

Ms. Erika Guevara Rojas
Programme Director – Americas
Amnesty International
London, United Kingdom

7 October 2015

Privileged and Confidential

*Subject: AngloGold Ashanti Colombia and its relation with
Alto Andágueda, Chocó and La Toma, Cauca.*

Dear Ms. Guevara Rojas,

On behalf of AngloGold Ashanti (AGA) and its subsidiary AngloGold Ashanti Colombia (AGAC), we would like to thank you for the opportunity to respond to the questions raised by Amnesty International (AI) in its letter dated 21 September 2015 with reference TC AMR 23/2015.002. We value the work and reputation of Amnesty International and it is therefore of great interest for AGA to respond to your questions and provide you with as much relevant information to help establish context and full-picture understanding.

The following sections center firstly on AI understanding AGA's values and its commitments to human rights. We believe it is critical that AI understand how AGA works to its vision and values in the context of national and international standards. Second, we note specific legal context and rule of law in Colombia as this relates to mineral tenements granting. Third, we respond to each of the questions raised in AI's 21 September 2015 letter.

AGA's Values and Commitment with Human Rights

AGA's business maintains an operational footprint in four continents and over 20 individual countries. The vastly diverse cultural settings encountered, necessitates a clear commitment with the respect to Human Rights. Accordingly, AGA has reached out to international entities for guidance, development, and adherence to key international standards and principles such as the Ten Principles of the Global Compact, the International Finance Corporation (IFC), the International Council on Mining and Metals (ICMM), the United Nations Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights, among others. In August 2013 the company issued its Human Rights Policy which highlights the company's commitments as follows:

“Respect for human rights is an essential part of AngloGold Ashanti’s vision and values. It is fundamental to our value of treating each other with dignity and respect.

We support the vision of a world where everyone can enjoy their universal human rights, and where business plays its part by respecting all human rights. States are responsible for the protection, promotion and fulfilment of human rights and companies have a responsibility to respect human rights.

We are committed to doing no harm, to avoiding infringing the human rights of others, and to addressing adverse human rights impacts where they may be linked to our activities.

We will strive to avoid causing and contributing to adverse impacts through our own activities, and address them if they do occur through appropriate remediation.

We will seek to prevent and mitigate adverse impacts linked to our operations, our products or services provided by business partners”.

AGA is convinced that economic development can and must be in harmony with the environment and communities in which it operates. The business license to operate requires social engagement and alignment that “breathes on” transparency and building of trust. The adoption of International and Local/National Standards in this area of engagement is an imperative to each of AGA’s operations and development sites.

Therefore, each of AGA’s sites are required to respect and preserve the rights, dignity, aspirations, cultures, religions, and livelihood activities of community and/or ethnic groups, as well as the long-term sustainability of the natural resources located within traditional or customary lands under use by ethnic groups. In accordance with the principle of Free, Prior and Informed Consent, the operational and development sites must - to the greatest extent possible - work to obtain the consent of indigenous communities for projects / activities and/or changes to sites that are located on lands traditionally owned by or are under customary use of ethnic groups and are likely to have significant adverse impacts on these groups, including where relocation and/or significant adverse impacts on critical cultural heritage are likely to occur.

AGA and AGAC categorically reject any violation of the rights of Indigenous people, Afro-descendent and communities in general. In all cases in which there is any claim relating to a possible violation of human rights, AGAC activates a protocol in accordance with the Voluntary Principles on Human Rights and Security, under which it formally informs competent authorities of the allegations and asks them to conduct an investigation. The company implements its processes by complying with the national regulation and by following the international guidelines and standards to which it has publicly committed.

Since 2008, the company has activated the Human Rights Protocol on 39 occasions in different areas such as Tolima, Antioquia and Cauca. Through this Protocol, the company informs key national and regional authorities about reports and complaints regarding possible human rights violations that are either in areas near AGAC's projects or that may involve the company at some point in the future. These include authorities such as the Attorney General, the National Police, the Colombian Army (when the subject requires their engagement), the National Ombudsman, the General Comptroller, the Human Rights Counselor, the Governor(s) and Mayor(s) of the region, among others.

Information flow is routinely bi-directional and when / as AGAC receives notifications and information from the various authorities, the information is compiled for appropriate follow-up on AGAC's part as to the outcomes of the pertinent investigations. The intent is to manage this process with transparency and cooperatively with the various authorities and to enable to the greatest extent possible company resolution to issues raised. AGAC fully denounces all Human Rights violations when these occur in this venue and we work cooperatively with all authorities to the rule of law and the due process.

