Pushing for Peace in Colombia: Indigenous and Afro-Descendant Peoples join forces to uphold their rights, address mining-related conflict

Synthesis Document for a collaborative project financed by the Embassy of Norway in Colombia and the Kingdom of the Netherlands (2014-2015)
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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 Lomaprieta through inter-ethnic and international alliances.”

By Viviane Weitzner, Forest Peoples Programme (December, 2015)
The sacred mountains of the Resguardo Indígena Cañamomo Lomaprieta and northern Cauca are rich with gold coveted by actors outside these ancestral territories.
Executive Summary:  
A separate executive summary in both English and Spanish can be found at: www.forestpeoples.org

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“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.”
—Chief Governor, Resguardo Indígena Cañamomo Lomaprieta

“Our savings are in the mountains... our battle is to be able to maintain those savings.”
—Afro-Descendant Councillor, Suárez Municipality, Cauca

“All concessions should fulfil free, prior and informed consultation and consent. But they said consultation is only for the environmental plan. That’s the third stage! The Colombian government hasn’t wanted to accept ILO Convention 169. And it shouldn’t only be consultation: It should be consent!”
—Leader, Palenke Alto Cauca-PCN
1. Introduction: Gold-related conflict escalates on ancestral lands in Colombia

1.1 Gold, Conflict and Hope

The Colombian peace talks currently underway in Cuba have raised anticipation and hope that the decades old internal armed conflict ravaging Colombia and its people might soon be brought 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.

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 rights frameworks in the world (see Box 1).

But on the other 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.

As Bogota’s famous Gold Museum attests, Indigenous—and also 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 call ‘ancestral mining’—a concept explained later on in this document—from other types of mining, and as a consequence it is lumped into other ‘illegal’, informal types of mining. Moreover, both legal and illegal armed actors are looking to ancestral lands as a place to engage in mining activities for profit; with illegal 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 narcotrafficking.

Finally, while the price of gold has dampened somewhat since its boom at the end of last decade, national and multi-national 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, and illegal armed actors are looking to ancestral lands as a place to engage in mining activities for profit; with illegal 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 narcotrafficking.

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“...which raises the question about the political will of the state to address the problems effectively...”

—Carlos Vázquez, UN Committee on the Elimination of Racial Discrimination (CERD), August 2015

1 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 5.3% of the population with recognized land title to approximately 50% 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).

2 Taussig (2004) highlights how Bogota’s gold museum completely ignores the important role that Afro-Descendant People played in Colombia’s gold mining history.

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 2).

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

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

Indeed, since 2009, Embera Chamí Indigenous communities from the 32 communities making up the Resguardo Indígena Cañamomo Lomaprieta, 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). With technical support from national and international allies, these peoples have shattered the myth that Indigenous and Afro-Descendant Peoples 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 of this innovative project (2009-2012) 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).

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 of the Project—the outcome of months of joint planning—has 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. Project activities cover five central themes: strengthening territorial and self-governance; research and knowledge generation; organizational strengthening; dissemination and sharing of experiences; and awareness-raising, policy influence and advocacy.

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5 Phase I (2009-2012) 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 http://www.nsi-ins.ca. Phase II (2014-2017) is undertaken in collaboration with the Forest Peoples Programme of the United Kingdom (www.forestrpeoples.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 Investigación y Estudios Superiores en Antropología Social (CIESAS-DF).

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

7 Financial support for the planning process came from various sources. We are extremely grateful to the Ford Foundation (Chile), for facilitating access to an IIEG 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.

8 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.”
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 synthesis document examines the first year (2014-2015) of activities of Phase II (2014-2017) of the joint project, in which the international NGO Forest Peoples Programme of the United Kingdom provides solidarity and technical support.

The report begins by providing a snapshot of the political moment in which Phase II of the project was launched, briefly taking stock of the national and international context. It then hones into the 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 successes and results from the project so far, but also critical challenges and urgencies moving forward. It closes with preliminary recommendations emerging from the first year of the work programme.
Box 1:

Colombia’s Progressive Rights Framework

Colombia’s national human rights framework for Indigenous and Afro-Descendant Peoples is among the most progressive worldwide. Among other international instruments, Colombia has ratified ILO Convention 169 on Indigenous and Tribal Peoples; the American Convention on Human Rights (giving Indigenous and Afro-Descendant Peoples access to the inter-American Human Rights Court and system); 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 are 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 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. It has upheld the rights to consultation and free, prior and informed consent in several key decisions involving the natural resources of Indigenous and Afro-Descendant Peoples, such as:

- **Judgment T-652**, which declared Decree 1320 of 1998 on prior consultation unconstitutional and inconsistent with ILO Convention 169;
- **Judgment C-030** of 2008, which declared without force (‘inexequible’) Law 1021 of 2006, the General Law on Forestry, for lack of prior consultation;
- **Judgment C-461** of 2008 concerning Law 1151 of the National Development Plan of 2006-2010, which suspended any implementation of programs, projects or budgets with the potential to directly affect ethnic communities until fully informed prior consultations are undertaken;
- **Judgment C-175/09** of 18 March 2009 which found Act No. 1152 of 2007, the Rural Development Statute, to be unenforceable due to lack of consultation;
- **Judgment T-769** of 2009, related to exploration and exploitation of the Mandé Norte/Cerro Carrepero Muriel Mining project because of lack of due process (no assessment of impact on Embera and Afro-Descendant communities), prior consultation and consent, and given the existence and cultural integrity of communities;
- **Judgment T1045A** of December 2010, which declared null and void a license granted for mineral exploitation in La Toma, Suarez, for lack of appropriate consultation with Afro-Descendant communities prior to issuing the mining license;
- **Judgment T-129** of March 2011 related to three projects, including the construction of a motorway, the bi-national electricity connection between Colombia and Panama, and a mining project (which the Court suspended until such time that there is appropriate consultation leading to free, prior and informed consent with the affected Embera Katio people for these projects); and
- **Judgment C-366** of 2011 which declared without force the reform of the mining code (Law 685 of 2001), due to lack of prior consultation with ethnic groups who could be affected (for more discussion on these see Rodriguez 2013; Vargas Valencia 2013; Negrete Montes 2013).

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 governance 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.
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Box 2:

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 has set aside some 42,733,164 hectares for strategic mining areas (Resolution 0045 of 2012) that overlap significantly with Resguardo lands.
- 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.

Almost the entire territory of the Resguardo Indígena Cañamomo Lomaprieta has been requested in mining concessions, including their sacred mountains, home of the protector spirits of the Embera Chami.
Visit to the so-called 'criminal mines' (operated by actors outside of the law) 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.

2.1 The national context: A snapshot

The first year of Phase II of our joint project coincided with a pivotal year for Colombia in many respects.

In the lead-up to and outset of our project—which was officially launched in August 2014—all eyes were on Colombia as hopes for the peace process reached a record high. Indeed, the peace process became the key issue of the presidential elections in June 2014: Juan Manuel Santos campaigned on his promise to provide ongoing support to the negotiations in Cuba, while uribista contender Óscar Iván Zuluaga took a tough stance, declaring he would disband the process and deal with rebel groups with a far harder hand. The upshot was that social movements such as unions and the Indigenous movement openly backed president Santos’ candidacy, 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 ‘locomota minera’, discussed later).

In the words of Juan Manuel Arias, president of the National Indigenous Organisation of Colombia, ONIC: “The Colombian Indigenous movement is betting on peace in the current situation; and when, in the current condition, we look at the country’s political situation, we see that it is through president Juan Manuel Santos that we can crystallize our dream.” Santos narrowly won a further four-year mandate (2014-2018) with 50.9% of the vote (Zuluaga obtained 45%). The elections signalled that while a majority of Colombians back the peace process, others are more skeptical of the process and its outcomes.

Yet what played out over the next year was a peace process that went down a very rocky road. In December 2014, the FARC declared a unilateral ceasefire. Guerrilla offensive actions were reduced by 85%, which had an immediate effect of decreasing violence to levels not seen since the 1980s. The ceasefire was relatively short-lived, however. On April 15, 2015 the FARC attacked a military column in Timba, Cauca, leaving 11 soldiers dead. On May 22 the Santos government responded with a series of aerial attacks against rebel groups. The FARC retaliated by launching a barrage of attacks on the oil sector between May and July, destroying pipelines and powerlines. In short, 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 October 2012.” A turning point came again July 12, 2015 when the FARC agreed to an indefinite ceasefire. Nonetheless, the assassination of Afrocolombian activist Genaro Garcia in Tumaco on August 3, 2015 who also had precautionary measures issued by the Nation Protection Unit, calls into question whether the FARC is upholding the ceasefire, with calls for verification missions to investigate.

There are also questions about the ongoing intimidation, harassment and other techniques that ethnic leaders face in the current context, as evidenced by the surprise jailing of Indigenous Leader Feliciano Valencia of the Association of Indigenous Cabildos of Northern Cauca (ACIN). Valencia was jailed for an alleged ‘kidnapping’ of a military officer who had infiltrated Indigenous territory in 2008, and who was detained under the powers of the special jurisdiction that Indigenous Peoples enjoy under the Colombian Constitution.

The Indigenous movement sees Valencia’s jailing as evidence that the Colombian state: “is undertaking a systematic attempt to criminalize and persecute the social movement imposing a war on those of us who have dared to defend our rights in an organized way in light of the failure of the State to implement its obligations. The arrest and judicialization of women and men leaders of our organizations represents an attack on peace with social justice so wished for by the Colombian people.”

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1 Efe (2014).
2 Isacson, Adam. 22 Jun 2015. “Colombia’s Peace Process: Some Frequently Asked Questions.” At http://www.wola.org/commentary/collombias_peace_process_some_frequently_asked_questions. For a useful timeline of these in the municipality of Guapi, Cauca. The FARC retaliated by launching a barrage of attacks on the oil sector between May and July, destroying pipelines and powerlines. In short, 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 October 2012.” A turning point came again July 12, 2015 when the FARC agreed to an indefinite ceasefire. Nonetheless, the assassination of Afrocolombian activist Genaro Garcia in Tumaco on August 3, 2015 who also had precautionary measures issued by the Nation Protection Unit, calls into question whether the FARC is upholding the ceasefire, with calls for verification missions to investigate. There are also questions about the ongoing intimidation, harassment and other techniques that ethnic leaders face in the current context, as evidenced by the surprise jailing of Indigenous Leader Feliciano Valencia of the Association of Indigenous Cabildos of Northern Cauca (ACIN). Valencia was jailed for an alleged ‘kidnapping’ of a military officer who had infiltrated Indigenous territory in 2008, and who was detained under the powers of the special jurisdiction that Indigenous Peoples enjoy under the Colombian Constitution.

