system reports. Despite the negotiation of peace accords, armed actors are still very active in Colombia, particularly around gold mining, a major source of their funding, and money laundering.

...Those relevant to **international donors, and national and international allies** supporting Indigenous and Afro-Descendant Peoples in Colombia, include

- Develop strategies to accompany communities fighting for legal security of their collective, ancestral lands.

Provide political and financial support to:

- Organizational processes

strengthening the exercise of Traditional Authority and Self-Government.

- Community initiatives that mitigate environmental impacts on ancestral lands, and that benefit Nature.
- Develop community information and mapping systems that enable processing data generated day-to-day.
- Develop the capacity of communities to draft and implement their own legislation.

...Those relevant to **Colombia's Indigenous and Afro-Descendant Peoples**, and especially those participating in this project:

- **Continue strengthening self-government**, internal regulations and protocols, and the capacities of Traditional Authorities towards autonomy and self-determination.
- **Continue joining forces and weaving strategies** that transcend projects funded through international cooperation, towards territorial defense, upholding fundamental rights, and achieving peace in Colombia.



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Annex 1:

Excerpts from final observations of the
Committee for the Elimination of Racial Discrimination
(25 September 2015)
(CERD/C/COL/CO/15-16)

Land rights and land restitution

20. The Committee recommends that the State party:

- a)** Guarantee the right of indigenous and Afro-Colombian peoples to possess, use, develop and control their lands, territories and natural resources, freely and with full security, by such means as providing legal recognition and the necessary legal protection;
- b)** Ensure the implementation of Act. No. 70 of 1993 and the adoption of the corresponding regulations; and
- c)** Take the necessary steps to ensure that the agencies responsible for implementing Act No. 1448 of 2011 have adequate human and material resources and cooperate with each other effectively, thus ensuring the effective participation of indigenous and Afro-Colombian peoples.

Right to prior consultation

22. Recalling its General Recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to:

- a)** Fulfil its obligation to ensure consultation, with a view to obtaining the free, prior and informed consent of indigenous and Afro-Colombian peoples, as a means of effective participation in any activities relating to legislative or administrative provisions that could affect their rights, particularly their right to the land and natural resources that they own or have traditionally used;
- b)** Adopt procedural protocols for carrying out prior consultation ensuring respect for the cultural characteristics, traditions and customs of each people;
- c)** Avoid statements criticizing or stigmatizing the efforts of indigenous and Afro-Colombian peoples to exercise their fundamental right to free, prior and informed consent and their right to sustainable development.

Impact of projects involving natural resource exploitation

24. In view of the fact that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and recalling the role of both the public and the private sectors in this regard, the Committee urges the State party to:

- a)** Guarantee the full and effective enjoyment by indigenous and Afro-Colombian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally;
- b)** Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous and Afro-Colombian peoples;
- c)** Guarantee that indigenous and Afro-Colombian peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.



Human rights defenders and leaders of indigenous and Afro-Colombian peoples

28. The Committee recommends that the State party:

- a)** Adopt effective and timely measures to prevent acts of violence against human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples, and to ensure the effective protection of their lives and personal safety;
- b)** Ensure the effective functioning of the National Protection Unit as a special mechanism for the protection of human rights defenders by such means as the review and improvement of existing protection strategies, the adoption of collective protection measures, with differentiated measures for people living in rural areas and for women, and the allocation of sufficient human, financial and technical resources;
- c)** Conduct thorough investigations and bring effective prosecutions of persons who threaten the lives and physical safety of human rights defenders, including the leaders and defenders of the rights of indigenous and Afro-Colombian peoples.

Annex 2:

List of Project Outputs

Resguardo Indígena Cañamomo Lomapieta

2015: Project outputs financed by Norway (Spanish only)

- **Video:** “Juntando Fuerzas, Tejiendo Estrategias”
<https://www.youtube.com/watch?v=AFe1PFpWWLw>
- Report: “Juntando Fuerzas, Tejiendo Estrategias”

2016: Project outputs financed by the Netherlands (Spanish only)

- **Video:** “Juntando Fuerzas, Tejiendo Estrategias II”
<https://www.youtube.com/watch?v=AFe1PFpWWLw>
- **Report:** “Juntando Fuerzas, Tejiendo Estrategias II”: Informe Final (enero 2017)
- Calendario
- **Brochure:** Association of Ancestral Miners (ASOMICARS)

Palenke Alto Cauca

2015: Project outputs financed by Norway (Spanish only)

- **Video:** “Nuestro Territorio, Nuestra Lucha I”
- **Cartilla:** “Nuestro Territorio, Nuestra Lucha I”

2016: Project outputs financed by the Netherlands (Spanish only)

- **Report:** “Nuestro Territorio, Nuestra Lucha II”
- **Video:** “Nuestro Territorio, Nuestra Lucha II”
- Protocolo propio para el desarrollo de la consulta y del consentimiento previos, libres e informados en la comunidad negra del norte del Departamento del Cauca.
- **Brochure:** Palenke Alto Cauca

(Outputs financed by both Norway and the Netherlands) (Spanish Only)

- **Reglamentos internos** de consejos comunitarios (Cerro Teta, La Alsacia, Puereto, Piedra Pintada) – circulación interna
- **Reseñas históricas** de los Consejos Comunitarios de Zanjòn de Garrapatero, Cuenca Cauca, Pilamo, CURPAQ, La Toma – circulación interna