General Considerations – Legal Context and Rule of Law

All subsurface minerals are the property of the Colombian State. Colombia, as many countries globally, encourages the economic development of its mineral resources as a primary means of enhancing and diversifying its economy – attracting direct foreign investment which creates employment, tax revenues, and advances societal wealth.

In Colombia, all mineral resources are property of the State. Mining activities are regulated by the Mining Code, Act 685, 2001. The filing of a proposal triggers a right of preference to obtain rights over the targeted area, provided it is available. Such area cannot exceed 10,000 hectares. Upon receipt of a proposal, the relevant government agency determines whether another proposal or contract already governs the area. If there are no pre-existing claims, the government agency grants the applicant a "free zone".

The National Mining Agency (ANM) grants a mining title (mining concession contracts). Such mining title allows concessionaires to conduct the studies necessary to establish the existence of minerals and to organize for future exploitation. Upon being awarded a mining concession, a company must take out an insurance policy to cover any possible environmental damage as well as breaches of its mining obligations. It may then proceed with exploration activities. Once the exploration phase is complete, the concessionaire files a new plan regarding works and installations. An environmental impact study must also be filed and approved in order for the concessionaire to receive an environmental license prior to beginning construction and exploitation.

Mineral tenements reside under the authority of the ANM who is the competent authority in Colombia for granting, auditing, suspending, and/or revoking of mineral tenements and regulating the conditions under which they are governed. ANM's mission is to effect the responsible development of Colombia's mineral resources – originally with a primary intent of

development and more recently with an aim to exclude unique social/cultural/environmental areas.

The legal guidelines for mining in Colombia are given through the Mining Code. Its objective is to promote the technical exploration and exploitation of the mineral resources of state and private ownership; to encourage these activities in order to satisfy the requirements of its internal and external demands, and to see that its use is carried out in a harmonious manner by making use of principles and norms of rational exploitation of nonrenewable natural resources and of the environment, within the integral concept of sustainable development and economic and social strengthening of the country.

Prior to the registration of a tenement the company is called by the authorities to sign a contract stating the conditions for maintaining the tenement. Once an application is granted and the tenement registered, before initiating any field activities, AGAC has a protocol of entering in contact, in person, with local authorities, identified stakeholders and in particular, local community groups, to explain our intentions. Obtaining the social license is paramount for the success of any project and from experience we recognize that by initiating these consultations prior to exploration activities, helps build trust and bi-lateral understanding, creating a smoother road forward.

AGA through its subsidiary AGAC began exploration activity in Colombia in 2004 and following established law under ANM, began the process of identifying and securing mineral tenements throughout prospective areas in Colombia. It is important to stress that all of the mining titles granted by Colombia to AGAC were processed and obtained through the appropriate institutional procedures, before the competent authorities and complying with all the existing legal requirements.

It is equally important to stress that during this period of time, there existed both armed conflict and the existence of illegal mining in some of the areas AGAC had explored and or applied for mineral tenements granting. In fact, a number of the areas AGAC applied were deemed unsafe and whose mineral tenements were ultimately declared in Force Majeure due to the inability to ensure safe access of its employees to mineral exploration sites. These two aspects – illegal armed conflict and illegal mining are the responsibility of the National Government of Colombia to address and resolve.

As well, it is critical to state that there is NO requirement for the issuance of Prior Consultation within the ANM / law / procedures that are required when *petitioning ANM for the right to secure mineral tenements*. But it is also important to note Prior Consultations are evolving into Colombian Law – with the country now fully subscribed to ILO Convention No. 169, but legal regulation is scarce and only recently the Constitutional Court has focused its jurisprudence in this sense. Under the current framework for granting of mineral tenements, the mining tenement contract does not grant any development / exploitive right to the applicant¹. Furthermore, the

¹ **Article 16. Validity of the Proposal.** The application or proposal of concession, while it is in process, does not confer in itself, before the State, the right to a celebration of a concession contract. Towards other applications or towards third parties, its conferred only to the interested party a right of preference to obtain such concession, if it complies with all legal requirements.

basic fact is that there are many unique environments in many of the mineral tenement areas in application or retained. These environments may have social / environmental / cultural / historical aspects that may well render mineral development as not practical or responsible. But the salient fact remains that it is within the legal framework of the ANM to define if Prior Consultations are required to the establishment of mineral tenements. And as a second step, prior to the conduct of activities, it is the tenement awardee who is then accountable to exercise Prior Consultation (e.g., between AGAC and local citizens / communities).