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4 http://www.eltiempo.com/politica/justicia/crecen-acciones-violentas-de-las-farc/16056657
5 Public Declaration by ONIC, September 21, 2015. Following demonstra...
In sum, the events of the past year make clear that peace is still elusive in Colombia. Active combat is taking place in the rural areas that are home to Indigenous and Afro-Descendant peoples and campesinos. And particularly in Cauca, which has become a major hot spot in the armed conflict. As the peace process conversations continue in Havana, project partners expressed increasing concern that there may be disconnect between those negotiating, and those ‘operating’ on the ground. But also, there is concern that Indigenous and Afrocolombian Peoples are excluded from planning and negotiations that affect their territories and rights directly.

### 2.2 Armed groups turn to mining for ‘Fundraising’

While active combat wages between the military and the FARC, with ceasefires being declared from time-to-time, and violence de-escalating and then re-escalating, one constant remains throughout: The continued ‘fundraising’ the FARC and other armed groups engage 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 – it has been 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.

But in other parts of Cauca, operators have invaded one-by-one, acquiring access to communal lands through manipulative tactics and threats. Even in the two municipalities where legitimate ancestral mining takes place, Suárez and Buenos Aires. As a Black Community activist recounts:

> “Here in Cauca there are five municipalities most affected by what is called ‘illegal mining.’ Here ‘miners’ don’t get dirty. They don’t know the mines. Here what there is a criminal enterprise... Behind each bulldozer there are legal and illegal armed actors. These bulldozers are for money laundering. The bulldozer operators say: ‘Lend us your land, and we will give you 15% of our money laundering’. And people have fallen for this! Mayors, councillors are permeated by this situation. That weakens our organizational system in these five municipalities” (Inter-Ethnic Workshop, Cauca, June 2015)

However, this promise of a percentage of the money laundering is a trap, Black leaders state, as land owners do not know how much money is actually being laundered in the operations taking place on their lands. And clearly, all this is done without going through any process of free, prior consultation and consent with traditional authorities.

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 try to stop...”

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6 Peace talks have progressed on four of the five major points to be discussed, with September and December 2015 seeing a major breakthrough on discussions regarding justice for victims. Under the “Integrated System for Truth, Justice and Reparations” announced December 15, 2015, “the administration will create a truth commission tasked with shedding light on those who participated “directly and indirectly” in the conflict. The government will also establish a team to find the tens of thousands disappeared, whether living or dead. It will also create a special unit to “investigate and dismantle” criminal organizations linked to the conflict, including the gangs considered the success-ors to disbanded paramilitary groups.” (http://www.miamiherald.com/news/nation-world/world/americas/colombia/article49848940.html).

7 The National Afrocolombian Peace Council (CONPA), for example, has issued several declarations demanding to be at the negotiations table. CONPA is comprised of a number of Afrocolombian organizations, including: Autori- dad Nacional Afrocolombiana (ANAFO); La Asociación de Afrocolombianos Desplazados (AFRODES); el Foro Interétnico Solidaridad Chocó (FISCH); Red Nacional de Mujeres KAMBIRI; el Centro de Pastoral Afrocolombiana (CE- PAC); la Asociación de Consejos Comunitarios del Norte del Cauca (ACONC); El Consejo Laboral Afrocolombiano (CLAF); el Proceso de Comunidades Ne- gras (PCN); and the Conferencia Nacional de Organizaciones Afrocolombiana (CNOA).

8 There is much speculation about potential links between areas where criminal mining takes place, and multinational companies. For example, the area where the San Antonio catastrophe took place is said to overlap with a concession issued to mining giant Anglo-Gold Ashanti (AGA) that would there-fore leave the company liable for cleanup and compensation, according to allegations made by the Regional Autonomous Corporation of Cauca (Corpo- ración Autónoma Regional del Cauca -CRC). Yet the company and National Mining Agency state that AGA reduced the total area of concession in 2010, with a new area that excluded the San Antonio mine site, and is therefore not responsible (Serpa and Bolaños 2015).
Importing contraband gold from neighbours...

Buying minerals produced from local miners...

Importing machinery for mining, bought with... of this involvement.

Illegal mining themselves, with community members citing concrete observations of this involvement.

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 ancestral miners working in these areas.¹²

Massé and Camargo (2012) provide in-depth documentation of illegal armed actors and the extractive sector in Colombia, highlighting the various Modus Operandi (MOs) illegal armed groups use. These range from ‘older’ MOs where illegal armed groups enter minerals-rich areas ahead of multinationals in an effort to position themselves well for extortion; to newer and more subtle MOs where they infiltrate smaller and medium-scale operations demanding extortion and eventually controlling these operations; or where they themselves provide the heavy machinery and dredges to undertake mining, as in the case of San Antonio.

In its 2010 report “Minería de hecho en Colombia” (Mining on the ground in Colombia), Colombia’s Defensoría (Ombudsperson), dedicates a section to money laundering and terrorism financing through mining. The report states:

“In the case of Colombia, in certain cases, mining—and especially gold mining—has been a source for laundering money from narco-trafficking. The principal mechanisms used towards this end are the following:

- Buying minerals produced from local miners at prices higher than those offered by the end receivers (for example, the Bank of the Republic), with the aim of making these appear to be the production from ‘façade’ mines;
- Importing contraband gold from neighbouring countries such as Ecuador, Venezuela or Panama, to then make this appear as if it were production from ‘façade’ mines;
- Importing machinery for mining, bought with dollars made from narco-trafficking.

Additionally, groups at the margins of the law (guerrillas, paramilitaries and emerging bands) use extortion as a source of funding; they extort both miners and traditional miners at their place of mining, requesting monthly payments—whether in the form of demanding a portion of gross product, or a payment for each machine that a miner uses, according to reports from miners of the Bajo Cauca antioqueño made to representatives of the Ombudsman’s Office (Defensoría del Pueblo).⁶ (Defensoría 2010: 27).

For its part, the Comptroller’s Office (Contraloría), Colombia’s fiscal watchdog, has also emphasized this issue. In August 2013 it published a special report on illegal mining. The report documents several cases where illegal armed actors are present or involved in mining. And a November 2013 document issued by the same office goes into detail on the effects of criminal mining, and the failure of state attempts to address the situation.

Yet despite widespread awareness about the proliferation of mining operations infiltrated or established by illegal armed groups, statistics are difficult to come by. Examining data from 2004-2010 collated by the former Ministry of National Defense among other sources, Idrobo et al (2013) conclude that: “the rise of illegal gold mining has caused a statistically significant and quantitatively important increase in variables such as the rate of homicides and the number of victims of massacres.” They state: “our hypothesis is that violence is used as a mechanism of conflict resolution and territorial control given the illegal nature of gold extraction that occurred in some parts of the country.”

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10 A May 5, 2014 letter issued by a network of respected academics, notes 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 impoverished 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).

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

12 The following section is excerpted and adapted from Weitzner (2014).

13 Author’s translation.
Indepaz (2012) recently published a detailed report based on extensive fieldwork, showing the extent to which criminal bands—also known as BACRIM (i.e. criminal groups that emerged following the ‘demobilization’ of paramilitaries undertaken under the Uribe administration)—such as ‘The Rastrojos’, ‘The Urabeños’ along with the guerilla group FARC, control mining activities in the departments of Cauca and Nariño. This concurs with a January 2012 news report by Insight Crime (Fox 2012), that 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."

A World Bank report meanwhile concludes 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 Colombias GDP.14 The Colombian Association of Mining (ACM) and the National Mining Agency has proclaimed that some 88% of gold extracted in the country is illegal.15

There is evidence that the criminal business around Colombian gold is connected internationally with Mexico’s infamous Sinaloa cartel, who with their commercial savvy managing narcotrafficking, are facilitating the commercial aspects of laundering Colombia’s gold internationally.16

While this proliferation of academic, NGO and state agency reports indicates the extent of the problems at the crossroads of minerals extraction and the Colombian armed conflict, perhaps the most vivid and shocking details emerged in a series of investigative reports in the national magazine Semana in 2013. In a special issue, the magazine published several articles that provide testimony, photographs and other data detailing how illegal armed groups are taking hold of the extractive sector in Colombia, and the nightmarish impacts that are ensuing. Nightmarish not only in terms of the worrying environmental impacts that are flowing from ever-more incursions into pristine areas deep in Colombia’s Amazonia, for example; but also in terms of the widespread and varied social and human rights impacts. These range from conditions akin to forced slavery of those miners used and extorted by illegal armed groups at gunpoint; to impacts on the collective rights and autonomy of ancestral miners; to health impacts such as neurological diseases and birth defects from inhaling extremely high concentrations of mercury fumes; to increased substance abuse and increasing numbers of women involved in sex work; to livelihood effects on communities living downstream. Mining—of gold, tungsten and even coltan, some

of the highest paying metals and minerals on the international market—is proving to be an excellent way for illegal armed groups to raise funds, to launder money and even gold that comes from elsewhere, through activities that are seen as far more legitimate than growing coca, and easier to manage.

2.3 State responses

While the state is engaging in initiatives to try to address these issues, including establishing a specialized police unit 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.\(^\text{18}\)

One result is that public forces are being mobilized to protect private enterprise, in what some consider is akin to ‘privatization’ of public forces (Massé and Camargo 2012). Public forces are being concentrated in areas where exploration and exploitation is taking place by national and international companies, detracting from security provision to other populations, leaving these more exposed and more vulnerable to illegal armed actors.

An additional issue, however, is that the Colombian military has itself been the subject of scandal in recent years. This revolves around the phenomenon of extra-judicial killings—more commonly known as ‘false positives’—where “army personnel killed civilians and reported them as combatants killed in action” (Human Rights Watch 2014). With high-level military personnel involved, this scandal has rocked the Colombian military’s reputation, leading the state to establish a military justice process to address this. The recently completed United Nations Universal Periodic Review on Colombia (April 2013) drew attention to this issue, with several countries intervening with observations and recommendations that this situation be addressed, and those involved brought to account. Concerns were also expressed against giving the martial court process powers in addressing human rights violations involving members of security forces.\(^\text{19}\)

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

As well, the knee-jerk reaction of many in the face of illegal mining is to argue that ‘legitimate’ large-scale mining should therefore be encouraged. Yet this is a problematic line of argument on several fronts, including that large-scale mines are by far not immune to illegal armed groups and their tactics.

