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**Shadow Report on the Violation of the Rights of Afro-Colombian
Women in Cauca Department, Colombia**

Submitted jointly by La Movilización de Mujeres Afrodescendientes del Norte del Cauca por el Cuidado de la Vida y los Territorios Ancestrales and the Leitner Center for Law and Justice at Fordham University School of Law.

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This report highlights how the pro-longed violence in the region of Cauca of Colombia, along with the failure of the State Party to meet its duty to provide physical security and to guarantee the land rights of the Afro-Colombian community have created a lawless zone that has been exploited by opportunistic actors. It emphasizes how the continuing state of war in the Cauca region, the gold mining industry's corporate interests and narco trafficking intersect to deny the fundamental rights of the Afro-Colombian community in general and Afro-Colombian women in particular.

I. Introduction

Without the free, prior, and informed consent of Afro-Colombian landowners, the State Party granted AngloGold Ashanti and other extractive mining entities concessions to Afro-Colombian land in Cauca, Colombia. The State Party sought to evict Afro-Colombian landowners and effectively destroy their artisanal mining businesses, but the community has resisted eviction. The State Party's blatant disregard of land ownership rights is evident only in areas of Colombia populated by African descendent communities and has a direct impact on Afro-Colombian women in particular. The Afro-Colombian women of the Cauca Department play a unique role in Colombia's gold mining industry and in the livelihoods of their families and communities. They are the first to be impacted when their communities' rights to landownership and gold mining are denied.

In an effort to assert these rights, the Community Council of La Toma brought its' case before Colombia's Constitutional Court. The Court found for the Community Council of La Toma and held that 1) free, prior, and informed consent must be carried out

before the implementation of any economic project in La Toma and 2) all mining activity in the region is illegal, *unless* it is carried out by the members of the La Toma community using traditional artisanal methods. The State Party has yet to enforce the Constitutional Court decision and corporate mining entities continue to claim rights to mine land that belongs to the Afro-Colombian community.

The Afro-Colombian community's struggle to regain control of its' land is complicated by the ongoing armed conflict between the Colombian government and the Fuerzas Armadas Revolucionarias de Colombia ("FARC"), which is occurring, in large part, in the Cauca Department. The violence and instability associated with this conflict has created an opportunity for illegal mining operations to take hold in Cauca and control the ancestral land that belongs to members of the Afro-Colombian community.

The State Party's failure to take effective steps to guarantee the lives and land rights of Afro-Colombian people in Cauca also falls short of meeting its obligations as outlined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

II. Reporting Organization

This report is a combined submission by the Movilización de Mujeres Afrodescendientes del Norte del Cauca por el Cuidado de la Vida y los Territorios Ancestrales ("Mujeres Negras Caminan") based in Cauca, Colombia and the Leitner Center for Law and Justice at Fordham University School of Law, based in New York, USA.

III. Background and Issue Summary

In the early 16th century, enslaved Africans were sent to Colombia by Spanish imperialists and forced to work in gold mines, on sugar cane plantations, on cattle ranches, and on large haciendas. The enslaved Afro-Colombian population was integral to the Colombian economy and pioneered the extraction of gold deposits in various Departments throughout Colombia, including the Cauca Department. Slavery was abolished in 1851 and women of the Afro-Colombian community developed small-scale artisanal mining businesses, which they relied on to sustain their families. In the 1990s, the Colombian government passed legislation formally granting land ownership to members of the Afro-Colombian community.

However, by the year 2000, there was evidence of a different government policy toward Afro-Colombian land rights. A pattern had emerged: the Colombian government was granting mining concessions to extractive industry companies without the free, prior, and informed consent of Afro-Colombian landowners. Since then, paramilitaries and guerillas have displaced, massacred, and systematically threatened members of the Afro-Colombian community. Although the extent of the relationship between FARC, paramilitaries, extractive companies, and narco trafficking is unclear, it is clear that the violence and the confusion has created a ‘lawless zone’ in which the rights of the A-C community are being abused by unknown illegal miners who have gained control of the ancestral land that belong to the Afro-Colombian community. See Attached: Titulos Mineros Vigentes-Departamento De Cauca.