To summarize, the Colombian State exercises its right to realize responsible development of minerals and does this through established law administered by the ANM. ANM develops – with a primary aim for discovery and development – areas of mineral interest and individual tenements. Restrictions such as Prior Consultation reside within the purview of the ANM to establish. Once mineral tenements are established, these are then allowed to be petitioned for mineral discovery and development. Companies – such as AGAC seek, as one of its primary business objectives – to find, develop, and produce those minerals. However, in step-wise progression, the process of securing social licensing – and therefore Prior Consultation can only occur after the mineral tenements are awarded (there is no lawful contract or award prior to this point).

Thus, the text of the Amnesty International’s letter fails to acknowledge this salient point. AGAC fully recognizes that mineral tenement award DOES NOT guarantee an outcome of forced displacements, granting of mining exploitation licenses, forced displacements of the population, etc. This is NOT the reality of the Colombian Mining regulatory environment, nor does it reflect the actions and commitments of AGAC and responsible mining.

Due Diligence Questions Specifically Raised: Case La Toma, Municipality of Suarez, Department of Cauca

At present, AGAC does not have any mineral tenements in standing in the Corregimiento La Toma, in Suarez Cauca. Between 2005 and 2010, AGAC presented proposals for concession contracts with plate numbers **HCG-131, GDK-094, JG1-10224, JG1-11147, JG1-11171, LDD-14041, GDI-12F, GDI-114** and **GDK-09G**, which requires under the mining regulation AGAC, is the proponent for the contractual right to the mineral tenement (but not a real owner). Thus the proponent (in this case AGAC) of a mining title cannot assert to the State and/or third parties a right or subjective situation that enables it to exercise actions in the mineral tenement in application while the request is being processed.

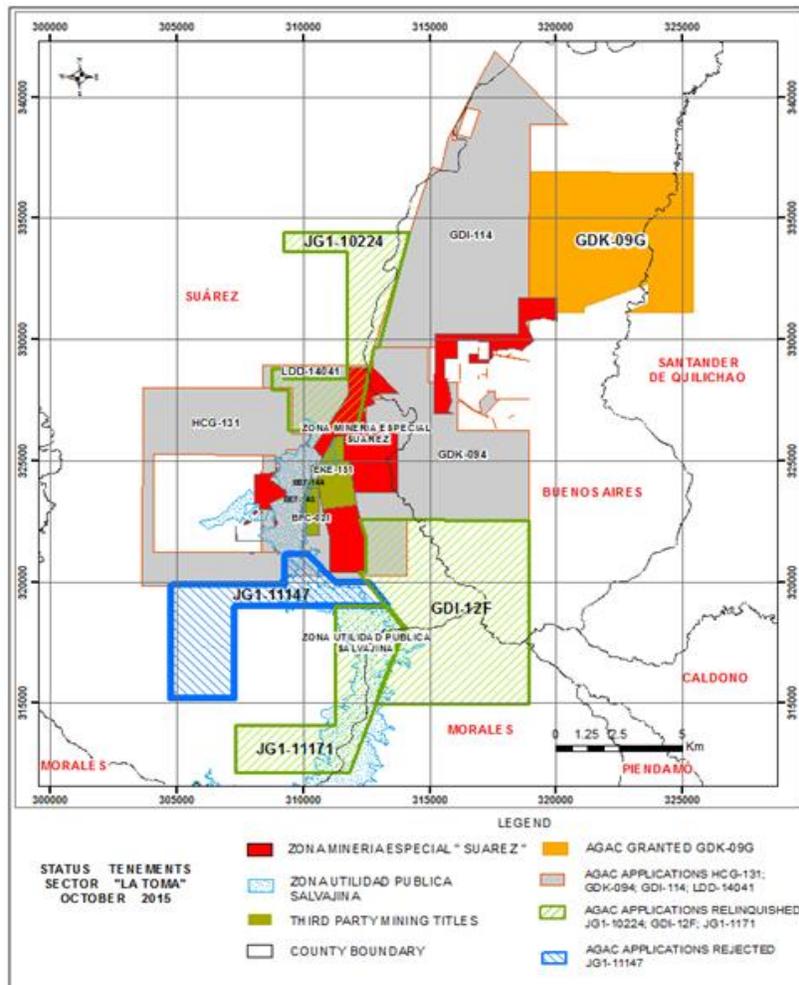
After more than nine years of processing, the ANM, through Resolution No. 002497 of 29 April 2013, suspended the processing of thirteen (13) proposals for a concession contract from different proponents including AGAC (ANGLOAMERICAN, MINING FOUR POINTS, SAE EXPLORATION, COOPERATIVE MINERS SUAREZ), including the **HCG-131**, under the sentencing proposal T-1045A10 of the sixth revision of the Constitutional Court.