While this snapshot offers only a selection of the key issues at stake around mining in the context of the Colombian armed conflict, it provides a sense of the immense complexity, and the reach of the illegal armed actors at war. 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 hand,\(^\text{20}\) 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”\(^\text{21}\) (emphasis added). The country’s minerals riches are now at the heart of disputes fuelling Colombia’s armed conflict.

A key question is whether now falling gold prices might ‘chill’ interest in mining gold from both ‘legal’ and criminal miners.\(^\text{22}\) The evidence on the ground does

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\(^{17}\) Efe Economía, Bogotá (17 enero 2014).

\(^{18}\) Massé and Camargo (2012).

\(^{19}\) For example, “117.8. Take further measures to ensure that the military justice system does not claim jurisdiction in human rights cases involving members of security forces (Portugal)”; or that Colombia, “118.26. Reinforce its efforts to end impunity concerning serious human rights violations including those perpetrated by high ranking military officers as well as those related to sexual violence against women (Republic of Korea),” A/HRC/ WG.6/16/L.4, April 2013.

\(^{20}\) 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. Our final project (Phase II) synthesis report (forthcoming in 2017) will discuss this issue further. Contraloría (2013: 558) offers an excellent and detailed map showing the overlap between ethnic communities and mining concessions.

\(^{21}\) Becerra (Contraloría 2013: 188).

\(^{22}\) The word ‘legal’ is in quotation marks because from the perspective of Colombia’s ethnic groups and other affected communities, most miners are acting illegally under national and international law, in that their activities have not undergone prior consultation or free, prior and informed consent.
not corroborate this.\textsuperscript{23} While perhaps multinational companies and especially smaller exploration companies known as juniors may be tempering their current activities, Colombia’s vast gold resources and other minerals and metals—and the rhetoric around peace that is echoing internationally—make Colombia still an attractive destination.\textsuperscript{24} And the ease with which gold can cross borders largely unquestioned makes this activity particularly attractive for illegal armed groups.\textsuperscript{25}

\textbf{2.4 Colombia’s Justice System in Crisis}

The first year of our project coincided also with scandal in Colombia’s justice system, and more particularly, its Constitutional Court. Alleged bribery of the president of the Court among a series of other serious allegations, were disclosed through national media\textsuperscript{26}. The Court is known worldwide for its progressive decision-making; the scandal that has rocked the institution is a let-down for Indigenous, Afro-Descendant and other people who have held it in high regard. An Afro-Descendant lawyer-in-training in Cauca summarized the implications of the scandal succinctly when he said: "The court held out hope for our country. Seeing it embroiled in scandal is extremely demotivating. If bribery happens at such a high level, what happens from that level down?" To which an Indigenous project participant standing close by responded: "Everything is rotten in this country, everywhere."

Yet despite the scandal, there is still hope for the Court, evidenced by a cutting-edge process and decision involving the Yaigoje Apaporis national natural park in Vaupés, established in 2009 to fend off mining in the area. A Canadian company, Cosigo Frontier Mining Corporation, was pushing to continue to be able to engage in minerals activities in light of a title that had been issued within the boundaries of the protected area prior to the creation of the park. Magistrates from the Constitutional Court visited the area to fact-find, and to talk with the Indigenous Peoples affected. The Court’s Decision T-384-14 suspended the activities related to any concessions issued within the boundaries of the Reserve-Park, and, among other topics, reinforced the importance of good faith consultation processes, a critical aspect which the Court found had been lacking in the process around the mining claim in the area. T-384-14’s process and outcome reinforces the ongoing importance of the Constitutional Court in upholding human rights.

\textbf{2.5 Weakening environmental and human rights protections in Colombia’s national mining framework}

During our project’s first year a series of national decrees were issued to streamline environmental permits, and consequently, consultation processes linked to these.

By way of background, Colombia’s efforts to reform the national mining code were declared unconstitutional by the Constitutional Court in 2011 for lack of consultation with the country’s ethnic groups. While the State was given a window of two years to present a new proposal following due process, the deadline the Court gave the State came and went (May 2013), and no new proposal was submitted. The consequence is that the previous version of the mining Code dating back to 2000, now prevails. However, the State began...
issuing a series of unilateral presidential decrees as a means to try to implement some of the provisions it had tried to push through the failed mining code reform, including expediting licensing and consultation processes.

In November 2013, two important Decrees were issued around prior consultation processes. On November 7, the government issued Presidential Directive No. 10, guidelines for implementing prior consultation. The purpose of these guidelines is to facilitate interagency coordination of prior consultation processes, with the aim of administrative efficiency and good governance in consultation processes with ethnic communities “for the development of projects, construction or activities.”27 The directives outline five phases for the process: certification of whether or not ethnic communities are in the affected area; coordination and preparation of the process; preconsultation; consultation; and follow-up. They also make very clear, that the aim of prior consultation is to establish agreement on mitigation measures for projects going ahead. The right to free, prior and informed consent comes into play only during the coordination and preparation phase, when the Directorate of Prior Consultation establishes whether FPIC is required.

According to the guidelines, and following Constitutional Court jurisprudence, FPIC is considered only when: a) the intervention requires relocation or displacement of the communities; b) the intervention is related to the storing or disposing of toxic waste on ethnic territories; and c) the intervention represents a high social, cultural and environmental impact in an ethnic community, that could put the very existence of the community at risk.28 What is striking and concerning is that it is the Directorate unilaterally determines whether FPIC takes place or not, as well as the sphere of influence of the project and its impacts. This is not consistent international standards on impact assessment, where affected communities must be involved in determining spheres of influence and the severity of potential social, cultural, livelihood and environmental impacts. There is some possibility for communities and civil society to appeal as consultation processes go along, but that would require judicial and litigious action.

And in November 20, 2013, the government issued Decree 2613, whereby it adopted a protocol for interinstitutional coordination for prior consultation that goes hand-in-hand with the guidelines for ethnic communities.

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 Licencing 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”. 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.29

Rigour and independence of information aside, clearly there are concerns regarding any meaningful community participation in the process given the compressed time frames for environmental licensing in these new regulations.

27 Paragraph two states: “should be used as a tool for inter-institutional coordination, to reach administrative efficiency and good governance practices, in processes of prior consultation of ethnic groups for the development of projects, such as works or activities."

28 a. When the intervention requires the resettlement or displacement of the communities. B. When the intervention relates to the storing or dumping of toxic waste in ethnic territories; and c. When the intervention represents a high social cultural and environmental impact in an ethnic community, that will lead to putting at risk its existence."

29 According to the Director of Sergio Arboleda University’s Master’s programme on management of environmental impact assessment, School of Engineering:

“The problem of environmental licensing tends to grow deeper instead of getting better for various reasons:

• In a country without a trustworthy baseline and that also is ignorant of its own resources and limitations, it is supremely dangerous to order that this information be drafted on an information base provided by third parties, among which there are some that have interests and where there is no state power to guarantee the analysis and refinement of this information.

• If control is going to be based on information provided by the IDEAM and this, in turn, obtains it from the consultants who are requesting the licenses, it is not farfetched to think that the licensed companies will be measured against the baselines they generate themselves, and not verified by the authority.

• The timeframes do not permit a rigorous analysis of the projects presented, even if the number of public servants is duplicated; this is because some of the information and analysis must be done sequentially, and cannot be simultaneous.” (‘¿Qué cambia el decreto 2041 o de licenciamiento exprés?’, El Nuevo Siglo, 19 October, 2014.)
2.6 Plan Nacional de Ordenamiento Minero de Colombia

Project participants were caught off-guard hearing that the national government had unilaterally drafted a National Mining Plan. Indeed, in February 2014, the national minerals planning unit (Unidad de Planeación Minero Energética), under the Mining and Energy Ministry, adopted Resolution 256, the National Mining Plan (Plan Nacional de Ordenamiento Minero de Colombia). The first some heard of it was when a meeting was called by a coalition of concerned consultants and agencies to examine lack of social inclusion in the Plan. This, a full year after the Plan had been adopted. This type of exclusive planning is indicative of the failure to uphold ethnic rights to participation in practice.30

“After more than 20 years of Colombia’s Political Constitution being in place, these decrees [on Autonomy] overcome the barriers that technicians and middle tier public servants erected alleging technical and judicial impossibility for the effective enjoyment of the rights of Indigenous Peoples. These norms will be an opportunity, but they depend on how Indigenous Authorities assume their responsibilities.”

—Indigenous leader

2.7 Steps forward on Indigenous Autonomy

Yet there was also some good news in the first year of our collaborative work in terms of recognition of Indigenous Autonomy. On the 7th of October, 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,” and Decree 1952 on Indigenous Education.31 These Decrees come after various social mobilizations. They show, as one Indigenous leader put it:

“The technical and political capacity of our struggles and mobilizations in 2013, the technical and political capacity for negotiation and agreement of our movement, leaders and advisors. After more than 20 years of Colombia’s Political Constitution being in place, these decrees [on Autonomy] overcome the barriers that technicians and middle tier public servants erected alleging technical and judicial impossibility for the effective enjoyment of the rights of Indigenous Peoples. These norms will be an opportunity, but depending on how Indigenous Authorities assume their responsibilities, they will strengthen their capacity to govern, their autonomy and the wellbeing for their communities.”

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). The decrees 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, managed now directly by Indigenous authorities themselves, rather than through mayors. These are all major steps forward in autonomy for Indigenous Peoples. 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.

2.8 National Development Plan

Debates around Santos’ proposed National Development Plan (2014-2018, “Todos Por un Nuevo País: Paz, Equidad, Educación”) were taking place the first few months of our project. While project interventions in this process will be discussed in detail below, it is important in this context to point out briefly that the whole PND formulation and adoption process was questioned both by Indigenous and Black Communities at various levels.