There were two attempts to evict the Afro-Colombian community of La Toma in Suarez, Cauca, despite its legal right to the land. The first was in October 2009. The latest order of eviction was for June 2010. That eviction was prevented by community

civil disobedience on May 21 2010 when the communities blocked the roads to La Toma and confronted military and police sent to control them. Additionally, there was strong international pressure on the government to revoke the eviction order.¹

This blatant disregard for land ownership rights is evident only in areas of Colombia populated by African descendent communities. Immediately following this attempted eviction, the Community Council of La Toma brought its case before Colombia's Constitutional Court. In December 2010, the Constitutional Court ruled on behalf of the Community Council of La Toma in Ruling 1045-A. The Court held that 1) free, prior, and informed consent must be carried out *before* the implementation of any economic project in La Toma and 2) all mining activity in the region is illegal, *unless* it is carried out by the members of the La Toma community using traditional artisanal methods.

The State Party has yet to enforce the Constitutional Court decision. Its failure to enforce this decision has a negative impact on the Afro-Colombian community in general and the women of the Afro-Colombian community, in particular. The Afro-Colombian women of the Cauca Department play a unique role in the gold mining industry in Colombia and in the livelihoods of their families and communities. They are the first to be impacted when the rights of their communities to gold mining are negatively impacted.

In November 2014, in an effort to have their rights recognized by the State Party, the Afro-Colombian women of La Toma courageously marched for ten days, over approximately 625 kilometers, to travel from Cauca to Bogota. When they reached Bogota they sat in the office of the Minister of Interior for days. The Minister finally

¹ This is really a decision of local authorities, the order is issued by the Mayor and the police implement it. Obviously, if the government had not issued the mining title the attempted eviction would not have taken place.

relented and promised the women protection from the death threats they were receiving from the armed groups and illegal miners and protection for their land rights.

Unfortunately, despite the efforts of these courageous women and the promises from the Minister of Interior, the State Party has failed to enforce the Constitutional Court's ruling and has failed to take the steps that the women demanded to guarantee their safety.

While attempting to assert their landownership rights, members of the Afro-Colombian community experience systematic violence and threats, apparently related to their struggle to regain their land. As a result of this violence, many of the women who marched to Bogota last November are too afraid for their lives to sleep in their own homes at night and are regularly displaced by this fear. Neither the State Party nor the extractive mining companies have taken steps to ensure the safety of the members of the La Toma community. See Attachment: Id.

IV. Legal Framework

A. The Treatment of Afro-Colombian Women in Cauca is Racial Discrimination and Directly Violates ICERD

Under ICERD, racial discrimination is defined to include any “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” See ICERD Article 1§1. In La Toma, the government has effectively taken mining concessions from the Afro-Colombian community, without gaining its free, prior, and informed consent, and issued those concessions to large multinational mining companies, including AngloGold Ashanti. Despite a Constitutional Court ruling that holds this to be illegal, the State Party has failed to revoke the issued mining concessions and return rights to the Afro-Colombian Community. The State Party’s blatant disregard of land ownership rights is evident only in areas of Colombia populated by African descendent communities, communities that suffer unique vulnerability because of their race. As descendants of slaves, this is a community that never enjoyed equal access to justice or remedies for violations of their rights. The State Party is directly violating ICERD, by its acts of omission and commission, with respect to the Afro-Colombian community of La Toma in general and particularly, the Afro-Colombian women.

Similarly, mining companies, like AngloGold Ashanti, are violating the principles of ICERD. Extreme violence, threats, and instability have accompanied the State Party’s issuance of mining concessions to large multinational extraction companies. Illegal

mining is rampant, and illegal mining groups threaten the La Toma landowners with violence and death. Companies like AngloGold Ashanti have done nothing to ensure that its concession is not used to perpetuate this violence nor has it encouraged the government to intervene. Additionally, AngloGold Ashanti has not voluntarily abdicated its mining concessions in order to comply with the Constitutional Court ruling.

i. *The State Party is Directly Violating Articles 2, 5, and 6 of ICERD*

1. Article 2

The State Party has failed to meet its obligations made explicit in Article 2 to “prohibit and bring to an end...racial discrimination by any person, group, or organization” and “ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purposes of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” See ICERD Article 2(1)(d); Article 2(2).