This Resolution ordered the ANM to refrain from granting or suspending licenses for mining in Mr. HECTOR JESUS SARRIA project or any other in the Corregimiento La Toma, Suarez –

Cauca, until the appropriate Prior Consultation has taken place, and if necessary, the procedure for obtaining the potential environmental license. This outcome was communicated directly to the Director of Indigenous, Affairs, Minorities and ROM, from the Ministry of Interior and Justice, requesting that once the procedure of Prior Consultation is carried out in the Corregimiento La Toma in Suárez – Cauca, the ANM is to be instructed to establish the procedure to continue with the process of analyzing the proposal for concession award as included in the Resolution.

To date, AGAC has not been notified or informed about the procedure of Prior Consultation nor has the process been engaged by the ANM.

Further, AGAC also evaluated information from the Colombian Mining Register (Catastro Minero Colombiano- CMC, and identified the plate number **BFC-021** is a mining title existing in the form of operating license for gold ore, on behalf of HECTOR JESUS SARRIA, and the plate number **EKE-151** is a mining title existing in the form of concession contract for gold and partners and other mineral concessions, on behalf of RAUL FERNANDO RUIZ ORDOÑEZ, both located in the jurisdiction of the municipality of Suarez in the Department of Cauca.



TENEMENT	PROPOSER	CURRENT STATE
----------	----------	---------------

TENEMENT	PROPOSER	CURRENT STATE
GDK-094	AGAC	Suspended by the ANM through Resolution No. 002497 from 29 April 2013
HCG-131	AGAC	Suspended by the ANM through Resolution No. 002497 from 29 April 2013
JG1-10224	AGAC	Withdrawal through document submitted on 10 September 2014 to the ANM
JG1-11147	AGAC	Proposal rejected by ANM through Resolution No. 000334 from 6 February 2014
JG1-11171	AGAC	Withdrawal through document submitted on 10 September 2014 to the ANM
LDD-14041	AGAC	Suspended by the ANM through Resolution No. 002497 from 29 April 2013
GDI-12F	AGAC	Withdrawal through document submitted on 10 September 2014 to the ANM
GDI-114	AGAC	Proposal under technical review by the ANM
GDK-09G	AGAC	Concession contract temporarily suspended until 3 October 2015 and in process of extension of the temporary suspension due to <i>force majeure</i> (public order).

In this context, it is clear that AGAC has not infringed any regulation related to the right of the communities to the Prior Consultation in the *process for obtaining the mining tenements* that are currently under application by the Company. From the court resolution cited, it is clear the authority for exercising Prior Consultation resides with the State of Colombia and that AGAC cannot engage in activities for which it has not received mineral tenements licenses. Finally, it is not legally possible to oblige AGAC to develop and execute a Prior Consultation when the Company does not have an acquired right to the mineral tenement(s) in this discussion. Therefore and as stated previously, the logical procedure is for the Prior Consultation to take place prior to establishing mineral tenement areas (by ANM) or only after granting the mineral tenement title which is when AGAC would be a legal tenement holder and should therefore engage the process.

Due Diligence Questions Specifically Raised: Case Alto Andágueda, Municipality of Bagadó, Department of Chocó

The mining titles with plate numbers **GEB-09B, GEB-09G, GEQ-09C, GEQ-09D, GEQ-09K, GEQ-09Q, GEQ-105, HJN-15231** and **IDA-16121**, are part of a Joint Venture (JV) developed between AngloGold Ashanti Colombia S.A. and Glencore Colombia S.A.S., which is materialized through the entity **Exploraciones Chocó Colombia S.A.S.**; JV that is currently administered by Glencore Colombia S.A.S.

Since award of mineral tenements, neither AGAC or Exploraciones Chocó Colombia S.A.S. have been conducting exploration activities in the areas of the concession Contracts GEB-09B, GEB-09G, GEQ-09C, GEQ-09D, GEQ-09K, GEQ-09Q, GEQ-105, HJN-15231 and IDA-16121, due to the high-risk security situation in this area.