The lack of appropriate consultation and consent of the Plan was raised as a problem by different groups, at different levels. Colombia’s Black movement charged that it was not at all consulted for the Plan. The movement has rejected the national

30 See Centre for Social Responsibility in Mining (2015).
31 “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.”
32 “By means of which is modified Article 12 of Decree 2500 of 2010.”
consultation commission (‘Comisión Consultiva de Alto Nivel’) set up in 2012 by the Santos government to undertake prior consultation with ethnic groups at the national level. The mechanism was established after discussions only with Black Community Councils who had collective title, and in so doing, discriminating against other Black communities with no recognized title, or who live in urban areas. For this reason, the Black movement rejected this mechanism as a representative body, a decision clearly expressed in public declarations following the 2013 First National Congress of Black Communities in Colombia that took place in Quibdó. But the Black movement also took their rejection of this mechanism to the courts. Indeed, the Constitutional Court ruled in favor of the Black movement, ordering that a mechanism be put in place developed by Black communities themselves. Yet that process had not yet been defined prior to the National Development Plan moving to Congress. For this reason, the Black movement took judicial action to ask that the Plan not move through Congress until the government carry out due process including free, prior and informed consultation through an appropriately established consultation mechanism. However, this court action was not successful, and the National Development Plan was debated in Congress and approved as law.

While Indigenous and Rom peoples had been consulted through the consultiva mechanism that they have not rejected as being unrepresentative, the Government did not allow for consultations on certain issues of the National Development Plan, as was the case with mining. The consultations that did take place around the National Development Plan were therefore flawed from the get-go. This will be discussed further below.

Although much content of the Plan is controversial, a key concern for Indigenous and Afro-Descendant Peoples is the further entrenchment of unilaterally established areas of national strategic mining interests (Areas estratégicas mineras). These areas were established in law under the 2011 National Development Plan (Law 1450), in its article 108. In brief, the national mining authority has the power to determine and delimit areas of strategic mining interest for the country, to later issue special concession contracts through a selective process based on specific terms of reference. Through a series of resolutions following the 2011 National Development Plan, the Ministry of Mines and Energy outlined the types of minerals considered strategic for the country (gold, platinum, copper, phosphates minerals, potassium, magnesium, coal, uranium, iron and coltan), and the types of areas with these potentials. The Ministry of Mines and National Mining Agency then established a total of 516 strategic mining areas across the country, covering some 20,471,346.7 hectares, representing 20.3% of the national land base. Alarmingly for Indigenous and Afro-Descendant Peoples, collective lands are not among the list of lands to be excluded from establishment of these areas; and in effect, these reserves do overlap with collective lands, allegedly the Resguardo Indígena Cañamomo Lomaprieta. Successful litigation has taken place to temporarily suspend these strategic mining zones due to lack of consultation with Colombia’s ethnic peoples; yet these zones have not been revoked, and remain a threat to the integrity of collective territorial lands.

### 2.9 Colombia under scrutiny at CERD

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. Public Hearings took place August 2015, with the Committee publishing its concluding observations that same month.

In 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

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36 Juan Pablo Muñoz (2015) legal and political analysis presented at a June 2015 inter-ethnic workshop held in Cauca See also May 15, 2015 Press Note from Centro de Estudios para la Justicia Social Tierra Digna, the organization that took legal action to suspend the strategic mining areas, which states that: “On 15 May 2015, Colombia’s State Council, the country’s highest administrative court, suspended three executive decisions that had demarcated 516 specific zones as ‘Strategic Mining Areas’ or ‘Mining Blocks.’” In its ruling the Council verified a violation of ethnic communities’ right to prior consultation. As such, the ruling also upheld the State’s obligation to guarantee prior consultation in all administrative measures and decisions that seek to implement development plans and mining extraction in Colombia.” (http:// tierradigna.org/areas/mineria-metales.php)
37 Interventions were made by the Association of Community Councils of the North of Cauca (ACONC); the Wayuu People; the Movilización de Mujeres Afrodescendientes del Norte del Cauca in association with the Leitner Center for Law and Justice at Fordham University School of Law; and Franciscans International.
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 Box 3). The Committee made clear its concern about the disproportionate impacts on Indigenous and Afro-Descendant communities in terms of the armed conflict, including militarization of their lands and forced recruitment of youth by armed groups, as well as sexual violence against girls and women. 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. Carlos Vázquez, the UNCED’s rapporteur for Colombia, emphasized there is much work to be done to bridge the gap between rights protection on paper, and what takes place across the country: “I can’t think of any country where the gap between the norms and the situation on the ground is bigger…which begs the question about the political will of the State to address the problems effectively.” The substance of the public hearings and the Committee’s recommendations provide important tools for the Palenke, the Resguardo and their allies like the Forest Peoples Programme to push for changes in policy and practice around human rights and the minerals sector in Colombia.38

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Box 3:

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.

Authorities of the Resguardo Indígena Cañamomo Lomoprieta in ceremony with their “bastones de mando”, symbols of their authority.

3.1 The international context: A snapshot

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. This report makes several important observations and recommendations, particularly around recognizing the right to free, prior and informed consent. 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 extractive activities on the lands and lives of ancestral peoples (see Box 4).

1 Other guidance also 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.
Box 4:

Observations of former UN Special Rapporteur on Indigenous Peoples Rights James Anaya on the Extractives Sector, FPIC and ‘the national interest’

According to former UN Special Rapporteur on Indigenous Peoples Rights James Anaya in his 2013 final report on the theme of extractive industries and indigenous peoples, the general rule for any extractive activity that affects ethnic territory is to obtain FPIC:

27. The Declaration and various other international sources of authority, along with practical considerations, lead to a general rule that extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent. Indigenous peoples’ territories include lands that are in some form titled or reserved to them by the State, lands that they traditionally own or possess under customary tenure (whether officially titled or not), or other areas that are of cultural or religious significance to them or in which they traditionally have access to resources that are important to their physical well-being or cultural practices. Indigenous consent may also be required when extractive activities otherwise affect indigenous peoples, depending upon the nature of and potential impacts of the activities on the exercise of their rights. In all instances of proposed extractive projects that might affect indigenous peoples, consultations with them should take place and consent should at least be sought, even if consent is not strictly required.

According to Anaya, the only valid exception to the rule of FPIC for extractive projects can take place if the limitations on human rights “comply with certain standards of necessity and proportionality with regard to a valid public purpose, defined within an overall framework of respect for human rights” (par 32). Economic growth cannot be considered ‘in the national interest’, without considering other impacts as well. He states:

35. The Special Rapporteur observes that in a number of cases States have asserted the power to expropriate indigenous property interests in land or surface resources in order to have or permit access to the subsurface resources to which the State claims ownership. Such an expropriation being a limitation of indigenous property rights, even if just compensation is provided, a threshold question in such cases is whether the limitation is pursuant to a valid public purpose. The Special Rapporteur cautions that such a valid public purpose is not found in mere commercial interests or revenue-raising objectives, and certainly not when benefits from the extractive activities are primarily for private gain. It should be recalled that under various sources of international law, indigenous peoples have property, cultural and other rights in relation to their traditional territories, even if those rights are not held under a title deed or other form of official recognition. Limitations of all those rights of indigenous peoples must, at a minimum, be backed by a valid public purpose within a human rights framework, just as with limitations on rights formally recognized by the State.

36. Even if a valid public purpose can be established for the limitation of property or other rights related to indigenous territories, the limitation must be necessary and proportional to that purpose. This requirement will generally be difficult to meet for extractive industries that are carried out within the territories of indigenous peoples without their consent. In determining necessity and proportionality, due account must be taken of the significance to the survival of indigenous peoples of the range of rights potentially affected by the project. Account should also be taken of the fact that in many if not the vast majority of cases, indigenous peoples continue to claim rights to subsurface resources within their territories on the basis of their own laws or customs, despite State law to the contrary. These factors weigh heavily against a finding of proportionality of State-imposed rights limitations, reinforcing the general rule of indigenous consent to extractive activities within indigenous territories.

Source: A/HRC/24/41, July 1, 2013 (emphasis added).
Yet the debate continued in 2014–2015, 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 simply do not provide adequate protections or remedies. As Victoria Tauli-Corpuz, current UN Special Rapporteur on Indigenous Peoples Rights, stated in her opening remarks at the Working Group’s First Session July 6, 2015:

“The search for a new international legal instrument and the implementation of the Guiding Principles should not be seen as contradictory, but rather complementary objectives. While we continue searching for viable alternatives to fill existing accountability gaps, the principles should continue to be used as an interim while we continue developing the platform for advancing in the prevention and remedy of human rights abuses in the context of corporate activities.”

• The efforts towards regulation should build upon former UN Special Rapporteur on Business and Human Rights John Ruggie’s (2009) “Protect, Respect and Remedy” framework, and Guiding Principles (2011), translating these advances into an international legal framework for accountability. The creation of a legally binding international instrument is welcome news for communities worldwide affected by extractives and other transnational corporations. As many have noted, the Ruggie Principles do not go very far in protecting human rights in the context of Colombia’s complex landscape of internal armed conflict.  

• 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.”  

Building on 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.”  

The legislation addresses specifically sourcing of gold, tantalum (the material that makes mobile phones vibrate), tungsten and tin imports from conflict zones. Implementing the legislation will require further negotiations with member states of the EU. Given that Colombia exports much of its gold to Switzerland, and coal to Holland, among other minerals, the EU legislation will have big implications for the country and its extractive sector.

• The International Council on Mining and Metals (ICMM) began requiring its member companies to implement its Indigenous Peoples Policy. As of May 2015, ICMM member companies such as Anglo-Gold Ashanti are required to implement an Indigenous Peoples Policy that includes respecting free, prior and informed consent. 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.  


4 Shreema Mehta, May 28, 2015, EU Votes for Strong Conflict Minerals Regulation.

5 Some States, such as Canada, however, are already pushing back against the outcome document, noting that they supported the UNDRIP as an aspirational, not legally-binding document; and arguing that certain paragraphs relating to upholding free, prior and informed consent could be interpreted as a ‘veto’, cannot be reconciled with Canadian law, and therefore cannot be endorsed by Canada as it ‘fetters’ Canada’s ‘Parliamentary supremacy.’ See http://www.afn.ca/en/news-media/latest-news/canadas-state-ment-on-the-world-conference-on-indigenous-peoples-outcom.