Forest Peoples Programme

2015

- Project Brochure: “Joining forces, weaving strategies.” (Also available in Spanish)
- **Press Release:** “Indigenous-Controlled Mining under Fire in Colombia.” <http://www.forestpeoples.org>



org/topics/legal-human-rights/news/2015/04/press-release-indigenous-controlled-mining-under-fire-colombi (Also available in Spanish)

- **Synthesis Report Year 1:** “Pushing for Peace in Colombia: Indigenous and Black Peoples Join forces to uphold their rights, address mining-related conflict.” Synthesis report for year 1 (2014-15). By Viviane Weitzner. (English only; Executive Summary available in Spanish)

2016

- **Amicus Curiae (7 March, 2016):** Escrito de **Amicus Curiae** en La **Acción de Tutela** interpuesta por el Resguardo Indígena Cañamomo Lomapieta (Pueblo Embera Chamí) contra la Agencia Nacional de Minería – ANM, la Corporación Autónoma de Caldas – CORPOCALDAS, el Instituto Colombiano de Desarrollo Rural – INCODER y el Ministerio del Interior **Rad. No. T5161395** (Spanish only)
- **News Item, Global Call for Action:** Interview with Arnobia Moreno on women and indigenous land rights in Colombia (8 December, 2016) <http://www.forestpeoples.org/topics/gender-issues/news/2016/12/interview-arnobia-moreno-women-and-indigenous-land-rights-colombia> (Also available In Spanish)
- **Final Synthesis Report:** “Indigenous and Afro-Descendant People pushing for peace in Colombia: ‘Between Hope and Despair’” (2014-2017). By Viviane Weitzner (Also available in Spanish)

Relevant Outputs financed by other donors

- **Workshop Summary Report:** “Diálogos Interculturales sobre la minería en Colombia”. A summary report (Spanish only) can be found at http://www.aconc.org/wp-content/uploads/2015/09/dialogos_interculturales_sobre_mineria_colombia.pdf (Spanish only)

- **Academic Articles:**

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Annex 3:

Public Declaration of Black Women Stewarding
and Caring for Life and our Ancestral Territories

DECLARACIÓN PÚBLICA

Primer Encuentro Nacional e Internacional de Mujeres Negras Cuidadoras de la Vida y Los Territorios Ancestrales

Las mujeres negras afrodiaspóricas reunidas en la región del Norte del Cauca, en el territorio negro ancestral de la vereda de Quinamayó, desde nuestra diversidad, experiencia y resistencias, asumiendo la herencia de lucha de nuestros ancestros y ancestras y reconociendo el valor ancestral de nuestros territorios:

DECLARAMOS

Que defendemos los derechos étnico-territoriales a la identidad, al territorio, a la autonomía, a la participación, a la organización, a la opción propia de futuro y nos solidarizamos con la lucha de las mujeres negras y pueblo negro del mundo.

Que el territorio es la vida y la vida no se vende, se ama y se defiende, el territorio es el patrimonio de los renacientes. Que nos ratificamos en el cuidado de nuestro territorio como espacio para existir y re-existir y no como un negocio para favorecer los intereses económicos de otros. Toda decisión que se tome sobre nuestros territorios debe involucrar a nuestra comunidad.

Que nos reafirmamos en el cuidado de nuestras prácticas ancestrales, nuestra medicina tradicional, nuestra historia y nuestra soberanía y autosuficiencia alimentaria. El cuidado de la ancestralidad es el principio que orienta nuestras acciones.

Que reconocemos la sabiduría de nuestras ancestras y nuestras mayores que son un pilar de nuestros procesos de lucha y un faro que guía nuestra comunidad.

Que reivindicamos nuestras formas propias de organización, persistimos en su autonomía, apostándole al autogobierno. Insistimos en que el movimiento social afro fortalezca la participación de las lideresas en los procesos organizativos.

Que rechazamos la explotación minera ilegal e inconstitucional. La invasión de multinacionales y foráneos en nuestros territorios nos ha traído delincuencia, violencia, abuso sexual y ha afectado nuestra cultura y vida en comunidad. La minería ilegal e inconstitucional ha acabado nuestras fuentes de sustento la como agricultura, la pesca y la minería ancestral, ha contaminado con mercurio nuestra agua, nuestros alimentos y nuestros cuerpos. Denunciamos la complicidad de las autoridades con la entrada de minería ilegal, el otorgamiento de permisos sin consultarnos previamente y la persecución a la minería ancestral.

Que rechazamos los megaproyectos agroindustriales que nos han traído amenazas, despojo y contaminación. Nos oponemos a la presencia de actores en el territorio que amenazan y ponen en riesgo la vida de la comunidad y nuestras lideresas.



"ENTRE LA ESPERANZA Y LA ANGUSTIA",
BETWEEN HOPE AND DESPAIR

Que como mujeres negras nos une un sentimiento de sororidad, hermandad y unidad, nuestra apuesta es el auto cuidado colectivo. Nuestra fuerza proviene de la resistencia de nuestras ancestras y de la que ejercemos diariamente en nuestras casas, familias y comunidades.

Somos mujeres negras empoderadas. Nuestra política es el afecto colectivo, el amor y el cariño.

INSISTIMOS, PERSISTIMOS Y NO DESISTIMOS

Quinamayó, 20 de noviembre de 2016.

Joining forces, weaving strategies

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