Since the time of granting of the mineral tenement contracts noted above, all are lawfully in force majeure (as provided under Colombian Law - specifically article 52 of the Code of Mines). This has been established via legal proofs that demonstrate force majeure exists due to public order problems in the municipalities in which the areas under concession are located (i.e. Tadó, Lloró, Bagadó and el Carmen – Department of Chocó) brought about by the presence of illegal armed groups that impede the safe entrance of personnel to those areas. Hence, the mining authority has recognized and decreed multiple periods of suspension of the obligations derived from the mineral tenement contracts. These conditions of insecurity prevail at present.

AGAC emphasizes that the identified armed conflict has no relationship with the fact that AGAC has been granted mining titles in the area. The ANM has not granted the mineral tenement contracts arising out of or through acts of violence nor through the armed conflict. Further, neither AGAC nor the JV benefited from any acts of this nature. On the contrary, AGAC and the JV in particular have not been able to access the area. The JV administrator has - on multiple occasions - informed the ANM about these circumstances and has repeatedly requested the suspension of the obligations and contractual rights required under the mineral tenement contract.

Further to the aforementioned suspension and as documented in the ANM files, from the moment the contract was granted, the JV has requested the suspension of the Concession Contracts, protected in what is provided by the ANM through Resolution VSC No. 000220 from 14 March 2013 which further ordered the suspension of the mining titles to comply with the precautionary measure ordered by the Land Restitution Judge in Quibdó through the Auto No. 006 from 4 February 2013.

The judicial sentence provided for the process of restitution of territorial rights to the Indigenous reservation of Alto Andágueda, ordered the ANM to establish and comply with a Prior Consultation, and to seek for informed consent from the community of the Indigenous reservation of Alto Andágueda. Further, that until such process is completed; there must be a suspension of studies and the process of requests from third parties that are external to the indigenous community. The judicial sentence also requested the suspension of the mining titles that overlap with the Reservation and the concession contracts for mining exploration and exploitation that are already subscribed.

In this context, is important to highlight that the process of restitution of territorial rights seeks to protect those who have been subject to violent actions related to the armed conflict and that have been forced to abandon or dispossess territories or territorial rights.

Categorically, neither AGAC and/or Exploraciones Chocó Colombia S.A.S. have no relation with the armed conflict that affects the Department of Chocó. The mining concession contracts under Exploraciones Chocó Colombia S.A.S. or AGAC have not caused abandonment, confinement, or dispossession of the territory of the afro-descendent communities. AGAC nor Exploraciones Chocó Colombia S.A.S have not taken advantage nor benefited in any way from the armed conflict. To the contrary neither entity has been able to perform any engagement that may develop into exploration activities.

Illegal Mining

Illegal mining as defined by the Code of Mines is the exploration or exploitation activity that is developed without the appropriate mining title or without the authorization of the owner of the private property in which the project is located (Article 159). Regulation of illegal mining is the responsibility of the State of Colombia which unfortunately is very limited in its ability to control and diminish this activity. Only during the last 2-3 years has there been a concerted attempt by the Colombian authorities to address this problem and with it define legal and actionable responsibilities and obligations to control illegal mining in Colombia.

AGAC dutifully reports instances in which it has identified the presence of illegal mining through lawful engagement of administrative protections (*amparo administrativo*). This process consists of a request that is presented by either the mining title holder or the Mayor of the municipality to the illegal third party who may be conducting illegal exploration or exploitation activities without a valid mining title. It is then the legal authority's obligation to initiate the legal and environmental investigations given that this conduct is classified as a felony under the Colombian Law.

From the information previously presented, the following directly answers each of the questions raised in your letter.

1. Is AngloGold Ashanti Colombia planning to purchase the two active mining titles held by Colombian individuals in La Toma

No, AGAC is not planning to purchase the two mining title existing **EKE-151** and **BFC-021** owned by HECTOR JESUS SARRIA, and RAUL FERNANDO RUIZ ORDOÑEZ, both located in the jurisdiction of the municipality of Suarez in the Department of Cauca.

2. What action has the company taken to ensure that mechanical diggers illegally operating on areas the company is requesting mining licenses for are removed or prevented from entering?

We insist and are emphatic that the control of illegal mining is the responsibility of the State of Colombia and unfortunately is very limited in its ability to control and diminish this activity. The company informs the authorities about the presence of such activities in the areas in which it has mining titles, and it corresponds to the respective authorities to take the appropriate measures

AGAC dutifully reports instances in which it has identified the presence of illegal mining through lawful engagement of administrative protections (*amparo administrativo*).The administrative protections can only be requested by mining owners with mining rights granted, which expressly

states that in the case of the contract proposals, even if there were illegal mining activities there, AGAC is not authorized by law for the application of the administrative protections.