2 See for example, Weitzner (2012); Alliance for Lawyers at Risk (2012).
• The United Nations declared 2015-2024 the International Decade of People of African Descent. 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”. This will place the political limelight on Black Communities in Colombia as they push for their rights to be recognized.

6 http://www.un.org/en/events/africandescentdecade/

• While this list of relevant initiatives is far from exhaustive, it evidences the debate taking place internationally over the last year 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.

8 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
4. Key Issues and Moments during 2014-2015 of our joint project: From a critical analysis and learning perspective

With the World Conference of Indigenous Peoples at the end of 2014, and the declaration of International Decade of People of African Descent, international awareness is growing regarding the urgencies and needs these peoples face to protect their territories and identity, particularly in the face of minerals extraction, climate change mitigation schemes, and other projects planned for their lands and affecting their territories. Yet in Colombia, the political backdrop and complex realities of armed conflict make addressing rights protection effectively an enormously difficult task.

This section reviews some of the key moments and issues that surfaced in 2014-2015, and the joint activities we undertook to begin to address these. 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, and also the individual documents each component produced during 2014-2015. Aside from the first section, which considers the fundamental issue of territorial ownership, the discussion of each issue concludes with an analysis of key successes, challenges and learnings. The section concludes with some reflections on operational aspects of the project, and identifies new priorities emerging from our work programme to be considered as we move forward.

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 touching fundamental questions around: 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 Lomaprieta:

“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.”

—Chief Governor, Resguardo Indígena Cañamomo Lomaprieta

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. And where true Autonomy, can take place only

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2 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.’
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... This in order to truly 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 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 2014-2015: “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 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 underpin 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.


Background and actions

As mentioned above, our project was launched during debates around the proposed 2014-2018 National Development Plan, whose theme is: "All for a new Country: Peace, Equity and Education." While we were just consolidating our project teams and work programme when the NDP debate was at its most intense, the project team realised this plan was a critical document in which to intervene given that it would have the force of law; and given our analysis that discussions around reform of the mining code were being blocked and essentially at a halt. We needed to intervene quickly and as effectively as possible to put forward our proposals especially around protection of ancestral mining.

In this spirit, we developed a document outlining our concerns with the process and substance of the Plan, and that put forth our proposals. 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. It described the arguments in the injunction of the Afro-Descendant movement against the plan for lack of consultation, and then stated the following about Indigenous perspectives on the process:

From the perspectives of Indigenous Peoples and their representative organizations, the process of consultation of the National Development plan has also violated due process, particularly in relation to the topic of mining, as consultation with Indigenous Peoples on this topic [mining] was not permitted. This is evidenced in the minutes of the Permanent Round Table with Indigenous Peoples and their Organizations that took place in January 2015 in Bogota (Session MPV No. 1 of 2015), in the discussion of the construction and consultation of public policy and normativity with regard to mining. The minutes open with the intervention of Ms. Maria Victoria Reyes, Chief of the Office of Environmental and Social Issues of the Ministry of Mines and Energy, who “manifests that with regards to the topic of discussion, the Ministry of Mines and Energy considers that the current policies are adjusted to the legal and normative framework, and for this reason she declares that the proposal of Indigenous Peoples [to open debate] is not open to discussion” (our emphasis). In other words, the State representative closes the door to the possibility that the topic of mining be consulted, leading to Indigenous members of the round table expressing their deep disagreement, as this goes against their fundamental rights to consultation and free, prior and informed consent.

We also analysed the substance of the plan, and put forth some of our biggest concerns related to mining. Briefly, these included, among other points:

- Lack of reference to ‘ancestral mining’ as a critical component of differentiated public policy;
- The need to bridge the current legal gap around mining, and to spur the reform of the mining code so that it: follows due process of consultation and consent of ethnic groups; recognizes and protects ancestral mining as distinct from other types of mining; as well as Indigenous and Afro-Descendant peoples’ self-determination and autonomy in the face of administrative acts, projects, plans and laws related to the extractive sector that affect ancestral territories.
- The need to strengthen efforts towards formalization such that the rights of ethnic peoples are included, which includes self-government of ancestral mining; and that traditional authorities—Cabildos and Consejos Comunitarios—be recognized as the authorities for decision-making around any activity affecting ancestral territories, particularly related to ancestral mining.
- Lack of emphasis on strengthening the role of the Ministry of the Environment, particularly with regards to environmental, social and human rights impact assessments, for which we mention uptake of the Akwé:kon guidelines\(^3\) as an important tool.
- Lack of consideration of free, prior and informed consent side-by-side consultation.
- The unilateral establishment of zones of national strategic mining interests overlapping with ancestral territories, without due process of consultation or consent, going against the Colombian Constitutional and international human rights framework.
- That efforts to address ‘illegal mining’ not lump in ancestral mining; but instead that ancestral mining be officially recognized as legitimate and protected.

The document includes an annex summarizing concretely our policy proposals.

**Successes, Challenges and Learnings**

Our strategy to influence key players involved with the debate was to meet with Indigenous senator Luis Evelis, who helped develop a plan to disseminate our report by holding working breakfasts and meetings\(^4\) with some key senators involved with the issues:

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4. Following our initial bilateral meeting with Senator Luis Evelis in early January 2015, the project team organized two meetings in Bogota – one in February and one in March—inviting key senators and their assistants.
copies of the report were also given to other relevant senators. These working meetings, where ONIC’s Chief Counsellor Luis Fernando Arias was also a key player and host of one of them, shone light on the fact that our proposals were not ones that had yet been brought to the table by Indigenous or Afro-Descendant organizations. Concerns that had been expressed about mining were mostly against large-scale mining, but to date there had not been a concerted effort to address protection of ancestral mining. Our proposals were consequently met with great interest.

Nonetheless, it was evident that we had arrived too late for these issues to be incorporated into the Plan. For effective intervention, we needed to have been involved months earlier, feeding in actual wording of articles to the senators and their assistants working on the Plan. Substance and timing aside, it was arduous for us to be involved in political debate in Bogotá, while there was so much to do and address in both Cauca and Caldas. This drove home the need for building stronger local-national level alliances, and more sustained work to push for legal and policy change nationally.

4.3 Invasion of ancestral territories by illegal armed miners in Cauca: Black Women’s March November-December 2014 and subsequent negotiations

Background and actions

By November 2014, land invasions in Northern Cauca by illegal-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. Desperate attempts to stop the bulldozers included Black Leaders speaking with the operators directly, organization of a social protest by the riverside, and a subsequent verification mission by Defensoría and OACNUDH.

Because no ‘acción contundente’ (compelling response) emerged from these actions, following several meetings—especially of Cauca women—the people of Northern Cauca decided to go 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, non-violent 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.

The women issued several public declarations throughout the march, working the social media through tweeting. In one of the first public declarations, they stated:

“What do we want? The media asks us again and again. We don’t want to feel fear when we walk our trails. We don’t want to hide out of fear when we get in the river because a bullet could take our lives. We want the bulldozers out of Cauca. We want the concessions to be revoked because we were not consulted. We want to live without the fear caused by the machine owners that send us notes saying that they know when our daughters and sons leave school...” (PCN, 18 November 2014)

After some 10 days of walking, which garnered significant media attention, the women arrived in Bogota, to meet with the Vice-Minister of the Interior,
Indigenous and Afro-Descendant Peoples join forces to uphold their rights, address mining-related conflict

herself a Black woman. They had several central demands, which were articulated to a national daily in the following terms:

“We are demanding that they remove the bulldozers that are on the Ovejas river. We are asking that they fulfil the Court decision (T-1045A of 2010) that orders the suspension of mining activities on our territory and to undertake the required prior consultations. None of these have been done, and now we are scared. Because they threaten us, because they say we don’t let them work. But they are taking away a resource from which we have lived for many years. We dedicate ourselves to fishing and ancestral mining.” (Silva Numa, 26 Nov 2014)

Yet during the day of meetings with the Vice-Minister of the Interior, the women were met with seeming indifference and lack of concrete action, and proceeded then to occupy the offices of the Ministry. They spent four days and nights in the Ministry until the government agreed to establish a negotiations table to consider each of the women’s demands.

The next two weeks saw the negotiations of a series of agreements. Key issues discussed included: the government stopping the illegal operators in La Toma and other affected places and seizing the heavy machinery; protection plans for the women returning to Northern Cauca following the negotiations; and strengthening of the Guardia Comarrona to defend ancestral territories from illegal mining. Two particularly thorny issues which remained largely undebated were around: 1) annulling minerals concessions that had been issued without consultation and consent; and 2) State plans for formalization of gold panners (bariqueros and bariquerias). In the first case, the State had little information available on the extent of the concessions and was unwilling to move forward with rigorous debate at this particular table; and in the second, there were clashes around gold panning as a way of life, and its mobility. State representatives were wanting to implement a programme educating gold panners about other possible livelihoods, while the Black women at the table saw this as an affront to an ancestral activity that has always gone hand-in-hand with other activities, expressing concern that the State’s formalization programme would erode the cultural spirit and mobility that gold panning entailed.

Successes, Challenges and Learnings
The women’s march was not a pre-planned activity of our project. However, the project clearly facilitated some of the spaces where this March was planned, and later debriefed. The women involved expressed deep frustration with the way negotiations took place, where high level authorities dropped out, and junior State representatives came to the table with no knowledge of the issues.

The delays in meeting times and rotating places for the meetings added to the fatigue the women already felt from the March itself and weeks away from home. Since the agreement signing ceremony December 11, 2014, several follow-up meetings have taken place, yet as with other agreements such as those made following the catastrophe in the San Antonio Mine April 30, 2014, very little progress—or more accurately, no progress—is being made in implementation.

While the learnings of this action are still being processed, the most pivotal are the importance of international and national alliances, working
the media and making issues visible through social media. However, there is also a strong sense that these types of marches and occupations of State offices must be done strategically for maximum effect. One effect of the march was a backlash from criminal groups with interest in the gold in northern Cauca. The women—and men—who are involved in speaking out for their rights in the face of mounting pressure from criminal mining, are receiving increasing threats to their lives and safety. Some have had to flee their territories with their families. This effect was predicted prior to the march; and in fact, one negotiation point was ensuring security measures for the women returning home. Yet what actually took place in this regard was far from sufficient.