Instead of honoring its obligation to condemn racial discrimination, the State Party 1) granted mining concessions to private companies, including AngloGold Ashanti, without the free, prior, and informed consent of the Afro-Colombian land owners in La Toma; 2) failed to enforce Constitutional Court decision 1045(A), which requires that the State Party revoke the issued mining concessions; and 3) permits private actors, like multinational mining companies and other illegal miners, to reek devastating impact on the well-being and livelihood practices of the Afro-Colombian community, and particularly the women of La Toma.

2. Article 5

The State Party has also failed to meet its obligations made explicit in Article 5 to “prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race...equality before the law, notably in the enjoyment of...(a) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (d)(v) the right to own property alone as well as in associate with others; and (e) economic, social, and cultural rights, in particular.

Instead of honoring its obligations under Article 5, the State Party 1) permits violence and threats of violence against the members of the Afro-Colombian community in la Toma, which in turn has in turn resulted in widespread fear, displacement, and relocation and 2) threatened the livelihood and economic stability of the La Toma community in general, and the La Toma women in particular.

3. Article 6

The State Party has also failed to enforce Constitutional Court Ruling 1045(A), and therefore has failed to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” See Article 6.

Multinational Mining Companies Operating in La Toma, Like AngloGold Ashanti,
Are Violating the Principles of ICERD

AngloGold Ashanti has an obligation of due diligence that it has failed to observe when it accepted an illegal mining concession, obscuring the rights of the Afro-Colombian landowners in La Toma. It has encroached on the mining rights of the ancestral landowners in la Toma and threatened their traditional livelihood.

Additionally, AngloGold Ashanti has failed to ensure that the territory over which it has been granted presumptive rights is not in turn used to launch further attacks on the rights and safety of others. It cannot at the same time claim rights over the area and also abdicate its responsibilities to guarantee that it is not a source of aggravated assaults on others. There are persistent, credible threats of violence, death and bodily harm that emanate from persons and groups seeking to deny the Afro-Colombian community of Cauca their rights now being claimed by AngloGold Ashanti. The corporation, claiming the source of their presumptive rights as being a legitimate grant from the government of Colombia, should be held accountable for its use for peaceful purposes.

V. Relevant Colombian Law

Colombian law prohibits racial discrimination, promotes equality as a matter of law, and recognizes the rights of the Afro-Colombian community. Although the Constitution, legislation, and many Government policies aim to address inequalities, members of the Afro-Colombian community are still socially and economically marginalized and there is impunity for crimes committed against them. See Attached:

Mission to Colombia-Report of the Independent Expert on Minority Issues, Gay McDougall.

In December 2010, the Constitutional Court held that the Afro-Colombian community in La Toma, Cauca has ancestral rights to the rural land on which they live and operate artisanal gold mining businesses. The Court reiterated that the state should engage in proper consultation processes to guarantee the participation of Afro-Colombians in the decisions that affect them directly, especially where they stand to be displaced.

VI. Recommendations

A. Steps that the State Party Should Take

- i. The State Party should guarantee the Afro-Colombian community's right to free, prior, and informed consent.
- ii. The State Party should implement Constitutional Court Ruling 1405-A.
- iii. The State Party should revoke the mining titles and concessions that were granted to outside companies and investors, including AngloGold Ashanti.
- iv. The State Party should investigate and prosecute those responsible for the violence and threats made against Afro-Colombians in Cauca.
- v. The State Party should fulfill the commitments made in the agreements reached with La Movilizacion de Mujeres Negras del Norte del Cauca in December 2014.

B. Steps That AngloGold Ashanti, and Other Mining Operations in La Toma Should Take

- i. AngloGold Ashanti should enter into meaningful negotiations with members of the Afro-Colombian community regarding how their rights can be fully respected and realized.
 1. This includes creating timelines for implementation in consultation with the Mujeres Negras Caminan.
- ii. AngloGold Ashanti and other mining corporations operating in Cauca should use their corporate influence to encourage the State Party to meet its obligations to Afro-Colombian communities in Cauca, including the La Toma community.
- iii. AngloGold Ashanti and other mining corporations operating in Cauca should ensure that no harm emanates from the territory where they have concessions.
- iv. AngloGold Ashanti and other mining corporations operating in Cauca should abdicate their concessions and make a statement to the State Party affirming their recognition of Afro-Colombian land ownership.
- v. The governance body of AngloGold Ashanti (Board of Trustees) should become fully apprised of these matters through an in-situ consultation with the Mujeres Negras Caminan.