Near La Toma and for the only mining title that AGAC has been granted **GDK - 09G** located the municipalities of Buenos Aires and Santander de Quilichao; AGAC requested the administrative protection before the mining authority. The first one was requested in April 2014 due to the evidence of mechanized mining activities in the area. Through Resolution No. 000107 from 8 May 2014 the ANM granted the administrative protection to AGAC and commissioned the Mayors of municipalities of Buenos Aires and Santander de Quilichao to proceed to the suspension and closure of the mining activities that were taking place in the area. This situation is currently under investigation from the General Attorney.

Regarding administrative protections in the Chocó (Alto Andágueda):

- It has not been possible to enter the areas due to the lack of public order. Therefore, AGAC has not been able to verify in the field illegal mining activities, if there are any.
- The mining authority has granted the suspension of obligations under the contracts because of the public order situation.
- AGAC has not granted any authorization to third parties to develop mining activities in these areas.
- AGAC has not entered any kind of machinery for the development of mining activities; nor has it authorized third parties to enter machinery for that purpose or for other purposes.

“Amnesty International has seen official information that indicates that the company has entered into security agreements over recent years with the Ministry of Defence to provide support for armed forces units operating in several parts of the country, including in Bagado and Suarez Municipalities. Regarding these agreements

1. Are the armed forces requested to control access points to the areas of mining application to prevent the arrival of mechanical diggers and other mining machinery?

The Armed Forces exert presence in support of AGAC only in those areas included in the agreements, when exploration activities are to be held. This is specific to areas AGAC can lawfully conduct its exploration activities and would exclude areas under proposal. Further, Armed Forces presence as security occurs only when AGAC requires it in the field and while performing work on granted mineral tenements.

As for the mechanical diggers operating in many places, the Armed Forces, as we engage, do not exert any action for prevention as this task has been given to a special corps of the Police (Policia de Carabineros) whom AGAC have no agreements with. This Police corps conducts missions to fight this type of illegal mining.

2. What, if any, conditions are imposed to ensure that units receiving financial support through these agreements do not commit human rights violations and are subject to full and impartial criminal investigations by the civilian criminal system not the military justice system, which has been instrumental in protecting the impunity of members of the security forces implicated in human rights violations?

AGAC has and continues to maintain security agreements with the Ministry of Defense. The primary motivation for these security agreements is to ensure our work force is afforded a safe work environment free from all forms of threat. Absent this, AGAC cannot and will not conduct business in Colombia or elsewhere.

These agreements expressly state that Security Services provided need to guarantee the avoidance of behaviors that violate of human rights as developed in the “Voluntary Principles on Security and Human Rights (VPSHR)” initiative. This VPSHR is conducted as training by AGAC to all members of the Armed Forces performing services under the security agreements (as well, AGAC requires this of all Security Services providers).

Under this program, AGAC monitors and reports all allegations, events or incidents related to the VPSHR violations not only through our internal structure but also to the civil authorities – who in turn, conduct external investigations. AGAC monitors the progress of all investigations until the allegation is resolved.

3. What, if any, conditions are included in these agreements to ensure that these units confront not just guerrilla but also paramilitary forces in the areas in which they are operating?

The agreements AGAC have signed with the Armed Forces do not make distinctions on the source of the threats. There is no differentiation as to threats AGAC may seek protection from. The agreements simply enjoin the Armed Forces to provide protection against any Security related threats to AGAC personnel and property. Furthermore, by law the Armed Forces are obliged to fight against all forms of threat with no distinction. These threats are internally developed and assessed based on intelligence information collected by their sources and may vary from paramilitaries to criminal gangs to guerrillas.

Summary

All of the information presented in this letter, intends to provide your organization with additional sources to enrich your analysis and take into account additional points of views. AGAC are open to discuss additional questions or information AI may be interested in understanding, before publishing your report, or in future processes of due diligence related to Human Rights issues.

AGAC respectfully and fully rejects the assertions raised in AI’s letter of 25 September 2015 linking the inexistence of Prior Consultations with a corporate behavior associated to the use of the Armed Forces for the private benefit, a passive attitude towards illegal mining and a

wrongful use of the situations of violence against the communities for searching and obtaining mining rights. The facts simply do not hold AI's view as valid.

AGAC fully believes it has and continues to act responsibly, legally, and with a strong moral compass as to its activities in Colombia.

Yours sincerely,