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 human rights defender’s prize in recognition of the action’s importance. Yet, concrete outcomes are still elusive. Yet, as one high level foreign official remarked: “Better an agreement—even if there is no implementation—than no agreement at all.” Indeed, there is at least a record of agreements, a hook for calls for implementation of commitments.

4.4. ‘Gobierno Propio’ versus State Formalization of Ancestral Mining

Background and actions

As noted throughout this document, both the Resguardo’s Cabildo and the Palenque 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 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.

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 Indigena. Indeed, this project has enabled further strengthening of these regulations, and the mechanisms to implement them, with the substance being strengthened through consultation with experts, including representatives of the state. The Indigenous Mayor of Riosucio has actively supported the Cabildo’s efforts in this regard. And the Cabildo is in open communications with State police, should it require backup and coordination for any actions within Resguardo territory led by its Guardia Indigena.

In short, the effort is not without coordination with the State, both in terms of substance, and in terms of enforcement.

During 2014-2015, Members of the Cabildo and ASOMICARS met with government officials both in Bogota and in Manizales, to enter into dialogue on obtaining State recognition of their own self-governed ‘formalization’ of ancestral mining within their territories. State formalization requires obtaining a mining title over Indigenous lands, which goes against the vision that Indigenous Peoples have for full respect for FPIC and aspire to obtain State recognition of their self-governed ‘formalization’ of ancestral mining within their territories. State formalization requires obtaining a mining title over Indigenous lands, which goes against the vision that Indigenous Peoples have against the vision that Indigenous Peoples have.

7 During Phase I of this project, the Resguardo established the following regulations: “Resolution 051 (17 July 2011) Regulating the artisanal ancestral mining within the territory of the Resguardo Indígena Cañamomo Lomaprieta; Resolution 046 (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 044 (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 Supia, Caldas. During 2014-2015, the Resguardo continued upholding, adjusting and refining these regulations. It also began to develop supplementary environmental regulations regarding buffer zones around mining areas. These have been developed in active consultation with experts and state representatives.

8 February of 2015, members of the Resguardo met with the National Mining Agency in Bogotá; and a meeting with Corpocaldas in Manizales led to their participation in a workshop in the Resguardo on environmental management plans July 15, 2015. There have been ongoing interactions also through a Round Table on Formalization established by the State, in which the Resguardo participates from its stance as a self-governed Indigenous territory with special jurisdiction.

“‘It’s important that the environmental and social policy framework falls under the umbrella of the exercise of autonomy of ethnic peoples. In other words, that cultural, environmental and ecological standards are framed within the exercise of their own rights. Autonomy is legislating; it doesn’t refer to anyone, but to exercise the right, and this is within the framework of the Constitution and international treaties. ILO Convention 169 establishes these mechanisms, so for this reason we would not be outside of the legal framework.’

—Chief Counsellor Luis Fernando Arias, ONIC
jurisdiction and self-government over their territories. It implies acquiescing that the State’s rules and authority ultimately superimpose Indigenous rules and authority regarding the subsoil. And should the Indigenous Authority not be able to meet the demands of formalization under a State-issued mining title, the potential exists that the State open up Resguardo lands to third party miners.

These issues have been at the centre of heated debate within the Resguardo.9 Resguardo miners are experiencing intense pressure to ‘formalize’ under State rules; some have even undermined Resguardo Authority by seeking individual titles from the State.10 These are desperate measures to become ‘legal’ in light of the difficulties that lack of state title entails for commercializing gold, following a new government decree in this regard.11 Yet the potential to sell their mines to companies may also be driving these actions by individual miners in the Resguardo—evidence of the significant impacts, internal divisions, and fragmentation of social cohesion—spurred simply by the state issuing concessions over collectively titled lands.

In Cauca, the challenges are of a different league. Addressing criminal mining and its effects are the number one priority for Community Councils.12 Key actions in this regard are stopping 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.

**Successes, Challenges and Learnings**

Efforts at dialogue on these issues with senior bureaucrats undertaken as part of this project have been far from fruitful, constrained as they are by the realities of the current national 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 Lomaprieta, that flooded on May 19.13

Yet analysts have concluded that to date State formalization programmes have been far from successful. A November 2013 Contraloria-published document dedicates one chapter to examining Colombia’s formalization policies and their effects, where economist Pardo Becerra undertakes a meticulous deconstruction of State policies. He highlights that Decree 2715 of 2010, the cornerstone of Colombian policy on formalization of mining until May 2013, was completely inefficient:

> “3,091 requests for legalization were received, of which none resulted in a mining concession contract... The total ineffectiveness of the Decree can be explained for various reasons, among them that in 2013 no resources were assigned for the formalization programme and that there is no real institutional network that reaches miners not in urban areas.”

A series of Decrees, resolutions and other measures have since been put in place to address issues around formalization and illegal mining, which Becerra argues have created widespread confusion around definitions

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9 This issue was central to several workshops throughout the project. For example, a March 2015 workshop with representatives from the Alliance for Responsible Mining led to much discussion about possibilities of fair trade and certification, yet it adhering to such a scheme would entail agreeing to State titling over Resguardo territory. A June 2015 joint, participatory SWOT (strengths, weaknesses, opportunities, threats) analysis with the Cabildo and miners of the various options involving formalization, led to the clear conclusion that it is in the Resguardo’s best interest to continue upholding Cabildo self-government of mining, rather than to agree to an Indigenous Mining Zone or other State scheme; and to attempt to obtain state recognition for these efforts through modification of the current mining code, as well as recognition through other means, such as in the National Development Plan.

10 One miner has gone so far to reject his indigeneity in an effort to shirk off Cabildo authority over his mining activities to move towards legalization by the State.

11 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.)

12 In terms of rules and regulations pertaining to mining activities, community workshops led to the conclusion that the priority for the five Community Councils involved in the project is to establish their own internal regulations and life plans, prior to focusing on regulating mining per se, and prior even to establishing protocols around consultation and consent. The first step, workshops concluded, must be establishing Community Council general rules and regulations, as well as life plans.


of what comprises illegal mining, and who does it. He describes the outcome of supranational binding norms adopted in 2012 by the Consejo Andino de Ministros de Relaciones Exteriores, where Ecuador, Peru and Colombia committed to a regional plan to combat illegal mining. In Colombia these norms were adopted through Decree 2235 of October 2012. While confusion reigned over the various types of mining targeted by previous State formalization programmes, Decree 2235 now talked about formalizing or regularizing artisanal or traditional small-scale mining, which had not existed as options for formalization previously. Becerra notes the severe difficulties in implementing the new regulation for lack of verifiable information on meeting the various criteria now required. He concludes:

“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.”

The new 2013 National Formalization policy represents “a promising turning point” in the Colombian government’s approach, according to renowned mining specialist Cristina Echavarría (2014: 48). Yet while promising, how this approach pans out in practice is a key question.

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 be more effective. As our project continues, we aspire to move along these arguments with ground level evidence—and with continued strengthening of self-government schemes in keeping with the work programme undertaken as part of this project from 2014-2015.

In conclusion, in light of increasing State scrutiny of ‘informal’ mining, there is new urgency in disentangling what ONIC’s Chief Counsellor Luis Arias calls ‘confusion’ around the centuries-old practice of ‘ancestral mining’ from criminal-illegal/informal mining; and in developing clear criteria and concrete proposals for implementation mechanisms. With the window of the National Development Plan now closed, the options for advancing this discussion are to try to rekindle a reform of the mining code, and also to advance arguments through the courts. These are paths we will pursue as this project moves forward.

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

A side 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 Gold Initiative”. Both these certification schemes require adherence to State mining title schemes, coming into tension with visions of self-government of minerals resources.

For example, it is critical to point out that our joint project has enabled the Cabildo not only to further strengthen its self-government through adapting and tightening its environmental management plans and enforcement of Cabildo rules; it has also led to coordination with State authorities who have been invited to the Resguardo to engage in capacity-strengthening on State policies especially around environmental management plans and formalization (with CORPOICADEC, for example; and the National Mining Agency’s directorate for formalization), and to try to enter into productive dialogue on recognizing and coordinating with Cabildo self-government. There is political will on the part of the Cabildo to engage with the State, and even to consider how to align with key criteria in State policies and regulation as part of its own rules and regulations; yet the question is to what extent the State is open to considering self-government over the minerals embedded in ancestral territories.

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15 See also Echavarría, Cristina (2014).
16 From legalizing those who mine State property without a mining title, to legalizing ‘traditional’ or ‘informal’ miners.
17 As well, the national mining authority still saw illegal mining as that which was done without a mining title or environmental license, while for the Ministry of Defence, it was all mining without State requirements that was also linked with moneylaundering and related crimes.
19 Echavarría writes: “It [the 2013 National Formalization Policy] aims to achieve 40 per cent formalization of ASM by 2019, and full formalization by 2052. 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).
20 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
4.5 Judicial actions for territorial defence

Background and actions

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, 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. 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 solicited in mining concessions.

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

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 is to obtain the protection for the fundamental rights of the Resguardo Indígena Cañamomo Lomparieta to their territory; to prior consultation and free, prior and informed consent; 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).

The tutela requests that the mining titles that exist overlapping with the Resguardo’s territory be left without judicial effect, having not undergone due process with regards to consultation. And also, that the judge consider the threats that the titles—and requests for titles—have on the ethnic, cultural, social and economic integrity of the Resguardo in light of: 1) the State and third party’s lack of recognition of Resguardo territory; 2) the victimization that has taken place in the Resguardo on account of the armed conflict; 3) the fact that the Resguardo practices ancestral mining, which is an important subsistence livelihood; and 4) the fact that the Resguardo manages its ancestral mining practice through its autonomous self-government, using criteria that address the principle of subsidiarity in terms of environmental issues. The tutela further asks for all external actions and decisions around concessions and licenses issued by outside agencies to be considered without judicial power until such time that consultation has taken place. It puts forth the various conditions required for consultation to proceed, namely that:

1. Analysis take place of the social, economic, cultural and environmental impacts already generated in the Resguardo’s territory, and that will take place in the future should the licenses and concessions emitted continue with effect;
2. The type of impacts be considered in two distinct moments: the impacts generated from the issuing of titles and rights for mining, and the impacts of the beginning stages of exploration;
3. Consideration be given to the existing standards of protection, the legality of existing concessions overlapping the Resguardo’s territory, their extent and threat on the ethnic, cultural, social and economic integrity of the Resguardo; and that;
4. In light of these impacts, the free, prior and informed consent of the Resguardo be required.

As well, the tutela requests that the judge order the National Mining Agency, INCODER and the Ministry of the Interior to recognize in their actions, and incorporate in their databases and information systems, the traditional territory of the Resguardo Indígena Cañamomo Lomparieta, taking into consideration Resguardo community members’ cultural
and economic traditional use and occupation, their autonomy and self-government. And that future actions and decisions by these agencies concerning the natural resources within the Resguardo Indígena Cañamomo Lomaprieta take place following reviewing and adhering to the Cabildo’s internal resolutions and regulations governing their sustainable use.

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

The Resguardo and its allies are now busy preparing legal strategy for interventions in upcoming months. This is an important achievement and a great opportunity for the Resguardo to set precedent nationally, and regionally.

**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 in 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.27 Already, the Community Council of “La Toma” has obtained such a collective precautionary measure (February 5, 2015), and the Palenke’s lawyer is preparing and submitting such actions for other community councils participating in the project.28

**Successes, Challenges and Learnings**

There is no doubt that important judicial inroads were made in Phase I of this project in the Palenke Alto Cauca with the Constitutional Court T-1045; and again in Phase II with the Collective Precautionary measure obtained for La Toma (with similar measures in progress for other Community Councils). The Constitutional Court’s current review of the Resguardo’s tutela is also a great success.

Nonetheless, judicial actions take an enormous amount of energy and resources.29 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

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26 Arguing that INCODER was the agency in charge of delimiting the Resguardo, and that the subsidiary nature of tutela actions was not adhered to, as there are other mechanisms of recourse.

27 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).

28 As well as these actions, in July 2015, Renacer Negro-Timbiqui obtained a collective precautionary measure over 71,000 has. (See “Restitución devuel- ve su territorio a Renacer Negro, en Timbiquí,” 6 de julio de 2015. El Tiempo, http://www.eltiempo.com/colombia/cali/restitucion-de-tierras-en-cau- ca/16049415.)

29 And it is difficult to find available lawyers in Colombia who are well-versed both in Indigenous and Afro-Descendant rights issues as well as minerals law.
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. 

### 4.6 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

In the last year, programmed inter-ethnic workshops were held in the Resguardo (January 2015), with a delegation from Cauca; and in Pilamo, Cauca (June 2015), with a delegation from the Resguardo. 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. The 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 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 Cauca workshop in June was held in Pilamo, in an historically important ‘finca’ or ranch that was reclaimed by the Black Communities of the area. The workshop location served to highlighted the territorial struggles at the centre of the discussions around mining, and the successes that had been won along the way. This workshop was preceded also by a tour to mining sites in Buenos Aires, enabling delegates to contrast first-hand the differentiated between technified, industrialized mining, and ancestral mining, and consider the difference in scale and impacts in both. However, the tour also drove home the very delicate situation of criminal mining in Buenos Aires; there are some 300 different operations in that municipality, which is a FARC stronghold, and just the day before our tour to the ancestral mining site near the town of Monchique, some 10 bulldozers operated illegally had been bombed by the State. 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. 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.

In addition, both teams have been active meeting with senators, state representatives and also representatives of foreign embassies at the national level, raising awareness about the issues at stake, and project results to date.

"For ‘renacientes’ (a term used by Black people reclaiming their heritage), this gathering [between Pilamo and López Adentro] was very important as it manifested the joint hopes between Indigenous and Black peoples for the protection of mother earth; and that it is not only the issue of illegal mining that has united the peoples of northern Cauca, or property rights that has put this framework, the latent conflict. Understanding the trajectory of the joint struggles is of vital importance in that this reality helps to overcome the issues of the present day. In this framework, the latent past in the present, which is fundamental for the future, helps to trace the lines of life and brotherhood. The importance of reconstructing the past needs to be strong in the future."

—Marlin Mancilla, Palenke Alto Cauca-PCN

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30 While in this project we have not focussed on the role of the Indigenous Guard o Guardia Cimarrona, this is of vital importance in follow-up work for territorial defense. Concrete actions to obtain more territorial land-base are also urgent.

31 The theme of the 2015 ‘posesion’ de Cabildo was “Gobierno Propio: Un aporte a la paz” – “Self-government, a contribution to peace.”
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. 33

Exchanges among the Resguardo Cañamomo Lomaprieta 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. 34

Successes, challenges, learnings

Inter-ethnic exchanges and joint action are clearly an important way of territorial defence and working towards peace from the ground up.

4.7. 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. Visits of various members of the Forest Peoples Programme to the field has helped deepen those already forged internationally. But also, we deepened relations between each of the partners and organizations at the national level, such as with Reiniciar, 35 CAJAR, the Universidad del Rosario, 36 and the Universidad Javeriana, 37 among others. We are keenly aware that building of 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.

4.8. Afro-Descendant and Indigenous political gains: “Blood had to run”

Background and actions

Aside from pursuing self-government and autonomy, project partners are keenly aware of the importance of high-level political appointments 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.

33 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 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.

34 Importantly, when the Ambassador of Norway visited in March 2014, the Resguardo Cañamomo Lomaprieta made a point of convening neighbouring Resguardo leadership to share a cultural event and dinner with the Ambassador.

35 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.

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

37 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.
During 2014–2015, 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 had to run.” 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 coordinations with regards to ancestral mining.

In northern Cauca, Black mayors have been voted in. In 2014–2015, 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. From this political position he can make progress in terms of protecting Black communities and their rights, furthering dialogue with other ethnic groups, and taking concrete steps towards addressing criminal mining and implementing an alternative peace process.

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.

**Successes, Challenges and Learnings**

Politics are a constant backdrop to the work in the Palenke and the Resguardo, with both Black and Indigenous people keenly aware that aside from strengthening their own traditional governance, there is strength in gaining political posts within government from which to attempt to move ahead the Indigenous and Black agendas in terms of territorial defense and rights protection. Yet these come at great personal and security risks to those who run. 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 to be done within the traditional governance systems.

### 4.9 Violence and Impunity

**Background and actions**

While northern Cauca has become a hotspot for active armed combat and the invasion of criminal mining as mentioned in the context-setting section of this document, the Resguardo Indígena Cañamomo Lomapireta is also living in a landscape of conflict. Indeed, a November 2014 report issued by Colombia’s Ombudsman’s early warning system, outlined the various illegal armed groups present in the area, and the threats to Indigenous and social leaders. 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. The report describes threats to leaders involved in territorial defense, and in the case of the Resguardo Cañamomo Lomapireta, specifically those involved in enforcing Cabildo authority over mining.

This November 2014 report was indeed a harbinger of impending violence. It was a harbinger for the assassination of Indigenous leader Fernando Salazar Calvo, who was gunned down outside of his home in Tumbabarreto on April 7th, 2015. Salazar was an active member of ASOMICARS, and was actively involved in the work of the Resguardo Nuestra Señora Candelaria de la Montana, 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.

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

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


41 This in the case of the Resguardo Nuestra Señora Candelaria de la Montana, 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 rules and regulations around ancestral mining. Many speculate that this assassination was a message to the Cabildo to stay away from actively scrutinizing the gold mines in the Resguardo, and enforcing its Authority, rules and regulations. Indeed, since June 2014, the Cabildo had taken a strong position to ‘house-keeping’ in its mining areas, by closing down all mines. And then opening them one by one, following one-on-one meetings with mine owners to ensure they were abiding by Resguardo rules and environmental management plans. Fernando Salazar Calvo was one of the key figures monitoring the mines to ensure Resguardo rules were being enforced.

Fernando’s assassination shook the project teams and participating communities deeply. We condemned our colleague’s assassination, with letter writing to State agencies to demand high-level investigations into the case, and press notes issued internationally. We also reached out to project financiers, and were very grateful for the joint letters Norway, Holland and Switzerland drafted to highlight the case, and to press for high-level investigations and answers.

Yet despite these actions, and follow-up meetings with State authorities and further letters, to date the investigations have gone nowhere: Fernando’s assassination remains in impunity. His death now is another one that contributes to the 98% impunity rate that exists in Colombia for assassinations involving Indigenous leaders.

Importantly, the Resguardo team has regrouped and is continuing with its organizational strengthening and control over Resguardo mines despite the fear Fernando’s assassination engendered. A huge issue moving forward is ensuring the security of leaders involved in ASOMICARS, particularly its current president; and other leaders fronting coordination of mining issues in the Resguardo, as well as the Cabildo itself. To date, State responses and furnishing of protection has been far from adequate. For this reason, the Resguardo is organizing to strengthen its own protection mechanisms, including its non-armed Indigenous Guard, and training its own bodyguards.

In Cauca, as was discussed earlier, the women’s march resulted in increased threats to Black leaders speaking out for territorial defense, particularly women. This situation was also inadequately addressed by the government, with only one leader afforded a full protection scheme; and even then, it does not cover basic security needs. Strengthening the unarmed Guardia Cimarrona and further strategizing about self-protection schemes has therefore become a key priority.

**Successes, challenges, learnings**

Risks are high for leaders involved in Indigenous rights protection around minerals, with the possibility of violence—and even death—a reality. Our national and international efforts to shine a light on the death of Fernando Salazar Calvo, and out pressure on the Colombian government towards resolution, were unsuccessful. Several articles and urgent actions were published, yet impunity reigns. Next steps will include attempting to have a public hearing at the Inter-American Commission of Human Rights; but also, to continue internal strengthening and non-violent self-protection schemes, such as those conferred by the Guardia Indígena and Guardia Cimarrona.

### 4.10 Consultation and Consent

**Background and actions**

As discussed in the context-setting, State rules around consultation were weakened significantly in 2014-2015 through unilateral decrees around ‘express environmental licenses’ that significantly shortened timeframes for approval, and with it possibilities for meaningful prior consultation. Further, State discourse hinges on ‘consulta previa’ rather than the fundamental right to free, prior and informed consent. Despite this regressive national context, in 2014-2015 both the Palenke and the Resguardo continued efforts to strengthen their understanding of their fundamental rights to prior consultation and free, open and meaningful participation.

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42 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 Kiosucio until October 2015, whose National Protection Unit’s scheme ‘ran out’ or was called off in 2015 (the scheme had been ordered by the Inter-American Court on Human Rights in 2009).


44 This statistic is cited from a statement issued by Indigenous senator Luis Evelis Andrade, which refers to information on impunity of assassinations involving Indigenous leaders gathered by the National Indigenous Organization of Colombia’s Council on Human Rights (Consejería de Derechos Humanos de la ONIC). Boletín Informativo No. 008, 2014.

45 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 (personal communication, January 2015).
prior and informed consent. In the case of the Palenke, there was also a focus on discussing and developing community protocols across a broader number of community councils.

Successes, challenges and learnings

The upshot is that both the Palenke and Resguardo’s approach to proposed—or imposed—projects, and State-triggered consultation processes, was strengthened.

In the case of the Palenke, community discussions centred on the case of the Salvajinas hydroelectric dam, which is only now—30 years after being constructed—undertaking a State-ordered consultation around a proposed Environmental Management Plan for certain aspects of its operations. While the consultation is far from ‘prior’, the communities involved are attempting to negotiate as rigorous conditions as possible for this process, in part as an opportunity to ‘learn by doing’. Yet in the Palenke, consultation and consent are invoked repeatedly with State representatives in the context of the invasions by criminal mining operations.

And it is precisely this context of violence and invasion—and the constant need to respond to urgent and immediate situations—that is preventing the consolidation of internal regulations in the Community Councils of the Palenke. Here Councils emphasize the need for broad internal regulation before honing in free, prior and informed consent.

In the case of the Resguardo, during 2014-2015 the State triggered a consultation around the case of Guamal, an Afro-Descendant community established within the Resguardo, that has considered itself Afro-Indigenous and under Cabildo Authority. Yet several political leaders had raised the possibility of breaking off, and establishing a Black Community Council. We will be analyzing this process and its impacts further in year two of the project.

On issues around mining, however, to date the Cabildo’s position has been firmly against mining by outsiders, especially large-scale projects. It has rejected all approaches made by miners to date including in 2014-2015.

Successes, Challenges and Learnings

On going capacity strengthening aroundrights 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. 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 American Convention.

Officials conflate FPIC with rights to veto, arguing vehemently that indigenous communities do not have this right, particularly in relation to minerals

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.

In Phase I of this project, the Resguardo developed its own protocol 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 in all 5 Community Councils of the Palenke participating in Phase II.

Cabildo authorities stress that the political aspirations of a handful of people from Guamal are creating ethnic divisions where they did not exist prior. In fact, the Cabildo has been providing resources to benefit the people of Guamal who have been considered Afro-Indigenous members of the Cabildo since the Resguardo was established. As well, representatives from Guamal have acceded to high-level positions within Cabildo authority, with the current ‘Gobernadora Suplente’ (second authority after the highest Chief Governor) from Guamal, and the current president of the Ancestral Miners’ Association of the Resguardo also from Guamal.

In 2014-2015, Canadian company Miranda Gold expressed interest in minerals exploration in neighbouring Resguardo la Montana, but announced to the Montana authorities in late 2015 that it was giving up its title.

Interview with Director of Consulta Previa, June 2015.

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.
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 intrroads 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 (2013) espouses in his thematic report on extractives. And it is one that aligns with growing debate in the Palenke and Resguardo. Moving this position forward in 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. Indeed, community discussions lead to the conclusion that in practice, this officially recognized ‘fundamental right’ has been ‘una burla’, a joke, far aligned with community decision-making processes and needs for effective decision-making.

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.

### 4.11 Reflections on operational aspects

**Challenges:** 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. In 2014-2015, Colombia’s armed conflict deepened particularly in Cauca, where there was active combat; and in Caldas, where illegal armed groups were also present. When we planned our project, we were aware that many and much-needed activities had been identified; all of these priorities. Yet the complexity of the political and security situation made working at the pace we hoped to extremely challenging, especially given the small project teams.

In Cauca, the challenge was reaching all 5 of the Consejo Comunitarios identified as priority with equal attention. One interesting observation in an internal narrative from the Palenke was that participation in capacity strengthening and drawing up regulations, political tasks, competes with the daily work activities of the people, people who live in poverty and hunger. Participation in the project activities is in and of itself

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53 “States should not insist, or allow 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).

54 In an internal project narrative from the Palenke Alto Cauca (June 2015), Marlin Mancilla, the Palenke’s project coordinator, makes the following observation: “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 dawnings 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.”

55 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, 2015).
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is an opportunity cost in this context. This is similarly the case in Caldas. The amount of time in trying to regulate mining has become so time-consuming for the Cabildo, that there are now dedicated meetings for this subject.

**Learnings:** Learnings from the operational process included:

- The importance of programming fewer activities, with more time between them. This not only because of the challenging contexts. But also because the leaders and project team members are also involved in other important processes of the communities to which they need to attend.

- Norway’s insistence on an external, independent auditor to accompany the process was an excellent contribution. Our auditor helped us achieve consistency and rigour in financial reporting across the three components: Cauca, Caldas and International (FPP).

- The weekly skype meetings among the teams were extremely helpful in keeping up-to-date, 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.

### 4.12 Priorities emerging from our Work Programme

Despite the many successes of the project in its first year, there is need to deepen work on the topics we identified from the outset as priorities, but also to address several new priority areas that have emerged. These include:

- **Consolidating our specific proposals for reform of the Mining Code, and developing a differentiated chapter for Ethnic Peoples.** We will develop further an inter-ethnic strategy to build on our efforts towards recognition of ancestral mining. 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.

- **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 free, prior and informed consent.** Consider developing (and in the case of the Resguardo, strengthening) a socio-environmental monitoring programme for ancestral mines, that has sufficient technical and financial support to ensure there is permanent, rigorous verification of the implementation of internal regulations. 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

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

—Governor Carlos Eduardo Gómez Restrepo, Resguardo Indígena Cañamomo Lomaprieta

“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
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.

- **Moving forward with national and international legal strategies and actions** to stop the State’s practice of issuing concessions on ancestral lands without first obtaining the FPIC of affected Indigenous and Afro-Descendant communities; to address the impunity of the assassination of our colleague Fernando Salazar Calvo; and to make visible the level of threats affecting Afro-Descendant and Indigenous leaders who defend their human rights, with a view to spurring a revision of State protection measures.

- **Deepening the inter-ethnic alliances between the Palenke and the Resguardo** in all aspects (cultural, territorial, political, economic and legal strategies), and considering joint actions and strategies.

- **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. Pushing for Peace in Colombia: Conclusions and Preliminary Recommendations

This synthesis report has highlighted the key issues emerging from the first year (2014-2015) of our joint project, “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 Lomaprieta through inter-ethnic and international alliances.”

It showcases a turbulent year for both the Palenke Alto Cauca and the Resguardo Indígena Cañamomo Lomaprieta. 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.

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 Lomaprieta. 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 action of a tutela that is now being considered by the Constitutional Court, in the case of the Resguardo Indígena Cañamomo Lomaprieta.

- 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; and

- We produced videos and publications to profile our work—our challenges and our successes—for others interested in learning from us.
- 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 Lomaprieta 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 the 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.

5.3 Looking ahead to

a Peace Agreement: Excitement and Worry

Looking ahead to our second year of work, there is much hope that March 2016 will see the signing of a potential agreement to end Colombia’s armed conflict towards a new era of peace. Yet there is a long way to go for this 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’.

In the words of Governor Carlos Eduardo Gómez Restrepo of the Resguardo Indígena Cañamomo Lomaprieta: “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 escalate right after the signing of a peace agreement between the FARC and the State, particularly since they are resources-rich. A recent declaration to support a mechanism to include Indigenous and Afro-Descendant voices at the Havana negotiations emphasizes 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.”

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 narcotrafficker, 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 illegal mining will continue to take place, especially if viable economic alternatives for Afro-Descendant communities are not considered.

As we look towards implementing year two of our work programme, there is a mixture of excitement at the potential of a signed Agreement; 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 Preliminary Recommendations

Several preliminary recommendations emerge from our work programme in 2014-2015. Those relevant to the Embassy of Norway and Holland, include:

- **Continue Norway’s strong support as guarantor of the peace process, emphasizing Indigenous and Afro-Descendant Peoples’ demands to be included** in the negotiations and implementation of the final Agreement through an appropriate mechanism defined prior to the signing of the Final Accord.

- **Encourage Ambassadors and their teams to continue to make field visits to Indigenous and Afro-Descendant communities** to get to know first-hand the urgent realities, and build their knowledge base within which then to intervene in political discussions nationally and internationally.

- **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.**

  b) **Provide increased protection to their people, through the strengthening, for example, of the Guardia Indígena and Cimarrona so they can fulfill 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 Box 3).**

- **Call attention to States who are consumers of Colombia’s gold that they consider putting in place robust regulations prohibiting consumption of gold from criminal mining taking place in our territories.** This recommendation goes hand-in-hand with legislation related to conflict minerals approved by the European Union.
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in 2015;³ and by the Frank Dodd Act approved by the United States in 2010.

While these are some of the most urgent, direct recommendations emerging from our 2014-2015 programme for Holland and Norway, our final project synthesis report (forthcoming in 2017) will flesh out further recommendations for other actors and around other issues, for example:

- Strengthening Colombia’s human rights mechanisms (Defensoría, Procuraduría, Fiscalía);
- Ensuring that companies headquartered abroad but with interests and activities in Colombia uphold in practice ILO Convention 169 ratified by Colombia;⁴ the UN Declaration of the Rights of Indigenous Peoples and other related human rights instruments 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);
- Encouraging Colombia to align its mechanisms with international standards, particularly around environmental and social impact assessment of exploration projects, as a key aspect of fully acceding to the OECD.⁵
- Contributing 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.⁶

References

European parliament votes for tougher measures on conflict minerals.

⁴ Also ratified by Norway.

⁵ There is much political pressure for Colombia to implement environmental and social impact assessment to the exploration stage of mining activities, as highlighted in the document outlining the 2014-2018 National Development Plan. This would be a major step forward as it would require also engaging in free, prior and informed consultation and consent processes prior to exploration, which while required by Colombia’s ratification of ILO 169, has not been implemented in policy or practice.

⁶ For further recommendations relevant to both Norway and Holland, see the European Parliament’s in-depth “Indigenous Peoples, Extractive Industries and Human Rights” published September, 2014.
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(Note: These references do not include unpublished internal documents referred to throughout this document).


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